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SEC's Recent Whistleblower Award Sends Strong Message to Companies – Do Not Ignore Reports of Compliance Violations

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Hughes Hubbard & Reed LLP • A New York Limited Liability Partnership
One Battery Park Plaza • New York, New York 10004-1482 • +1 (212) 837-6000

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April 1, 2020 – On March 30, 2020, the Securities and Exchange Commission (“SEC”) announced that it would award \$450,000 to a whistleblower who had compliance-related responsibilities at the company at issue. While the SEC has awarded over \$396 million to 77 individuals since issuing its first award in 2012, this award marks only the third whistleblower award to an individual with compliance-related responsibilities.

Ordinarily, a whistleblower whose “principal duties involve compliance or internal audit responsibilities” is not eligible to receive an award as a result of information he or she provides the SEC¹ because information a compliance employee obtains in the course of his or her duties and forwards to the government is not considered to be “original information” derived from the whistleblower’s own “independent knowledge” or “independent analysis.”²

However, in limited circumstances, whistleblowers with compliance-related responsibilities can receive SEC awards for the information they provide. For example, when, as occurred in this instance, an employee with compliance-related responsibilities reports concerns to the company, but the company fails to address them for at least 120 days, and that employee then reports the improper conduct to the SEC, he or she can be credited with providing “original information” and obtain a whistleblower award.³ This 120-day exception allows companies time to investigate and remediate conduct reported by compliance and internal audit but also ensures that important information about securities violations is reported to the SEC if the company takes no corrective action.⁴

As awards to whistleblowers in compliance-related roles are not a common occurrence, this announcement is an important reminder that companies must pay attention to concerns raised by individuals within their compliance or internal audit structures. A company that fails to take corrective action when misconduct comes to light risks opening itself up to more liability in the future. In these increasingly difficult times of remote working, unforeseen

economic challenges, and seemingly endless uncertainty, companies must ensure that they remain vigilant on the compliance front and not turn a blind eye to reports of potential misconduct.

¹ 17 C.F.R. §240.21F-4(b)(4)(iii)(B).

² 17 C.F.R. § 240.21F-4(b)(1).

³ 17 C.F.R. § 240.21F-4(b)(4)(v)(C).

⁴ Press Release, Securities and Exchange Commission, SEC Awards \$450,000 to Whistleblower (Mar. 30, 2020), <https://www.sec.gov/news/press-release/2020-75>.

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