



Proposed OSC Policy 15-601 Whistleblower Program



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Presentation Outline

- Purpose of the Whistleblower Program
- Overview of the Proposed Policy
- Next Steps

Purpose of the Whistleblower Program

- One of a number of initiatives by the Enforcement Branch aimed at resolving enforcement matters more quickly and effectively
 - No-contest Settlement Program introduced in 2014
 - Credit for Cooperation Program revised in 2014
- Whistleblower program is an additional tool to assist us in identifying and investigating violations of securities laws, particularly in matters involving financial reporting and disclosure, insider trading and market manipulation
- Opportunity for reporting issuers and registrants to review and enhance their compliance systems and to foster an environment where internal reporting of misconduct is encouraged
- Program is applicable to s. 127 administrative matters dealt with by the Commission

Overview of the Proposed Policy

- 1) **Eligibility for a Whistleblower Award** – Policy sets out the nature of the information that may be eligible for the payment of a whistleblower award and the criteria that would make an individual eligible for a whistleblower award
- 2) **Financial Incentive** - A whistleblower award would be offered to eligible whistleblowers who provide the OSC with timely, credible and robust information that leads to an enforcement outcome with sanctions of \$1 million or more in a s. 127 Commission proceeding
- 3) **Confidentiality** - We would use all reasonable efforts to protect the identity of the whistleblower
- 4) **Whistleblower Protection** – The OSC expects that employers will not retaliate against a whistleblower or take action through contractual agreement or otherwise to impede a whistleblower from reporting a violation of securities law
- 5) **Procedure for Submitting Information and Award Process** – Policy describes how to submit information to the Whistleblower Program, under what circumstances Staff may communicate with a whistleblower and the process for determining whistleblower awards

Eligibility for a Whistleblower Award

Who

- Whistleblower defined as an individual or two or more individuals acting jointly who:
 - Provide original information on a voluntary basis in relation to a violation of Ontario securities law
 - Submit information in manner described in Proposed Policy
- Specific exclusions as follows:
 - External legal counsel
 - Whistleblowers who knowingly submit misleading or untrue information, unreasonably refuse request for additional information from Staff or disclose the enforcement activity or content of their submission
 - Staff or former staff of OSC, SRO, law enforcement
- Certain whistleblowers (D&O, CCOs, auditors, in house legal counsel) may be eligible if meet higher threshold criteria

Eligibility for a Whistleblower Award

What

- Submitted information must:
 - Be high quality and contain sufficient, timely , specific and credible facts
 - Provide meaningful assistance to Commission Staff investigating matter and obtaining an award eligible outcome
- No award will be provided for information that is misleading or untrue, or subject to solicitor client privilege

Financial Incentive

- Eligible whistleblowers may receive an award of between 5 and 15% of the total sanctions imposed and/or voluntary payments made, in cases where these amounts total \$1 million or more
- Amount:
 - Up to \$1.5 million, not contingent on collections
 - \$1.5 - \$5 million, only if sanctions collected
- Payment to the whistleblower would only be assessed after the matter is concluded (including any appeals) and sanctions are imposed
- Determination of award amount based on set criteria, including:
 - What steps the whistleblower had taken to report the misconduct through internal compliance systems before reporting to the OSC
 - Timeliness of whistleblower's report
 - Degree of assistance

Confidentiality

- We will use all reasonable efforts to protect the identity of the whistleblower
- Whistleblowers would generally not be required to testify as part of an administrative proceeding
- Confidentiality will not be maintained where:
 - Disclosure is required to be made to a respondent in connection with a s. 127 administrative proceeding to permit a respondent to make full answer and defence
 - When the Commission provides the information to another body pursuant to s. 153, except the whistleblower's identity will not be disclosed without the whistleblower's consent
- Whistleblower may submit information to Program on an anonymous basis if represented by legal counsel, but whistleblower's identity must be disclosed to OSC prior to receiving an award

Whistleblower Protection

- Commission expects employers will not:
 - Discipline, demote, terminate, harass or otherwise retaliate against a whistleblower, or
 - Take action through a contractual agreement or otherwise to impede a whistleblower from reporting
- Staff may commence a s. 127 proceeding in these cases
- Staff will seek legislative amendments to include anti-retaliation provisions in the Ontario Securities Act
- Protections apply to whistleblowers who report through internal compliance systems and those that report directly to the OSC

Procedure for Submitting Information and Award Process

- Whistleblower to complete information form and read and sign declaration (Staff may request a whistleblower provide additional information)
- Process for determining whistleblower awards would include a Staff recommendation reviewed by a Staff committee, including the Director of Enforcement
 - The Commission would review the Staff committee's recommendation, determine if a whistleblower is eligible and if so, may exercise its discretion to modify the amount of the award
- Communications with whistleblowers
 - Communications by Staff with whistleblowers in response to a specific whistleblower submission would be limited to ensure compliance with s. 16 of the Act and OSC Staff Notice 15-703

Next Steps

- Comment period ends January 12, 2016
- Review comments and prepare final Policy
- Seek legislative amendments for anti-retaliation provisions
- Subject to stakeholder feedback and Commission approval, target implementation Spring 2016

Questions?