

SEC Whistleblower Turns Down \$8.25M Whistleblower Award

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Eric Ben-Artzi, a former risk officer at Deutsche Bank, blew the whistle on colleagues' fraudulently inflating the value of the bank's portfolio of credit derivatives. The SEC acted on Ben-Artzi's tip and ultimately fined the bank \$55 million. Due to the success of Ben Artzi's disclosures in combatting fraud, the SEC has determined that he is entitled to an award of \$8.25 million.

Ben-Artzi announced that he is turning down the award, or at least until certain conditions are met to ensure that bank executives are held accountable. Ben-Artzi stated:

“Deutsche did not commit this wrongdoing. Deutsche was the victim . . . Meanwhile, top executives retired with multimillion-dollar bonuses based on the misrepresentation of the bank's balance sheet. It is therefore especially disappointing that in 2015, after a lengthy investigation helped by multiple whistleblowers, the SEC imposed a fine on Deutsche's shareholders instead of the managers responsible.”

Ben-Artzi requests that his “share of the award be given to Deutsche and its stakeholders, and the award money clawed back from the bonuses paid to the Deutsche executives, especially the former top SEC attorneys.” Once those conditions are met, he would be willing to collect a whistleblower award.

Ben-Artzi's selfless and bold action underscores what whistleblower advocates already know about their clients – whistleblowers are primarily driven by a desire to vindicate the public interest and combat unlawful conduct, not by a potential payout.

Critics of the Dodd-Frank SEC Whistleblower Program Have Been Proven Wrong

Critics of the Dodd-Frank whistleblower award provisions incorrectly predicted that these incentives would encourage opportunistic whistleblowing and undermine corporate compliance programs. Former Rep. Michael Grimm (R-NY) argued that the bounty provision of the “[program could actually create a perverse incentive to let a problem grow and then report it, rather than to solve the problem in its earliest stages.](#)” The National Association of Corporate Directors (NACD) worried that the

program “[leaves no recourse to a company if an employee circumvents the compliance systems or makes false allegations against a company.](#)” And many corporate law firms argued that the an SEC whistleblower reward program would “[provide strong incentives for whistleblowers to circumvent registrants’ internal reporting mechanisms.](#)”

Ben-Artzi’s decision to turn down an award following years of substantial assistance to the SEC in combatting fraud demonstrates that the opposition to the SEC whistleblower program was premised on a fundamentally flawed assumption — that whistleblowers are motivated by greed. In fact, whistleblowing is a courageous and selfless act that often entails significant risks and all too often results in retaliation. Such retaliation can include adverse employment actions, harm to reputation, alienation, isolation, and blacklisting. Indeed, Ben-Artzi notes in his column that after he reported his concerns to Deutsche’s top lawyer for compliance and regulatory affairs, he was fired and his Wall Street career was ruined.

For many whistleblowers, it would be easier to look the other way and continue with their successful careers than to risk jeopardizing their future earnings.

SEC Whistleblower Program Has Been Effective in Combatting Fraud

As SEC Chair Mary Jo White noted in a speech entitled “The SEC as the Whistleblower’s Advocate,” the program is a “game changer” for securities enforcement. White also noted that the quality of tips has been very high and that the tips have spanned the full spectrum of securities law violations, including market manipulation, offering fraud, and shareholder fraud. As the SEC confronts significant resource challenges in policing the financial markets, high-quality tips that enable the SEC to build a case quickly are invaluable in helping the SEC protect investors.

Due to the whistleblower program, the SEC has received more than 14,000 tips, including 3,923 in FY2015, and has paid out more than \$85 million in awards. Also, contrary to initial concerns, approximately eighty percent of whistleblowers disclosed wrongdoing internally prior to blowing the whistle to the SEC, thereby incentivizing companies to bolster their internal compliance programs.

In turning down a whistleblower award Ben-Artzi notes that “the whistleblower award was a powerful incentive” for the assistance he provided to the SEC. This powerful incentive is attracting many whistleblowers that are similarly motivated to protect investors and combat corporate fraud. Ben-Artzi’s courageous whistleblowing has proven the critics of the SEC whistleblower program wrong, and will likely inspire other employees in the financial services industry to come forward.

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