



## White Collar, Government & Internal Investigations / Securities Litigation ADVISORY ■

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### SEC Awards \$36 Million to Culpable Whistleblower Who Delayed Reporting by [Paul Monnin](#), [Joey Burby](#), and [Michelle Dowst](#)

Further evidencing that the Biden Administration is intent on leveraging the Securities and Exchange Commission's (SEC) whistleblower program to augment the number, variety, and scope of its enforcement matters, on September 24, 2021, the SEC [announced](#) a jaw-dropping whistleblower award of **\$36 million** to a single claimant. This is despite the fact that the whistleblower delayed reporting the misconduct at issue for over five years – coincidentally, the statute of limitations for most federal crimes – and was culpable in the underlying scheme.

Rule 21F-6 of the Securities Exchange Act of 1934 requires the SEC to consider both an individual's "culpability" and "[u]nreasonable reporting delay" as "[f]actors that may decrease the amount" of a whistleblower's prospective award. As a corollary, Rule 21F-16 mandates examination of whether a covered action was "based substantially on conduct that the whistleblower directed, planned, or initiated." Yet despite these safeguards limiting bounties awarded to wrongdoers who sit on evidence of securities law violations, the SEC concluded that awarding a culpable whistleblower \$36 million was appropriate in this case.

This is presumably because, between the SEC's covered action and another agency's related enforcement action, the whistleblower's original information generated monetary sanctions of at least \$360 million. (Rule 21F-5 provides for whistleblower bounties of between 10 and 30 percent of monetary sanctions exceeding \$1 million. Rule 21F-3(b) also allows the SEC to aggregate sanctions from a related action, most notably by the U.S. Justice Department, in determining whistleblower eligibility and calculating their awards.) Setting aside that the \$36 million bounty in this case was borne of the whistleblower's cooperation in multiple agency investigations, it is further worth noting that, while heavily redacted, the SEC's award reflects that its covered action appears to have involved misconduct by a financial institution and personnel from a "Foreign Government Entity." It follows that the SEC's current regime is willing to spend handsomely to generate nine-figure financial sanctions in covered actions prosecuted in parallel with other agencies, particularly when the covered action involves financial institution misconduct and foreign actors (where the SEC may be more constrained in gathering and domesticating evidence).

In this regard, the SEC's September 27 [Order](#) states that the whistleblower provided information that "significantly contributed to the success" of the covered action and to another agency's actions. The tipster met with SEC staff on

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multiple occasions, provided information that helped the SEC identify and request key documents, and “provided crucial information regarding the illegal scheme.” It bears noting that the SEC’s acknowledgment that the whistleblower had “unreasonably delayed reporting to the [SEC] for over five years” was likely associated with the running of the five-year statute of limitations on federal criminal actions in the United States. The SEC’s finding that Rule 21F-16 did not preclude an award because the whistleblower did not direct, plan, or initiate the scheme further evidences the SEC’s willingness to align itself with culpable individuals to maximize enforcement, especially in complex cases involving conduct by foreign actors. And if the SEC is willing to pay \$36 million to an admittedly bad actor who waited years to make a disclosure until he or she was immune from criminal prosecution, this begs the question of how the whistleblower program may be deployed by the SEC’s current management in the mine-run of enforcement investigations it conducts.

News of this award comes on the heels of another [notable bounty award](#) of over \$1 million, paid to three whistleblowers who each held compliance roles at the subject company. Both awards reflect the SEC’s current willingness to leverage insiders, including compliance personnel, through payment of whistleblower bounties, even if doing so may be in tension with other valuable objectives, like allowing companies to self-police their compliance issues or prohibiting bad actors from profiting from their misconduct.

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