

# SEC Penalizes Anti-Whistleblower Provision in Customer Settlement Agreements

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The SEC has opened a new track in the whistleblower litigation derby. While SEC enforcement actions concerning whistleblower violations are nothing new, they typically involve claims that companies precluded employees from reporting purported violations of securities laws to the SEC. See [“Juggling Act: SEC Fines Three Employers for Potentially Discouraging Whistleblowers,”](#) *Expect Focus – Life, Annuity, and Retirement Solutions* (January 2024). In the case discussed below, however, the SEC claimed that a company violated whistleblower rules by allegedly precluding customers from reporting alleged securities law violations to the SEC. The SEC’s action evidences its broad interpretation of whistleblower protections and comes on the heels of pro-whistleblower actions by other regulatory bodies, including the National Labor Relations Board. See [“NLRB Stacks Deck in Favor of Employees: Employers Must Play Cards Defensively or Go Bust,”](#) *Expect Focus – Life, Annuity, and Retirement Solutions* (September 2023). In January, a major bank agreed to pay \$18 million to settle claims by the SEC that it violated federal whistleblower protection rules. The SEC alleged that the bank had required clients involved in disputes to sign confidential release agreements, prohibiting them from disclosing settlement details and precluding them from voluntarily contacting the SEC. At the time of the settlement, the director of the SEC’s Division of Enforcement blew the SEC’s own penalty whistle, saying that companies “cannot include provisions that prevent individuals from contacting the SEC with evidence of wrongdoing.” Broad SEC interpretations of whistleblower protections in settlement agreements with customers open a new field in whistleblower protection litigation. Companies now need to be concerned about agreements with all sorts of third parties rather than just focusing on their employees. They also need to scrutinize carefully what was previously thought of as standard and mundane settlement and confidentiality language.

## Authored By



Jonathan Sterling



Brendan N. Gooley

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