



SEC WHISTLEBLOWER PROGRAM

Enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) on July 21, 2010, the SEC Whistleblower Program is designed to combat securities fraud by rewarding whistleblowers.

Under the SEC Whistleblower Program, an individual who voluntarily provides the SEC with original information regarding a securities violation may receive between 10 and 30% of the total monetary sanctions collected by the SEC, if the original information leads to a successful enforcement action with monetary sanctions over \$1,000,000.

What Type of Fraud is Covered by SEC Whistleblower Program?

The SEC Whistleblower Program applies to violations of the federal securities laws including the Securities Act of 1933, the Securities Act of 1934, and the Investment Company Act of 1940. Types of fraud covered by the SEC Whistleblower Program include insider trading, Ponzi schemes, stock manipulation, and financial report misstatements.

The SEC Whistleblower Program also rewards individuals who provide the SEC original information about violations of the Foreign Corrupt Practices Act (“FCPA”). The FCPA prohibits American companies and individuals from making payments to foreign officials for the purpose of obtaining, retaining, or directing business to any person.

Who Qualifies as a Whistleblower

An individual is eligible for an award under the SEC Whistleblower Program, if he or she voluntarily provides original information to the SEC about a possible securities violation and that information leads to a successful enforcement action. Corporations and organizations are not eligible to be whistleblowers under the program.

The SEC considers a whistleblower’s submission “voluntary” if the whistleblower provides the information to the SEC before the SEC or other relevant authority (such as Congress or FINRA) requests or demands information from the whistleblower (or whistleblower’s attorney) relating to

that submission. A submission is not considered voluntary if the whistleblower was already under a pre-existing legal or contractual duty to disclose the violation to the SEC.

For information to be original, it must be:

- (i) Derived from the whistleblower's knowledge or independent analysis;
- (ii) Not already known to the Commission from any other source, unless the whistleblower is the original source of the information;
- (iii) Not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is a source of the information; and
- (iv) Provided to the Commission for the first time after July 21, 2010.

To be an "original source", the whistleblower must either have originally provided the information that the SEC obtains from other sources regarding the alleged fraud or have information that is (1) derived from the whistleblower's independent knowledge or independent analysis and (2) that materially adds to information that the SEC has already obtained from other sources.

How to Make a Submission Under SEC Whistleblower Program

Unlike cases brought under the False Claims Act, whistleblowers do not file a complaint in federal court to initiate an SEC Whistleblower action. Instead, whistleblowers must provide the SEC with the details and evidence of the alleged securities violation by completing and filing an SEC Form TCR with the SEC Office of the Whistleblower.

If you would like to speak to one of our attorneys about a potential whistleblower matter, please email us at wbinfo@ktmc.com or call us at (610) 667-7706. All case evaluations are confidential and free.