



Top 10 Topics for Directors in 2015: Maintain Robust Compliance Programs

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In addition to utilizing new investigative approaches and innovative data and analytical tools to ferret out many of these violations, the SEC received more than 3,500 tips from whistleblowers in fiscal year 2014, the largest number since the whistleblower rules went into effect in 2011.ⁱⁱⁱ Since 2011, the SEC has given 14 whistleblower awards, nine of which were awarded in 2014. And the SEC recently announced its largest ever award of \$30 million, which is more than double the previous record of \$14 million. The size of these awards provides strong incentive for individuals to report suspected conduct to the SEC.

The increase in whistleblower activity shows no signs of abating. To the contrary, Sean McKessy, Chief of the SEC's Office of the Whistleblower, has said that he intends to broaden the scope of the SEC's activity in this area, making employers who retaliate against whistleblowers a priority. The SEC brought its first whistleblower retaliation case in June, resulting in \$2.2 million in sanctions against the offending company. McKessy has suggested that this case may be the first of many, noting that the SEC is actively looking to bring cases against employers who make it more difficult for whistleblowers to come forward and provide information to the SEC. Employee confidentiality agreements, including in the context of employment and severance agreements, that "impede" whistleblower activity are now falling under heightened scrutiny. Of particular concern are clauses that prohibit employees from reporting misconduct to a government agency without first getting approval from a supervisor, or that prohibit all discussion of such misconduct without including an express exclusion for protected whistleblower activity, particularly if such clauses threaten an employee with termination or legal action based on a disclosure.

In light of these developments, it is critical for companies to have comprehensive and effective compliance programs in place, including a transparent process for internal investigations. Companies should also review and update as necessary their anti-retaliation policies and procedures and make sure employees and executives at every level are sufficiently trained in this area.

This post was excerpted from our annual Top 10 Topics for Directors in 2015 alert. To read the full alert, please [click here](#).

ⁱ Speech by SEC Chair Mary Jo White entitled “Remarks at the Securities Enforcement Forum,” (Oct. 9, 2013).

ⁱⁱ Press Release, “SEC’s FY 2014 Enforcement Actions Span Securities Industry and Include First-Ever Cases” (Oct. 16, 2014).

ⁱⁱⁱ “SEC Reports Rise in Whistleblower Tips in Fiscal 2014,” *Reuters* (Nov. 18, 2014).

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