



The Ontario Securities Commission's Whistleblower Program

CCLS Education Sub-Committee
Breakfast Seminar
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Agenda

- Background on the OSC's Whistleblower Program
 - Confidentiality, Anti-Reprisal Protections, Financial Incentives, etc.

- OSC Whistleblower Desk Review
 - Key Findings

- Practical Considerations



Purposes of the *Ontario Securities Act*

- Provide protection to investors from unfair, improper or fraudulent practices (OSA, s.1.1(a))
- Foster fair & efficient capital markets & confidence in capital markets (OSA, s.1.1(b))
- Contribute to the stability of the financial system and the reduction of systemic risk (OSA, s.1.1(c))



OSC Whistleblower Program

- Launched the Office of the Whistleblower and implemented OSC Policy 15-601 (July 2016)
- First paid program for a Canadian securities regulator
- Designed to assist in identifying and investigating more complex and hard to detect securities misconduct



Information Being Sought

Violations of Ontario securities law such as:

Illegal
distribution
and/or
Unregistered
trading

Misleading
disclosure
and/or
Misstatements
in financial
statements

Fraud

Illegal insider
trading and/or
Tipping

- Timely, specific and credible facts relating to the alleged violation of Ontario securities law
- Provides meaningful assistance to Staff investigating the matter and obtaining an award eligible outcome



Whistleblower Awards Announcement

- The OSC has paid out over \$8 million to four whistleblowers since the launch of the Program
- Most recent award announcement on April 6, 2020
 - \$525,000 paid to a company outsider who used their industry expertise to identify irregularities



Key Features

- **Eligibility for a Whistleblower Award** – Two facets to eligibility:
 - Information Eligibility – criteria for information to be eligible for a whistleblower award; and
 - Individual Eligibility – categories of individuals who are ineligible for a whistleblower award and exceptions to those categories
- **Financial Incentive** – Eligible whistleblowers may receive between 5 to 15% of total sanctions imposed and/or voluntary payments made where sanctions/payments total $\geq \$1M$



Key Features (cont'd)

- **Confidentiality** – Staff make all reasonable efforts to protect the identity of a whistleblower
- **Whistleblower Protection** – Amendments to the *Ontario Securities Act*:
 - make it a violation of securities law to retaliate against whistleblowers;
 - render void contractual provisions designed to silence WBs; and
 - provide for a civil right of action



OSC Desk Review

Restrictive provisions in agreements with employees

Ontario *Securities Act* voids certain contractual provisions that preclude or purport to preclude an employee from:

- reporting securities misconduct; or
- assisting in an investigation or proceeding

2018 Targeted Review of 30 Registered Firms (IFMs, PMs and EMDs)

“significant portion of the firms reviewed had employment agreements that contained inappropriate language.”

“language that may inhibit possible disclosure to the OSC, SROs or law enforcement agencies”...

Source: OSC Compliance and Registrant Regulation’s Annual Summary Report for Dealers, Advisers and Investment Fund Managers, August 2018



Whistleblowing & Practical Considerations



Research shows that whistleblowers want to report internally first

85% of employees who received awards from the U.S. SEC first raised concerns internally before reporting to U.S. SEC

(Source: 2019 U.S. SEC's Annual Report to Congress on Whistleblower Program)

OSC Whistleblower Program:

- incentivizes whistleblowers to report internally but does not require them to do so
- complements other OSC Enforcement tools – credit for cooperation and no-contest settlements



Whistleblowing & Practical Considerations

- Review and enhance compliance systems to foster an environment where internal reporting of misconduct is encouraged
 - Reporting channels that are independent, broadly communicated, accessible and consistent
 - Protections for anonymity and against reprisals
 - Defined processes for handling allegations of wrongdoing and ensuring appropriate follow up
 - Appropriate oversight by senior management/BOD, etc.
- Review internal policies and any existing contracts, agreements and related documents to ensure they do not contain restrictive provisions



Resources

- Website and online portal
www.officeofthewhistleblower.ca
- Whistleblower hotline
1-888-OSC-5553 (1-888-672-5553)
- OSC Policy 15-601 *Whistleblower Program*



Questions?

