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Bigger payouts seen for U.S. financial market whistleblowers

Tue, Oct 1 2013

By Sarah N. Lynch

WASHINGTON (Reuters) - In the two years since U.S. market regulators launched programs to encourage whistleblowers to report corporate wrongdoers, all of five people have been rewarded, but officials are bolstering their efforts and predict lucrative payouts for tipsters.

Both the Securities and Exchange Commission and Commodity Futures Trading Commission launched their offices in 2011 as part of post-crisis reforms laid out in the 2010 Dodd-Frank financial law.

Lawmakers hoped the allure of financial windfalls would encourage witnesses to turn in fraudsters or other corporate wrongdoers. But the initial tips and payout numbers have been modest.

The SEC had paid a total of four whistleblowers \$170,000 despite receiving 3,001 tips in fiscal year 2012 alone, while the CFTC paid nothing after getting 58 tips in the same time period.

But on Tuesday the SEC announced its largest award yet - \$14 million to an anonymous whistleblower - and the official in charge of the agency's office said high-quality tips that could lead to big payouts are now being submitted routinely.

"We have some very interesting ongoing investigations that, depending on how they play out, could, given our historical recovery in these kinds of cases, mean very big numbers," SEC Whistleblower Office Director Sean McKessy said in an interview with Reuters last week.

"I think logically speaking, in the years to come, I expect there will be more frequent and continuous payments on a more rolling basis," he added.

The SEC provided few details about how the latest whistleblower helped assist SEC investigators, citing confidentiality concerns by the whistleblower.

Under SEC rules, if the tip proves vital to a case, a whistleblower can receive anywhere from 10 to 30 percent of the monetary sanctions collected if they exceed \$1 million.

The SEC said the person's tip allowed the agency to bring an action against the perpetrators in less than six months and recover investors' money.

While the SEC's office has received the bulk of the tips so far, the CFTC's program is gaining traction.

In July, the CFTC hired SEC enforcement veteran Christopher Ehrman to head its whistleblower office. In an interview with Reuters, Ehrman said the program is thriving.

As of late September, he said, the CFTC had received more than double the tips for fiscal 2013, jumping from 58 to 137.

"The overall visibility of the agency I think has increased significantly," he said, noting that the CFTC's blockbuster cases against banks like UBS, The Royal Bank of Scotland and Barclays, settlements over the rigging of Libor interest-rates and the ongoing litigation against ex-MF Global Chief Executive Jon Corzine have been a "game-changer" for the agency.

EARLY CRITICISM

The offices have their critics.

Corporate interest groups, including the U.S. Chamber of Commerce, warned that the rules governing the offices could kill company compliance programs, especially if whistleblowers were not required to report internally first.

They say regulators could be swamped with an avalanche of possibly less-than-stellar tips from insiders who have a beef with management and were looking for a big payday.

In a concession to companies, the final SEC rule included a provision that improved a whistleblower's chances of receiving a higher percentage award by reporting problems internally first. But the rule only protects the whistleblower from retaliation if the employee also reports wrongdoing to the SEC.

Tom Quaadman, vice president of the Chamber's Center for Capital Markets Competitiveness, said in an interview that it is too soon to know if the program has had adverse effects and that more data is needed.



Other groups, namely whistleblower lawyers, have been fierce advocates of the offices' potential.

Lawyers in private practice who specialize in whistleblower cases say they have clients, including high-level people from well-known companies, who have strong potential to reap the benefits of the new Dodd-Frank whistleblower programs.

"We have 26 cases pending before the SEC right now and of that number, close to half have had some enforcement interest," said R. Scott Oswald, a lawyer with the Employment Law Group. "Of that number, I'd say about six or seven are very significantly down the track in the enforcement action."

Regulators and lawyers say few awards have been handed out so far due to the time it takes to investigate, litigate and determine whether whistleblowers should be rewarded.

"An SEC investigation can take two to four years to develop," said Jordan Thomas, a partner at Labaton Sucharow LLP, who previously worked at the SEC helping to create the whistleblower program.

Because the rules took effect only in 2011, that means most cases have not yet run their course, he added.

"In the coming years, I predict that many of the SEC's most significant cases will be the result of whistleblowers," Thomas said.

As for the CFTC's program, experts say they believe there have been no payouts yet for a variety of reasons.

In addition to the time it takes to check out tips, the CFTC investigates a narrower swath of issues than the SEC and is not as well known a regulator on Wall Street.

"I think that office should go on a massive public relations campaign to explain what they do and how whistleblowers can help," said Stephen M. Kohn, the executive director at the National Whistleblowers Center and author of "The Whistleblower's Handbook."

The CFTC's Ehrman, for his part, said he could not agree more.

He plans to go on a road show of sorts, visiting CFTC and FBI regional offices, bar association events and trade group gatherings. In November, he will set up a table at the Future Industry Association's popular annual conference in Chicago.

"We are redoubling our efforts," he said.

(Reporting by Sarah N. Lynch; Editing by Karey Van Hall and Dan Grebler)

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