

## **OFFICE OF THE WHISTLEBLOWER APPROACH TO PROCESSING WHISTLEBLOWER AWARD CLAIMS**

Whistleblower information regarding possible violations of the securities laws can have a significant and positive impact on the SEC's ability to enforce the law. With the benefit of whistleblowers' assistance, the Commission is better able to identify frauds and other violations, and often does so earlier than might otherwise have been possible. In this way, whistleblowers help the Commission minimize harm to investors, protect the integrity of the U.S. capital markets, and hold accountable those responsible for unlawful conduct.

Congress has authorized the Commission to make monetary awards to whistleblowers who provide high-quality, original information that leads to a Commission enforcement action involving over \$1,000,000 in ordered sanctions. By statute, the amount of whistleblower awards ranges between 10% and 30% of the money collected in the enforcement action. Since the inception of the program, the SEC has awarded hundreds of millions of dollars to dozens of individual whistleblowers.

The Commission's Office of the Whistleblower (OWB) administers the agency's whistleblower program. In addition to processing award claims, OWB carries out other responsibilities, including responding to calls daily on a public whistleblower hotline and providing guidance on issues such as confidentiality and retaliation protections to investigative staff working with whistleblowers.

Each year OWB seeks to process a significant number of whistleblower claims overall, while also fulfilling the program's mandate to award whistleblowers with meritorious claims. This requires OWB to process a mix of likely meritorious and likely non-meritorious claims throughout the year, with the likely meritorious claims prioritized.<sup>1</sup> This statement describes OWB's two phases of claims processing: (1) the initial triage and prioritization of claims, and (2) substantive claims analysis and claim recommendation.<sup>2</sup>

### **Phase One: Initial Triage and Prioritization for Substantive Analysis.**

A top priority of the whistleblower program is to make awards for meritorious claims. To that end, the first phase of the process involves initial triage and prioritization of the claim for substantive analysis. To make an initial assessment of whether a claim is likely to result in an award, OWB reviews each award claim and considers, among other things, the information in the claimant's application, any whistleblower tips submitted by the claimant that are related to the claim, and communications the claimant had, if any, with the Commission's enforcement

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<sup>1</sup> This means that a later-filed likely meritorious claim may be considered before an earlier-filed but likely non-meritorious claim.

<sup>2</sup> OWB processes claims but does not determine their disposition. Rather, consistent with the whistleblower rules, OWB makes recommendations for initial determination by the Claims Review Staff of claims and reconsideration requests, and notifies the Commission of each Proposed Final Determination.

staff responsible for investigating the underlying enforcement action.

After initial triage, OWB's general practice is to initiate the substantive analysis of claims within each group (e.g., likely meritorious vs. likely non-meritorious) on a first-in, first-out basis. However, there are a number of factors that may cause OWB to undertake earlier (or later) consideration of a claim. These factors, which may relate to the claimant, the claim itself, or our efforts to manage claims efficiently, include, among others:

- **Claims that Appear Frivolous.** In order to increase efficiencies and conserve resources, OWB may group together for consideration claims that appear frivolous or that are straightforward denials.
- **No Collections.** If there has been no collection of monetary sanctions in the underlying enforcement action, OWB may defer consideration of the relevant claims, even if a claim appears to be meritorious.<sup>3</sup>
- **Overlapping Facts.** OWB may consider a later-filed claim that it views as likely meritorious in conjunction with an earlier-filed claim by the same claimant if there is significant factual overlap between the claims.
- **Serious Health Concerns.** If a claimant with a likely meritorious claim faces a life-threatening or other serious health situation that is sufficiently documented, OWB may prioritize consideration of his or her claim.
- **Other Facts and Circumstances.** OWB may depart from its general practices for other reasons if it believes the facts and circumstances of a particular claim warrant such a departure.

### **Phase Two: Substantive Analysis and Claim Recommendation.**

Once OWB begins the substantive analysis of an award claim, many factors can affect the time it takes to complete the process and prepare a recommendation for the Claims Review Staff or a notification for the Commission on the disposition of the claim. Such factors include, but are not limited to, the following:

- **Multiple Claimants.** Many enforcement actions generate multiple award claims. As a general matter, the more claimants that apply for awards on an enforcement action, the longer it takes to complete the analysis and processing of the claims.<sup>4</sup>

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<sup>3</sup> This is because absent collection of ordered sanctions, an award will not result in an actual payment to a successful claimant.

<sup>4</sup> In some instances, we process all claims arising from an enforcement action together for two reasons. First, we process claims involving more than one potential award together to ensure that we weigh the contributions of the claimants in comparison to each other, and to ensure that the total of the awards arising from the enforcement action does not exceed the statutory maximum of 30% of ordered sanctions. Second, in some actions, it is more

- **Requests for Reconsideration.** After receiving a Preliminary Determination of the Claims Review Staff, any claimant may request reconsideration, which may require OWB to address new factual and/or legal issues.
- **The Presence of Complex Legal Issues.** If a claim presents a complex legal issue that requires consultation with other Commission offices, OWB will defer the processing of part or all of the claim until it has resolved the legal issue.
- **Awaiting Information or Input from Others.** The analysis of an award claim may require information and/or input from others, including the claimant or other government agencies. Progress on a claim may be delayed while OWB awaits a response from one or more of such persons. This is particularly common with claims involving a related action, in which OWB is dependent on another agency to provide information unavailable to the SEC.

For questions concerning the SEC's Whistleblower Program or information on how to submit a whistleblower tip to the Commission, please visit our website at [www.sec.gov/whistleblower](http://www.sec.gov/whistleblower) or call the public whistleblower hotline at 202-551-4790.

This document is U.S. Securities and Exchange Commission (SEC) property. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. Decisions about the assignment of award claims for processing, and about the completion of the processing of assigned award claims, are made based on the specific facts and circumstances presented.

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efficient to consider multiple claims filed in connection with an enforcement action together than to consider each separately. However, with respect to certain matters, where there appear to be straightforward denials, we may individually process those claims to gain efficiencies.