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MARKETS

SEC Whistleblower Payouts Slow Amid Deluge of Reward Seekers

Agency proposes ways to speed up decisions that now take more than two years to make



The Securities and Exchange Commission acknowledges the process for rewarding whistleblowers can be improved. PHOTO: JONATHAN ERNST/REUTERS

By *Dave Michaels*

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WASHINGTON—Wall Street's top regulator now takes more than two years to hand rewards to tipsters who report wrongdoing, a process that lasts longer than the average time it takes to investigate and close an enforcement case.

The Securities and Exchange Commission has become a magnet for tips—both good and bad—after publicizing its mega-bounties, including an \$82 million award given in March to three tipsters who told regulators about a complex scheme at Bank of America Corp. involving misused customer cash and securities.

The commission acknowledges the process can be improved, and partly blames requests from unworthy applicants trying to finagle windfalls from the program, which pays whistleblowers who provide tips deemed critical to an investigation.

The cash-for-tips program, now in its seventh year, has awarded more than \$266 million to 55 tipsters, the SEC said.

In 2012 and 2013, the early years of the program, the SEC took about a year to decide if a whistleblower's tip merited a reward. The average time rose to over two years in the period from

2014 through 2017, when it exceeded four years, according to a sample of whistleblower award decisions analyzed by The Wall Street Journal.

The Journal based its analysis on a sample of whistleblower awards because it isn't always possible to identify the case related to a reward. The SEC withholds many details from its decisions, citing its desire to completely shield the whistleblower's identity.

Over the life of the program, people who got awards waited on average about 210 days for a decision, while a rejected application got word within 730 days, according to the Journal's analysis.

The process, even for legitimate tipsters, can take much longer, according to attorneys who deal with it.

Stephen Kohn, an attorney whose whistleblower clients have included former UBS Group AG banker Bradley Birkenfeld, said he has one client who was told by the SEC that an award is forthcoming. But it has been over four years since the client sought the reward, Mr. Kohn said.

"I believe they have a massive backlog," Mr. Kohn said. "The SEC has operated a professional program, but their decision-making process hasn't taken into consideration the devastating impact on the whistleblowers of these long delays."

Deciding who gets paid is a demanding process that involves vetting each request to determine how important the person's tip was, according to current and former officials. When multiple whistleblowers are involved, decisions are more challenging because the SEC has to measure each tipster's value to the case.

Applicants receive an initial decision, but can prolong the process by challenging the ruling and asking for another review of their claim.

"No application is cookie cutter for us to process," Jane Norberg, head of the SEC office that oversees whistleblower rewards, said in an interview. "The volume of claims received is a reflection of the program's success."

Critics of the SEC's process blame the way it publicizes cases that are eligible for rewards. After the commission settles cases where the total fines exceed \$1 million—a minimum condition for getting a reward—it advertises those on a website. Anyone who sees that disclosure can request a reward, which can range from 10% to 30% of the total fines.

Frivolous reward seekers can "significantly delay" the SEC's ability to pay real whistleblowers, the SEC wrote in a proposal issued in June that seeks changes to the program.

The regulator is now moving to hand rewards sooner to tipsters who report wrongdoing, after red tape and a flood of undeserving claims have delayed whistleblower payments.

The plan, now out for public comment, would let the SEC more quickly reject less deserving applicants so regulators can focus on paying real whistleblowers, officials said. The SEC receives about 110 whistleblower reward applications a year that meet all of its documentation and processing rules, according to agency records.

The SEC has barred two people from the program who together sought rewards tied to hundreds of enforcement actions. Their claims of having helped government investigations were “patently false,” the agency wrote in its decisions.

Some whistleblowers and their attorneys, who insist their claims are credible, say they’ve lost faith in the system because it can take so long to get an answer.

A former orthopedic surgeon who said he told the SEC and U.S. prosecutors about kickbacks paid to Brazilian doctors by a distributor for Zimmer Biomet Holdings has been waiting over a year for a decision on his reward.

Zimmer Biomet in January 2017 paid about \$30 million to settle probes by the SEC and Justice Department. The SEC settlement order acknowledged the role of a whistleblower without naming who it was. Under the rules of the program, the former surgeon could receive a payout anywhere from \$3 million to \$14 million.

The former surgeon, once a president of the Brazilian Orthopedic Sports Medicine Society, said he sent a detailed email about wrongdoing to the SEC and Justice Department in October 2013. The email revealed the names of distributors and the alleged kickbacks they paid doctors—15% to 20% of the device’s cost—who agreed to use their products. The tip revealed that Zimmer Biomet continued to use one distributor in Brazil that was known to have paid bribes to government officials on its behalf—despite an earlier agreement with U.S. prosecutors requiring Zimmer Biomet to stop using the distributor.

“Having a system that is slow is the same thing as having a system that is not fair,” the former surgeon said.

The SEC recently asked the former surgeon for a sworn statement declaring that he sent the anonymous tip, his lawyers, Andy Rickman and Christopher Connors, said.

An SEC spokesman declined to comment on the case.

“To our clients, the whistleblower claims process feels like a bottomless pit,” Mr. Connors said.

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