

SEC Reduces Dodd-Frank Whistleblower Award For "Unreasonable Delay," Announces Policy Of "More Heavily" Punishing Delay After Award Program's Implementation

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Continuing [our coverage](#) of the SEC's whistleblower award program, the SEC recently announced a [notable award order](#). What is notable about this award is not the size of the bounty, but the fact the SEC reduced the award for "unreasonable delay" in reporting, stating for the first time that "the award could have been higher had this whistleblower not hesitated." As we have previously discussed, the Dodd-Frank Act's whistleblower award program permits the SEC to award whistleblowers a bounty between 10 percent and 30 percent of an enforcement sanction. While this is not the first time the SEC reduced an award due to a claimant's delay, the SEC had mitigated its prior reductions by noting the delays pre-dated the Dodd-Frank Act. Here, in contrast, the SEC noted the delay occurred "entirely after" the establishment of the award program, and thus refused to mitigate the award reduction. Moreover, the SEC clearly stated it would "weigh the [reporting] delay more heavily in assessing the appropriate award percentage" for all future awards. In other words, the SEC, through this award order, is effectively announcing that any leeway in past reductions is over: the SEC expects claimants to take advantage of the reporting program and that it will not hesitate to reduce awards for unreasonable delay in the future. Interestingly, the SEC also noted the possibility that a claimant may delay reporting to increase his own bounty, given that awards are calculated as a percentage of the overall sanction. The SEC expressed its concern that "whistleblowers could unreasonably delay reporting and receive greater awards due to the continued accrual of wrongful profits." This is the first time the SEC has expressed this concern in its award orders. Although the SEC did not find this concern actually present here, and the concern did not directly affect the award calculation, whether this concern is merely a general policy statement or a serious factor the SEC will consider in future award calculations remains to be seen. (Perhaps unsurprisingly, the SEC rejected wholesale the claimant's argument that by reducing an award for delay, the SEC would encourage "lower quality tips and complaints.") Finally, the award order sheds more light on the SEC's award calculations. Here, although the claimant did not report the violations internally, the SEC explained at length that this was not a factor in the SEC's decision to reduce the award. Additionally, the SEC noted that factors mitigating the claimant's delay included the fact the claimant "witnessed a single violation and was unaware of the full extent of the fraud." This also suggests that whatever downward adjustment the SEC made to the claimant's award, it could have been more severe. Going forward, the SEC's award order makes clear the SEC will not hesitate to reduce an award for what it considers to be "unreasonable delays," and that any leeway from the implementation of the whistleblower award program is effectively over in the wake of Dodd-Frank. This stance could cause more problems for companies that do not promptly

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recognize and respond to whistleblower complaints, as any delay in addressing the issue internally could encourage whistleblowers to go directly to the SEC. Indeed, this award may drive more whistleblowers to go directly to the SEC first, without elevating the issue at the company, making it even more imperative that companies have compliant, working, readily available reporting systems in place to address whistleblower complaints. Continue to follow us for the latest developments in this rapidly developing area of enforcement. Read the SEC's Press Release [here](#).