Veil Parted on SEC Whistleblower Award

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Early this year, the SEC announced it had paid a whistleblower award of "more than $700,000" to a company "outsider" who "conducted a detailed analysis" that led to a successful enforcement action against the company. Customarily, such awards, which are granted pursuant to the whistleblower program mandated by the Dodd-Frank Act, leave many potentially interesting facts cloaked in a veil of secrecy. In this case, however, the whistleblower took the unusual step of identifying himself and providing additional information to the press. Accordingly, it appears:

- The exact award amount was $750,000, which was 15 percent of a related $5,000,000 fine against the New York Stock Exchange and its parent, NYSE Euronext (as compared to the 30 percent maximum the SEC is permitted to award under the program).
- The fine was for the exchange's conduct, over an extended period in 2008, of releasing certain market data to feeds for its proprietary customers slightly sooner than it released the same data to consolidated feeds available to the public.
- This was the first financial penalty the SEC assessed against an exchange. • The whistleblower was Eric Scott Hunsader, who owns a market data firm and has long asserted prominently that the SEC has done too little to ensure market integrity.
- Although Hunsader discovered the violation, he provided his initial detailed analysis of the violation to the SEC prior to the whistleblower program's establishment. His award, therefore, was based solely on additional analysis that he thereafter provided to the SEC.

This case provides rare (though still imperfect) insight into how the SEC staff may weigh various facts and circumstances in making decisions about whistleblower awards. More generally, however, the case underscores that companies' exposure to whistleblowers with whom they have no affiliation is far from just theoretical.

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