

Securities Regulation Daily Wrap Up, TOP STORY—SEC announces record-setting whistleblower awards in Merrill Lynch matter, (Mar. 19, 2018)

Securities Regulation Daily Wrap Up

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By [Anne Sherry, J.D.](#)

The SEC announced the two highest-ever whistleblower awards to date. Together, the \$50 million and \$33 million awards account for nearly one-third of the total granted to whistleblowers since the program's inception in 2011. The SEC keeps whistleblowers' identities confidential, but the law firm representing them, Labaton Sucharow, issued a [press release](#) disclosing that the awards related to Merrill Lynch's [\\$415 million settlement](#), in 2016, of charges that it misused customer cash and failed to safeguard customer assets.

Seven claimants applied for awards. The \$33 million sum was [awarded](#) to a single claimant, while the \$50 million will be split between two other claimants who jointly submitted their whistleblower forms. Unless the joint claimants make a written, joint request for a different allocation of their award, it will be split equally between them.

Award percentages. Under the Dodd-Frank program, the SEC can award whistleblowers between 10 percent and 30 percent of the monetary sanctions in the enforcement action. In the case of multiple meritorious claimants, as here, the aggregate award may not exceed 30 percent of the sanctions collected. In this case, the awards fall right in the middle, at 20 percent of the \$415 million settlement. (Whistleblower awards are calculated based on the sanctions awarded, but are paid out of a separate fund and do not diminish the amount returned to victims.)

According to the SEC's [infographics](#) and [press release](#) in connection with the awards, the Commission has awarded more than \$262 million for tips that have resulted in "more than \$1 billion" in remedies.

Quality tips. The joint claimants provided information that became the focus of Enforcement staff's first investigation and a cornerstone of the subsequent action against Merrill Lynch. During the first investigation, the claimants continued to assist through in-person meetings, conference calls, and supplemental submissions, and they identified potentially relevant documents and key witnesses. However, the SEC took into account that the claimants unreasonably delayed in reporting their information to the Commission.

The tip from the remaining meritorious claimant allowed the same Enforcement staff to open a second investigation. The information this claimant provided was previously unknown to the staff and became another cornerstone in the action against the company.

Unsuccessful claimants. The Commission denied the claims of three further claimants who did not provide original information that led to the successful enforcement of the covered action. The SEC declined one claimant's invitation to adopt a more flexible or lax standard for determining whether a tip "led to" the success of the covered action. This is a critical prerequisite to award eligibility and was subject to much consideration and comment during the adoption of the whistleblower rules. Relaxing the standard "could undermine the whistleblower program's purpose of incentivizing individuals to come forward with credible intelligence," the order reasons.

The release is [No. 34-82897](#).

Complainant: Merrill Lynch

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