Simpson Thacher

Memorandum

SEC Awards Maximum Allowable Whistleblower Payment In Its First Case Involving Alleged Retaliation Against A Whistleblower

May 6, 2015

On April 28, 2015, the Securities and Exchange Commission ("SEC") announced that it awarded the maximum allowable award to a whistleblower under the Dodd-Frank whistleblower program in its first case involving alleged retaliation by an employer against an employee who reported suspected misconduct to the SEC.[1] This award of 30 percent of the amount collected by the SEC in *In the Matter of Paradigm Capital Management, Inc. and Candace King Weir* equaled a payment of more than $600,000 to the employee who, according to the SEC, provided "key original information that led to the successful SEC enforcement action."

In June 2014, the SEC instituted settled cease-and-desist proceedings against investment adviser Paradigm Capital Management, Inc. and its majority owner, Candace King Weir, for allegedly taking "a series of retaliatory actions that ultimately resulted in the whistleblower's resignation" after learning that the whistleblower had reported potential securities law violations to the SEC.[2] Paradigm's alleged retaliatory actions included:

- removing the whistleblower – Paradigm's then-head trader – from Paradigm's trading desk and temporarily relieving him of his "day-to-day trading and supervisory responsibilities";
- tasking the whistleblower with investigating the very actions he reported to the SEC;

[1] Securities and Exchange Commission, "SEC Announces Award to Whistleblower in First Retaliation Case" (Apr. 28, 2015); *see also* *In the Matter of Paradigm Capital Management, Inc. and Candace King Weir*, Release No. 34-72393, File No. 3-15930 (June 16, 2014).

[2] *In the Matter of Paradigm Capital Management* at 2.

- denying the whistleblower access to certain trading and account systems to which he previously had access;
- denying the whistleblower access to his existing email account and redirecting his trading and email accounts to another trader; and
- otherwise marginalizing the whistleblower.

The SEC found that Paradigm violated Section 922(h)(1)(A) of the Dodd-Frank Act, which provides that employers may not "discharge, demote, suspend, threaten [or] harass" employees who report suspected misconduct to the SEC. The respondents agreed to pay disgorgement, prejudgment interest and a civil penalty totaling $2.18 million to settle the charges.[3]

Significance of the Award

The recent whistleblower award highlights the SEC's continued focus on protecting whistleblowers from retaliation. In connection with this award, Sean McKessy, Chief of the SEC's Office of the Whistleblower, expressed his hope it will encourage "potential whistleblowers to come forward in light of our demonstrated commitment to protect them against retaliatory conduct and make significant financial awards to whistleblowers who suffer employment hardships as a result of reporting possible securities law violations."[4] Moreover, as noted by the Director of the SEC's Division of Enforcement, Andrew Ceresney, the underlying action demonstrates that the SEC's Enforcement Division "is committed to taking action when appropriate against companies and individuals that retaliate against whistleblowers."

The award and the underlying enforcement action underscore the importance of implementing and maintaining a well-designed, robust and effective program for reporting suspected misconduct through internal compliance channels and strong anti-retaliation policies.

[3] The respondents also agreed to retain an Independent Compliance Consultant "to conduct a comprehensive review of Paradigm's supervisory, compliance, and other policies and procedures designed to prevent and detect prohibited transactions" and to implement all the consultant's recommendations.

[4] "SEC Announces Award to Whistleblower in First Retaliation Case."

If you have any questions or would like additional information, please do not hesitate to contact **Yafit Cohn** at +1-212-455-3815 or yafit.cohn@stblaw.com, any other member of the Firm's Public Company Advisory Practice or any of the following members of the Firm's Government and Internal Investigations Practice:

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