

What Makes a Compelling SEC Whistleblower Tip?

By Scott Silver and David R. Chase

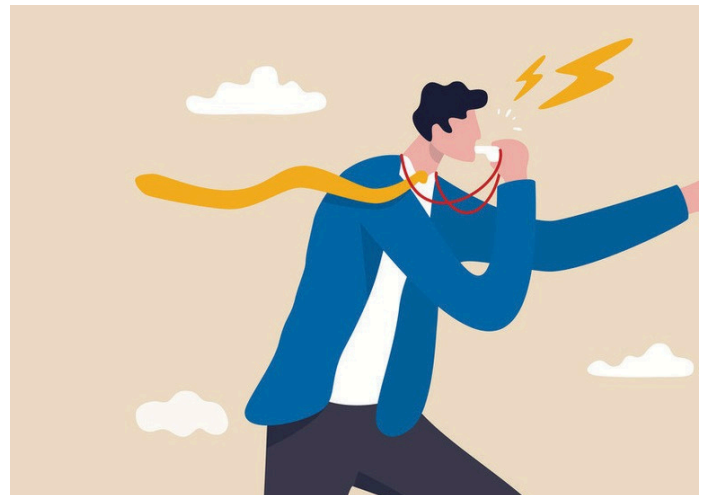
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In this article, we discuss the elements of what makes a compelling SEC Whistleblower Tip, such that it is likely to be investigated by the SEC's Enforcement Division resulting in an enforcement action, substantial monetary penalties and ultimately payment of a financial bounty to our whistleblower client.

But first, a bit of background on the SEC Whistleblower Program.

The Establishment and Success of the SEC Whistleblower Program

The SEC Whistleblower Program was established by the U.S. Securities and Exchange Commission as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010. The program provides monetary incentives for individuals who report original information to the SEC that leads to an enforcement action in which a judgment is entered in excess of \$1 million. SEC whistleblowers are eligible, after application, for an award ranging between 10% to 30% of any funds collected on that judgment. The SEC's Whistleblower Program has, by all accounts, been a game changer by substantially assisting the SEC in its efforts to effectuate its goals of protecting investors and upholding the integrity of the financial markets. Last year alone, the SEC awarded a record high \$600 million to whistleblowers, and has paid in excess of \$1 billion to whistleblowers since the program's inception. With that success, however, has come a deluge of whistleblower filings, thus making it more important than ever that the SEC tip submitted constitutes not only original information (i.e., the SEC is unaware of it), but that it is compelling, credible and supported by persuasive evidence, if it is to have a chance to catch the eye of the regulator and lead to an investigation.



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The Elements of a Compelling SEC Whistleblower Tip

As SEC Whistleblower Lawyers, we have found that the most successful tips typically share a few common characteristics.

Types of Whistleblowers

We absolutely love corporate insiders. They are usually the most effective whistleblowers in that they have first-hand knowledge of the violative conduct—they have seen it, understand it, can explain it, know who is involved and on what level, and quite often are in possession of internal documents and communications that conclusively prove it.

We also highly value and represent short sellers, who may not have inside information, but through their highly sophisticated analysis of publicly available information, including company filings and financials, earnings calls and macro industry trends, can identify securities law violations from the outside in a persuasive and compelling manner. The mere fact

that they have a direct financial interest in seeing the company's stock price fall, does not mean that their analysis is not otherwise sound.

Defrauded investors can also prove, in certain circumstances, to be effective whistleblowers. This is particularly true when they have had extensive discussions with management, and are in possession of emails and text messages that evidence potentially fraudulent conduct. This is distinct, however, from a scenario where an investor has a mere hunch or feeling that they have been defrauded, but have no concrete evidence to prove it.

Types of Cases

While the scope and nature of potential federal securities violations for which a SEC whistleblower tip can be submitted is extremely broad, ranging from accounting fraud, market manipulations, unregistered sale of securities, false filings, crypto fraud, insider trading, Ponzi Schemes and violations of the Foreign Corrupt Practices Act, there are a few common themes that guide our decisions in determining what case to file or to decline representation. First, no matter the type of securities violation, the conduct must be egregious, blatant and systemic, not technical, isolated and/or grey, and must be coupled with credible and persuasive evidence.

Second, it always helps to file a tip that involves securities misconduct that is an enforcement priority for the SEC. For example, insider trading has historically, and continues to be, a key enforcement priority. More recently, crypto fraud has taken center stage, with the SEC devoting tremendous resources to its investigation and prosecution. These tips are thus more likely to be investigated.

Third, tips that identify securities misconduct, particularly ongoing frauds, that directly harm vulnerable investors (the elderly, retirees and the unsophisticated) will typically gain more traction than others, given that such cases directly implicate the SEC's statutory obligation to protect the investing public. Ponzi schemes are a classic example.

To File Anonymously or Not?

The SEC goes to great lengths to protect the identity of its whistleblowers and to ensure their anonymity during the investigatory process, whether they file their SEC whistleblower tip anonymously or if they reveal their identity. If an individual chooses to file anonymously, he must be represented by counsel.

We prefer, but do not require, that our whistleblower clients identify themselves in the whistleblower tip as it adds credibility and context to their claims, and it also facilitates cooperation with the SEC Enforcement Division after the tip has been filed. Such ongoing cooperation is often critical in assisting the SEC in making its case, and can help increase the size of the financial bounty when awarded. Quite often our whistleblower clients will file anonymously only to then reveal their identity after they have spoken with the SEC (anonymously by phone for example) and become comfortable with the process and with the SEC enforcement staff working the investigation.

SEC Whistleblowing: A Win-Win

The SEC Whistleblower Program has clearly proven that whistleblowers play an absolutely critical role in alerting the SEC to serious securities violations of which, but for their tips, the SEC would likely never become aware. By doing so, whistleblowers can personally reap tremendous financial rewards for courageously stepping up and reporting, while simultaneously doing a public service by assisting the SEC in its mission to protect investors and the integrity of the financial markets.

The Importance of Working With Experienced SEC Whistleblower Counsel

Given the tremendous success of the SEC Whistleblower Program and the resulting avalanche of whistleblower tips being submitted on a daily basis, the statistical likelihood of having a filing investigated, successfully prosecuted and a financial bounty awarded is less than ever. Thus, more than ever, it is critical to be represented by seasoned SEC whistleblower counsel who understands the SEC whistleblower process, knows how to present the tip in the most compelling and persuasive manner and can maximize the value of a financial bounty by effectively cooperating the whistleblower in the SEC investigation.

Scott Silver is the managing partner of Silver Law Group, a nationally recognized law firm representing investors worldwide to recover their investment

David R. Chase, the managing partner at The Law Firm of David R. Chase P.A., is a seasoned SEC defense attorney and SEC whistleblower lawyer, and former SEC prosecutor, with over 30 years' experience, represents clients around the nation and internationally.