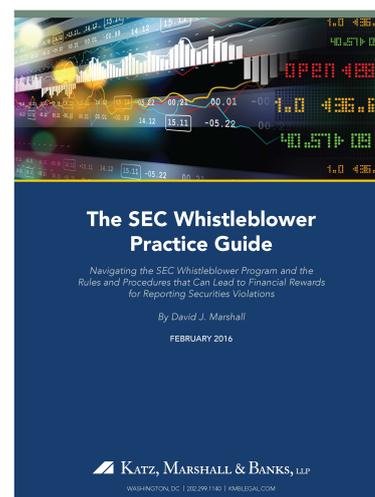


What does “Successful Enforcement” Mean: Understanding the SEC’s Terminology

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The SEC’s commitment to curbing abuses of the financial system is exemplified by its [Whistleblower Reward Program](#): when a whistleblower provides information that leads to a successful investigation and results in sanctions over \$1,000,000, she is entitled to a percentage of that award. Though this is an attractive incentive on its face, it is helpful for prospective whistleblowers to understand the exact meaning of the phraseology.



So, what does “successful enforcement” mean, and what sort of information can lead to a positive result?

1. Information provided must be “sufficiently specific, credible, and timely” to cause the Commission to start an examination, open or reopen an investigation, or to look into different conduct within an ongoing examination/investigation.
2. This information must then form the whole or partial basis for a successful judicial or administrative action.
3. If the information pertains to an existing investigation/examination, the new material must “significantly contribute” to the success of the action. The Commission judges this higher standard of contribution by considering four factors: the information must allow the SEC to (a) bring an action significantly quicker, (b) expend significantly fewer resources, (c) bring an additional successful claim, and/or (d) take action against additional parties.

In determining the amount of sanctions and whether it passes the \$1 million threshold, the SEC looks to the amount of money collected from the company, not just the amount ordered. Though this requires a whistleblower to monitor the SEC’s collection process, it can result in additional payment if the Commission is able to collect additional sanctions in a case.

Lastly, an “enforcement action” generally refers to a single judicial or administrative proceeding, though actions may group together cases from two or more proceedings that stem from common facts. The SEC determines whether two or more proceedings stem from the “same nucleus of operative facts” by looking at parties, factual allegations, and alleged violations of federal securities laws, transactions and occurrences.

Legalese is notoriously difficult to parse, but understanding the procedures of the SEC’s Whistleblower Reward Program is crucial to evaluating and submitting a whistleblower tip. David Marshall’s [SEC Whistleblower Practice Guide](#) provides prospective whistleblowers with a concise, accurate outline of the Program’s procedures and best practices to enable them to contribute information effectively.