

SEC Announces a Maximum Whistleblower Award to an Employee Who Faced Employment Retaliation as a Consequence of Reporting Dodd-Frank Act Violations to the Commission

In June of last year, Paradigm Capital Management agreed to pay the SEC nearly \$2 million to settle allegations that it violated the Dodd-Frank Act's conflict-of-interest rules and unlawfully retaliated against the whistleblower that brought the conflict-of-interest issue to the SEC's attention. This Tuesday, the SEC announced that the Paradigm Capital whistleblower would receive, on a percentage basis, the maximum allowable whistleblower reward — 30 percent of the amount that Paradigm Capital paid to the SEC to settle the allegations. In announcing the maximum reward, the SEC's press release cited the fact that the whistleblower "suffered unique hardships, including retaliation, as a result of reporting [the conflict-of-interest issue] to the Commission."

While the total dollar amount awarded to the Paradigm Capital whistleblower — \$600,000 — is by no means the SEC's largest Dodd-Frank payout, it is significant that the SEC's decision to provide the whistleblower a percentage-maximum award rested largely upon the fact that the whistleblower was exposed to retaliation. According to the SEC's administrative order, the Claims Review Staff considered "in particular . . . the substantial evidence that the whistleblower suffered unique hardships as a result of reporting [to the Commission]."

The timing of the SEC's announcement is also significant, coming on the heels of two other recent, groundbreaking SEC enforcement actions involving the Dodd-Frank Act's whistleblower provisions — KBR, Inc.'s April 1, 2015 settlement of allegations that it unlawfully sought to deter whistleblowing, and the Commission's announcement on April 22, 2015 that it had awarded over \$1.5 million to a compliance officer who reported company violations to the SEC without first seeking to remedy the issue through the company's internal compliance procedures.

Viewed against the backdrop of the SEC's recent enforcement activity in the whistleblower space, it seems likely that the SEC's decision to give a percentage-maximum award to the Paradigm Capital whistleblower is part of a broader SEC strategy to encourage whistleblowing by employees who might perceive reporting to the Commission to be a major professional risk. Essentially, the SEC's press release sends a message that the award a whistleblower receives is not based merely on the quality and quantity of the information provided to the Commission, but also the personal and professional hardships the whistleblower faced as a result of reporting to the Commission — in other words, that the SEC will, to the maximum extent possible, provide a whistleblower with additional compensation for the retaliation he/she might have suffered. Indeed, in the SEC's press release, Sean McKessey, Chief of the SEC's Office of the Whistleblower, stated his "hope . . . that the award today encourages potential whistleblowers to come forward in light of our demonstrated commitment to protect them against retaliatory conduct and make significant financial awards to whistleblowers who suffer employment hardships as a result of reporting possible securities law violations."

As the calendar now turns to May, the SEC's flurry of activity in April can be seen as a strategic, holistic effort to bolster the financial incentives for whistleblowers to come forward, penalize companies that seek to deter employees from reporting to the Commission, and reduce procedural hurdles that might otherwise prevent certain key employees from becoming whistleblowers.

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