

SEC Announces Initiative to Encourage Individuals and Companies to Cooperate and Assist in Investigations

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Video: News Conference

SEC Enforcement Director Robert Khuzami announces Enforcement Cooperation Initiative

Washington, D.C., Jan. 13, 2010 — The Securities and Exchange Commission today announced a series of measures to further strengthen its enforcement program by encouraging greater cooperation from individuals and companies in the agency's investigations and enforcement actions.

The new initiative establishes incentives for individuals and companies to fully and truthfully cooperate and assist with SEC investigations and enforcement actions, and provides new tools to help investigators develop first-hand evidence to build the strongest possible cases. The cooperation initiative is expected to result in invaluable and early assistance in identifying the scope, participants, victims and ill-gotten gains associated with fraudulent schemes.

"This is a potential game-changer for the Division of Enforcement," said Robert Khuzami, Director of the Division of Enforcement. "There is no substitute for the insiders' view into fraud and misconduct that only cooperating witnesses can provide. That type of evidence can expand our ability to conduct our investigations more swiftly, and to act quickly to file charges, freeze assets, and protect investors."

To improve the quality, quantity, and timeliness of information and assistance it receives, the SEC approved the following measures:

First, the Division of Enforcement is authorizing its staff to use various tools to encourage individuals and companies to report violations and provide assistance to the agency. The new tools are laid out in a revised version of the Division's enforcement manual in a new section entitled "Fostering Cooperation." For many years, similar cooperation tools have been regularly and successfully used by the Justice Department in its criminal investigations and prosecutions. The new cooperation tools, not previously available in SEC enforcement matters, include:

- **Cooperation Agreements** — Formal written agreements in which the Enforcement Division agrees to recommend to the Commission that a cooperator receive credit for cooperating in investigations or related enforcement actions if the cooperator provides substantial assistance such as full and truthful information and testimony.
- **Deferred Prosecution Agreements** — Formal written agreements in which the Commission agrees to forego an enforcement action against a cooperator if the individual or company agrees, among other things, to cooperate fully and truthfully and to comply with express prohibitions and undertakings during a period of deferred prosecution.
- **Non-prosecution Agreements** — Formal written agreements, entered into under limited and appropriate circumstances, in which the Commission agrees not to pursue an enforcement

action against a cooperator if the individual or company agrees, among other things, to cooperate fully and truthfully and comply with express undertakings.

Second, the SEC streamlined the process for submitting witness immunity requests to the Justice Department for witnesses who have the capacity to assist in its investigations and related enforcement actions.

Third, the Commission has set out, for the first time, the way in which it will evaluate whether, how much, and in what manner to credit cooperation by individuals to ensure that potential cooperation arrangements maximize the Commission's law enforcement interests. This pronouncement is expected to provide guidance and serve as an incentive for individuals to report violations and to cooperate fully and promptly in enforcement cases. It is similar to the so-called "Seaboard Report" that was issued in 2001 and detailed the factors the SEC considers when evaluating cooperation by companies.

In the newly issued policy statement, the SEC identifies four general considerations:

- The assistance provided by the cooperating individual.
- The importance of the underlying matter in which the individual cooperated.
- The societal interest in ensuring the individual is held accountable for his or her misconduct.
- The appropriateness of cooperation credit based upon the risk profile of the cooperating individual.

The developments announced today are the latest in a series of initiatives that are part of the most significant reorganization of the Enforcement Division in more than 30 years. These reforms include vastly expanding staff training programs, hiring staff with new skill sets, streamlining management, adding more experienced investigators to the front lines, revising internal enforcement procedures, restructuring processes to ensure better sharing of information, leveraging the knowledge of third parties, and revamping the way tips are handled.

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For more information, contact:

Robert S. Khuzami — Director of the Division of Enforcement — (202) 551-4500

Lorin L. Reisner — Deputy Director of the Division of Enforcement — (202) 551-4500

Jordan A. Thomas — Assistant Chief Litigation Counsel — (202) 551-4475

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