

How the Best SEC Whistleblower Law Firms Advocate for SEC Whistleblowers

Prepared by:
Jason Zuckerman and Matthew Stock
Zuckerman Law



LORMAN[®]

Published on www.lorman.com - September 2020

How the Best SEC Whistleblower Law Firms Advocate for SEC Whistleblowers, ©2020 Lorman Education Services. All Rights Reserved.



Lorman Education Services is a leading provider of online professional learning, serving individuals and teams seeking training and CE credits. Whether you're looking for professional continuing education or an enterprise-wide learning and development solution, you will find what you need in Lorman's growing library of resources.

Lorman helps professionals meet their needs with more than 100 live training sessions each month and a growing collection of over 13,000 ondemand courses and resources developed by noted industry experts and professionals.

Learn more about Lorman's individual programs, economical All-Access Pass, and Enterprise Packages:

www.lorman.com

How the Best SEC Whistleblower Law Firms Advocate for SEC Whistleblowers

Written by [Jason Zuckerman](#) and [Matthew Stock](#)

Last updated: July 26th, 2020

In a recent episode of *inSecurities* titled [Inside the World of Whistleblowers](#), SEC whistleblower attorney Matt Stock discusses his extensive experience effectively representing whistleblowers before the SEC. Stock also describes how the best SEC whistleblower law firms take certain steps to increase the likelihood that their clients not only obtain, but maximize, their recoveries. This article provides an overview of the [SEC Whistleblower Program](#) and identifies five ways in which SEC whistleblower law firms can significantly assist whistleblowers in combatting fraud and obtaining an [SEC whistleblower award](#).

SEC Whistleblower Program

The [SEC Whistleblower Program](#) provides whistleblowers with a strong monetary incentive to report wrongdoing to the SEC. Under the program, the SEC is required to issue awards to eligible whistleblowers who provide original information about [violations](#) of the federal securities laws that leads to enforcement actions with monetary sanctions totaling more than \$1 million. In exchange for the valuable information, a whistleblower may receive an award of between 10 and 30 percent of the total monetary sanctions collected.

Since 2012, the SEC Office of the Whistleblower has issued more than [\\$500 million in awards](#) to whistleblowers. The largest SEC whistleblower awards to date are:

- [\\$50 million](#);
- [\\$50 million](#);
- [\\$39 million](#); and
- [\\$37 million](#).

See some of the [SEC whistleblower cases](#) that have resulted in multi-million dollar awards.

5 Ways that Experienced SEC Whistleblower Law Firms Can Effectively Advocate for Whistleblowers

The path to receiving an SEC whistleblower award is lengthy and complex. In fact, most successful SEC whistleblower claims take 4 years or more to complete. Throughout this process, SEC whistleblower law firms can provide critical guidance to whistleblowers on a wide range of issues. The five areas discussed below represent only a handful of the countless ways in which the best SEC whistleblower law firms can assist whistleblowers before the SEC.

#1: Protect a Whistleblower's Identity

For most individuals, it is imperative that their identity remain confidential when blowing the whistle. There are several ways that SEC whistleblower law firms can protect a whistleblower's identity throughout the process. The [rules](#) of the SEC Whistleblower Program permit whistleblowers to [submit tips anonymously](#) if represented by an attorney. When submitting an anonymous tip, the whistleblower is not required to include his or her name in the submission. Rather, the whistleblower's attorney will provide their contact information and will be the SEC's point of contact for the submission.

Moreover, as an added layer of protection, SEC whistleblower law firms can carefully review all information and documents included in the submission and either: (i) identify with particularity any information or documents that could reasonably be expected to reveal the whistleblower's identity if disclosed to a third-party (to put the SEC on notice of the sensitivity of the information); or (ii) redact/exclude this information from the submission. When redacting/excluding information from a submission to protect a whistleblower's identity, whistleblower counsel can inform the SEC of potential witnesses that can

corroborate the violations and can suggest that the SEC obtain particular evidence to prove the violation.

In short, SEC whistleblower law firms can take additional steps throughout the entire process to maximize the likelihood that a whistleblower's identity is shielded. In certain circumstances, a whistleblower may remain anonymous, even to the SEC, until an [award determination](#). However, even at the time of an award, a whistleblower's identity is not disclosed to the public.

And if a whistleblower suffers retaliation, an SEC whistleblower attorney can help the whistleblower assess potential retaliation claims under federal and state law and develop and execute a strategy to enable their client to obtain the maximum recovery. The primary federal laws protecting SEC whistleblowers against retaliation are the anti-retaliation provisions of the [Sarbanes-Oxley Act](#) and the [Dodd-Frank Act](#).

#2: Analyze a Whistleblower's Eligibility for an Award

Most individuals, regardless of citizenship, are – or can become – [eligible](#) to receive SEC whistleblower awards. This includes high-level corporate insiders (e.g., officers and directors) and [compliance personnel](#) (e.g., internal auditors and external auditors). Importantly, however, the eligibility analysis differs depending on the whistleblower's relation to the company and how the whistleblower obtained the information.

SEC whistleblower law firms can help whistleblowers determine whether they need to take any actions prior to submitting a tip to be eligible for an award. For example, one of the exceptions in the SEC Whistleblower Program's rules, found in [Section 21F-4](#) of the Securities Exchange Act, allows certain gatekeepers to be eligible for awards if they report their concerns internally to their supervisor (among others detailed in the rule), wait 120 days, and then submit their information to the SEC. If a whistleblower is uncertain about their eligibility to receive an award, they should consult with an experienced SEC whistleblower law firm. A thorough analysis informed by prior

SEC whistleblower award determinations may be the difference between a multi-million-dollar whistleblower award and no award at all.

#3: Increase the Likelihood That the SEC Acts on a Whistleblower's Tip

Since August 2011, the SEC Office of the Whistleblower has received more than 33,300 whistleblower tips. The SEC has limited resources and can only investigate and pursue enforcement actions for a fraction of the tips received. According to the SEC Whistleblower Office's [2019 Annual Report](#), the SEC is tracking approximately 1,000 matters in which a whistleblower's tip has opened an inquiry or investigation. As revealed by the numbers (33,300 tips and 1,000 matters), most whistleblower tips fall to the wayside, and the SEC never takes action on them. There are several ways that SEC whistleblower law firms can help whistleblowers increase the likelihood that the SEC will act on their tips.

First, SEC whistleblower law firms can investigate a fraud scheme, identify the key violations, and prepare a persuasive [Form TCR](#) submission that will be more likely to cause the SEC to open an investigation or expand an existing investigation. These submissions are reviewed by the SEC's Office of Market Intelligence staff who determine whether a Form TCR warrants further investigation. An experienced SEC whistleblower law firm can provide the SEC with a clear roadmap for a successful enforcement action, which will often entail applying SEC precedent established in prior enforcement actions.

Next, SEC whistleblower law firms can identify the evidence that should be included in (or excluded from) submissions. Many whistleblowers are surprised to learn that they should not include all evidence of wrongdoing in a submission. Indeed, some evidence may hinder or delay the progress of an investigation. Moreover, SEC whistleblower law firms can address the countless evidentiary issues that may arise during a whistleblower claim, including, but not limited to:

- [Can I provide information/evidence to the SEC if I signed a confidentiality agreement with my employer?](#)
- [Can I disclose secret recordings to the SEC?](#)
- How much information/evidence is necessary to get the SEC to act?
- What are the risks associated with disclosing information to parties outside of the SEC, e.g., to the media or other regulatory agencies?

Finally, as a practical matter, the SEC is more likely to act on a whistleblower's information if they receive a compelling submission from a law firm that has a track record of successfully representing SEC whistleblowers. As noted previously, the SEC receives thousands of tips annually and can only act on a fraction of the tips received. By signing a TCR submission, an [SEC whistleblower attorney](#) is signaling to the SEC that they have vetted the whistleblower's information and concluded that it is sufficiently specific and credible to merit an investigation, and the investigation could result in a successful enforcement action resulting in monetary sanctions in excess of \$1 million. Although there are unfortunately some firms that will file any whistleblower claim, experienced and effective SEC whistleblower lawyers are selective about the claims they bring and develop a reputation at the SEC for bringing meritorious claims.

#4: Increase Total Monetary Sanctions Through "Related Actions"

When the SEC brings a successful enforcement action in excess of \$1 million, whistleblowers may also be eligible for "related action" awards. This occurs when a whistleblower reports wrongdoing to the SEC as well as certain other agencies/organizations (detailed in [Section 21-F3](#) of the Securities Exchange Act), and the information leads to two successful enforcement actions. In these circumstances, the

whistleblower may be eligible for an award based on the total monetary sanctions collected in both enforcement actions.

For example, on December 6, 2019, Ericsson agreed to pay \$539 million to settle the SEC's charges of violating the [U.S. Foreign Corrupt Practices Act](#) (FCPA), as well as a \$520 million penalty to the Department of Justice (DOJ), totaling more than [\\$1 billion](#) in monetary sanctions. If these two actions were based on original information voluntarily provided to the SEC and DOJ by an eligible whistleblower, the SEC could pay an award to that whistleblower of between 10 and 30 percent of the \$1 billion.

SEC whistleblower law firms can assist whistleblowers by identifying these related actions and determining how best to report the information. Importantly, other agencies do not offer the same protections as the SEC Whistleblower Program. As such, it is imperative that whistleblowers understand how to report to specific agencies as well as the protections offered by each agency.

#5: Maximize a Whistleblower's Award Percentage

When determining the amount of an award, the SEC considers various factors that may increase or decrease an award percentage of between 10 and 30 percent of the total monetary sanctions collected. For example, the SEC may increase a whistleblower's award based on positive factors, such as the significance of the information provided and whether the whistleblower and their counsel provided ongoing, extensive, and timely assistance to the SEC in its investigation. The SEC may also decrease a whistleblower's award based on negative factors, such as unreasonable delay in reporting the wrongdoing to the SEC and culpability in the misconduct.

Prior to submitting a tip, SEC whistleblower law firms can help whistleblowers leverage these [rules to maximize their recovery](#). An effective analysis and application of the award factors could potentially increase an award by millions of dollars. And during the course of an SEC investigation or SEC enforcement

proceeding, an experienced SEC whistleblower law firm can identify opportunities to provide effective assistance to the SEC. In addition, experienced SEC whistleblower attorneys can help prepare a detailed application for an award that makes a compelling case for a high award percentage and can help the whistleblower navigate the award application process.

Blowing the whistle through the Dodd-Frank Act's SEC Whistleblower Program is inherently a long process filled with some uncertainty. But with experienced counsel, a whistleblower can increase their chance of success, mitigate the risk of being "outed," get sound advice about their options and the process, and combat any potential retaliation.

ABOUT THE AUTHORS



Jason Zuckerman, Principal of Zuckerman Law, litigates whistleblower retaliation, qui tam, wrongful discharge, and other employment-related claims. He is rated 10 out of 10 by Avvo, was recognized by Washingtonian magazine as a "Top Whistleblower Lawyer" in 2015 and selected by his peers to be included in The Best Lawyers in America® and in SuperLawyers.



Matthew Stock is the Director of the Whistleblower Rewards Practice at Zuckerman Law. He represents whistleblowers around the world in SEC, CFTC and IRS whistleblower claims. He is also a Certified Public Accountant, Certified Fraud Examiner and former KPMG external auditor.

The material appearing in this website is for informational purposes only and is not legal advice. Transmission of this information is not intended to create, and receipt does not constitute, an attorney-client relationship. The information provided herein is intended only as general information which may or may not reflect the most current developments. Although these materials may be prepared by professionals, they should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.

The opinions or viewpoints expressed herein do not necessarily reflect those of Lorman Education Services. All materials and content were prepared by persons and/or entities other than Lorman Education Services, and said other persons and/or entities are solely responsible for their content.

Any links to other websites are not intended to be referrals or endorsements of these sites. The links provided are maintained by the respective organizations, and they are solely responsible for the content of their own sites.