

ICI VIEWPOINTS

DECEMBER 17, 2010

Proposed SEC Whistleblower Program Could Backfire

By ICI Strategic Communications

Today we filed [a comment letter](#) on the Securities and Exchange Commission's [proposed new whistleblower rules](#). Our letter registers the Institute's very serious concerns about the unintended consequences that will likely result from the program, given its proposed design.

Some background on the proposal: The [Dodd-Frank Wall Street Reform and Consumer Protection Act](#) required the SEC to set up a program for rewarding whistleblowers who voluntarily provide regulators with original information about a violation of the federal securities laws. If information leads to a successful enforcement action, the whistleblower gets a reward ranging from 10 percent to 30 percent of the monetary penalty assessed by the SEC.

ICI supports efforts to ferret out wrongdoing. But this program, as designed, has flaws that could wind up hurting funds and their investors. The first of these flaws is that the program could create incentives for employees to report problems to the SEC, rather than a fund's internal compliance personnel. Thus, the program could undermine the rigorous compliance controls that funds have been required by law to maintain since 2004. We recommend that the SEC change the proposed rule's language to avoid employees "front running" internal compliance programs.

Another concern is that the program implicitly requires registrants to report to the SEC every violation of the federal securities laws, no matter how minor. The idea, according to the Commission, is to "maximize the submission of high-quality tips." We see a strong likelihood that just the opposite will occur. The implicit requirement to report all violations could well overwhelm the SEC with information on minor violations, to the detriment of protecting investors from serious fraud or abuse. To avoid this outcome, we recommend that the SEC revise the rule to reporting all violations to the SEC.

We also think revisions are needed to improve the criteria for rewarding whistleblowers. The proposal lacks any criteria to establish whether the whistleblower is acting in good faith, the materiality of the information provided, and the whistleblower's interest in making a windfall off civil litigation related to the whistleblower's allegations.

- Read [ICI's letter](#).
- See [comments from others on this proposal at SEC.gov](#).
- Read [more ICI comment letters](#).
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