The Problem Facing Fraud Detection

"Honest behavior is not rewarded . . . Given [the] costs [of whistleblowing] the surprising part is not that most employees do not talk, it is that some talk at all."

— Alexander Dyck, et al., "Who Blows the Whistle on Corporate Fraud?" The University of Chicago Booth School of Business Working Paper No. 08-22 (2009).

Best Compliance Practices

Enforce Strict Rules Protecting Confidential and anonymous reporting

Independent investigations not under the direction of corporate counsel

Cooperate with Government Investigations – No Cover-Ups

Prohibit Retaliation. Understand that line managers will try to discredit the whistleblower

Directors, Lawyers and Compliance Officials Can Become Whistleblowers

Directors and compliance officials can qualify for financial rewards under the Tax and False Claims Act Reward Laws

Under the Dodd-Frank Act directors and compliance officials can qualify for rewards if the company does not self-report within 120 days

Lawyers can also qualify for rewards, but must be aware of the Attorney Client and Work Product Privileges

U.S. Obstruction of Justices laws and SEC rules prohibit agreements restricting disclosures to law enforcement

The Framework for *qui tam and* Reward Laws

Employees who only report internally are not eligible for a financial rewards.

Emphasis is on the truthfulness of the information, not on a employment discrimination.

Non-U.S. citizens can qualify for financial rewards.

The United States government will pay rewards. In FY 2018 the SEC paid $168 million, IRS paid $312 million, and the DOJ paid $301 million to whistleblowers.

Whistleblowers who provide original information to the appropriate government agency are entitled to a mandatory reward of between 10-30% of the proceeds triggered by their "original information."

False Claims Act: A Whistleblower Program Delivers Significant Benefits

- In FY 2017, the U.S government recovered over $3.7 billion through its civil fraud program.

- Of this amount, whistleblowers were directly responsible for the detection and reporting of over $3.4 billion under the FCA.

- Whistleblowers were the source of the detection of 92.8% of civil fraud recovered in FY 2017.

Non-WB
8%
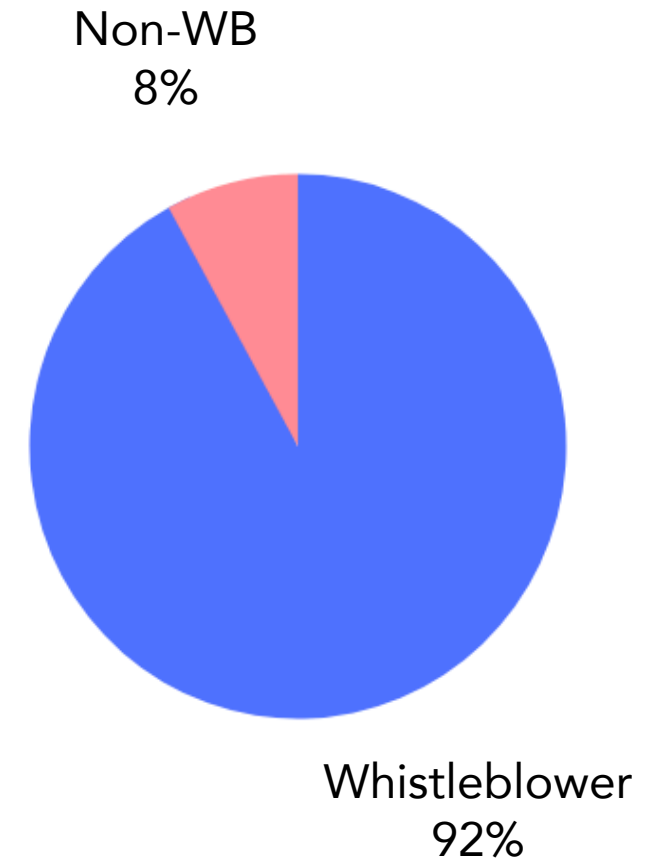
Whistleblower
92%

In 2017, of the $3.4 billion recovered through the FCA and as a result of whistleblower assistance, $392 million (11.5%) was awarded to whistleblowers.

IRS / Tax Whistleblower Law

- Tax whistleblowers were paid $741.1 million in awards between 2012-2018.

- Whistleblowers were the critical source of information on policing offshore Swiss banking violations.

- In Swiss banking cases government collected over $16 Billion in fines and penalties. 50,000 U.S. taxpayers entered the voluntary disclosure program.

- Tax whistleblower law expanded in 2018 to cover all criminal tax cases and money laundering cases investigated by the IRS.

Foreign Corrupt Practices Act (FCPA)

- Since 2011, 2,655 whistleblowers from 113 countries outside the U.S. have filed claims under the Foreign Corrupt Practices Act whistleblower reward provision.

- Over $40 million has been paid to non-U.S. citizens who reported bribes paid overseas.

The FCPA is often known as the law used to prosecute bribes paid abroad.

Dodd-Frank Act: Securities and Commodity Exchange Acts and the FCPA

Whistleblowers who report violations to corporate compliance programs are **not** protected from retaliation under the DFA.

Whistleblowers can file anonymous and confidential claims directly with the government.

Eligibility for financial rewards does not depend on U.S. citizenship.

Whistleblowers who provide original information that leads to a successful enforcement action entitled to a mandatory reward of between 10-30% of the collected proceeds.

Sources: *Digital Realty v. Sommers*; *Rule 8*; *SEC Office of the Whistleblower*

". . . it makes no difference whether . . . the claimant was a foreign national, the claimant resides overseas, the information was submitted from overseas, or the misconduct comprising the U.S. securities law violation occurred entirely overseas."

— Kevin M. O'Neill, Deputy Secretary, Securities and Exchange Commission, [Order](link) Determining Whistleblower Award Claim

The SEC "whistleblower program . . . has rapidly become a tremendously effective force-multiplier, generating high quality tips, and in some cases virtual blueprints laying out an entire enterprise, directing us to the heart of the alleged fraud."

— Chairman Mary Jo White, Securities and Exchange Commission, [Remarks at the Securities Enforcement Forum](), Washington DC (October 2013)

University of Chicago Booth School of Business

A critical study on whistleblowing came out of academics from the University of Chicago's Booth School of Business.

Their goal was to "identify the most effective mechanism for detecting corporate fraud."

"

A strong monetary incentive to blow the whistle does motivate people with information to come forward.

Monetary incentives seem to work well, without the negative side effects often attributed to them.

Employees clearly have the best access to information.

"

— Alexander Dyke, et al., University of Chicago Booth School of Business

Updated with new information on rewards, wildlife trafficking, and Wall Street whistleblowing

THE NEW

Whistleblower's
HANDBOOK

A Step-by-Step Guide to Doing
What's Right and Protecting Yourself

STEPHEN MARTIN KOHN, ESQ
Nationally Acclaimed Expert
on Whistleblower Law

"You may want to add this book to your… wish list. Just don't let your boss catch you reading it."

–Wall Street Journal

Links to the legal authorities including statutes, regulations, and cases relied upon in The Handbook can be found online, including:

- *Confidential Reporting: Rule 1*
- *False Claims Act / Qui Tam: Rule 6*
- *Tax Whistleblowers: Rule 7*
- *Dodd-Frank Act: Rule 8*
- *Foreign Corrupt Practices Act: Rule 9*
- *Internal Compliance: Rules 17-19*
- *Non-Disclosure Agreements: Rule 28*
- *International Whistleblowing: International Toolkit*

Order from: https://www.whistleblowers.org/book/

Stephen M. Kohn,

Partner, Kohn, Kohn & Colapinto, LLP

Chairman of the Board of Directors, National Whistleblower Center

Stephen M. Kohn, has represented whistleblowers since 1984, successfully setting numerous precedents that helped define whistleblower law. He currently represents whistleblowers at major international financial institutions, including the Danske Bank manager who reported multi-billion dollar money laundering schemes. He obtained the largest reward ever paid to an individual whistleblower ($104 million for exposing illegal offshore bank accounts) Mr. Kohn is the most published author on whistleblower law.

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LINKS TO ALL SOURCES

This PowerPoint is accessible online at http://www.kkc.com/compliance.

All Sources of information are linked in this PowerPoint and Easily Accessible.

MAJOR STATUTES

- False Claims Act Reward and Anti-Retaliation | 31 U.S.C. § 3729-3732
- Tax Reward and Anti-Retalliation Law | 26 U.S.C. § 7623
- Securities Exchange Act Reward and Anti-Retaliation Law (also covers violations of the Foreign Corrupt Practices Act) | 15 U.S.C. § 78u-6
- Commodity Exchange Act Reward and Anti-Retaliation Act | 7 U.S.C. § 26
- Sarbanes-Oxley Act (no rewards but covers internal whistleblowing) –18 USC 1514A
- Sarbanes-Oxley Act law on mandatory confidential internal reporting programs --- 15 USC 78j-1(m)(4)
- Obstruction of Justice (whistleblower protection) ---
- U.S. Sentencing Guidelines (encourages creation of internal compliance programs) ---
- Close the Contractors Fraud Loophole Act (mandatory internal reporting requirements for U.S. government contractors) Public Law 110-252, 73 *Federal Register* 67064

"Going after waste, fraud, and abuse without whistleblowers is about as useful as harvesting acres of corn with a pair of rusty old scissors."

— Senator Charles Grassley, Chairman of Senate Judiciary Committee, speech given on National Whistleblower Day (July 30, 2018) --- Watch the Video --- Read the Speech