

NWC

NATIONAL
WHISTLEBLOWER
CENTER

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Lessons from the Danske Bank Case: Whistleblowing in Europe's Financial Institutions

OffshoreAlert Conference Europe
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“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](#)



Surprising that some talk at all

“Honest behavior not rewarded by the market, but it is penalized . . . Given these costs, however, 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).



"Because those who defraud the government often hide their misconduct from public view, whistleblowers are often essential to uncovering the truth."

— Former Acting Assistant Attorney General Chad A. Readler, Department of Justice, Civil Division, in press release titled, "[Justice Department Recovers Over \\$3.7 Billion From False Claims Act Cases in Fiscal Year 2017](#)" (December 2017). Nominated by President Trump to the United States Court of Appeals (nomination pending).

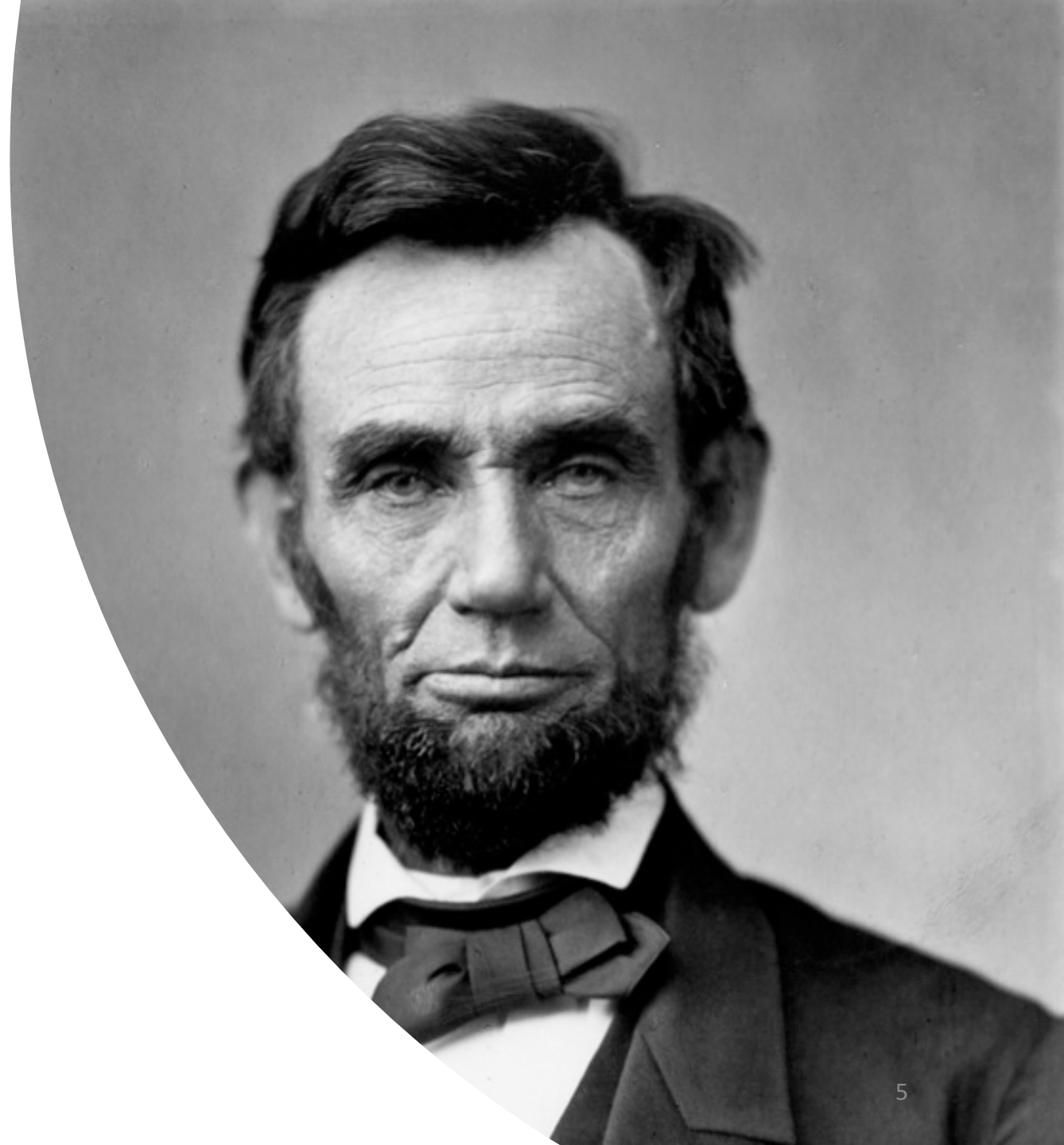


Qui Tam: "The Lincoln Law"

On March 2, 1863, President Abraham Lincoln signed the original whistleblower [qui tam reward law](#), the False Claims Act ("FCA").

It was modernized in 1986. Since then, it has become the most successful anti-fraud law in the United States.

The FCA incentivizes reporting by paying whistleblowers financial rewards and is the model for all current whistleblower reward laws.





The False Claims Act whistleblower law is “the most powerful tool the American people have to protect the government from fraud.”

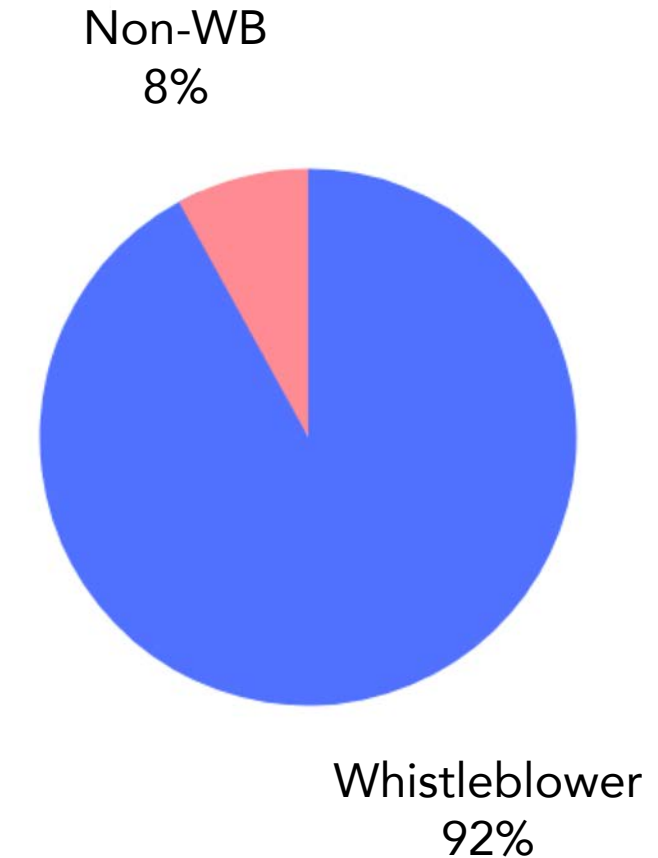
— Former Assistant Attorney General Stuart Delery - [Remarks](#) at American Bar Association’s 10th National Institute on the Civil False Claims Act and Qui Tam Enforcement (2014)



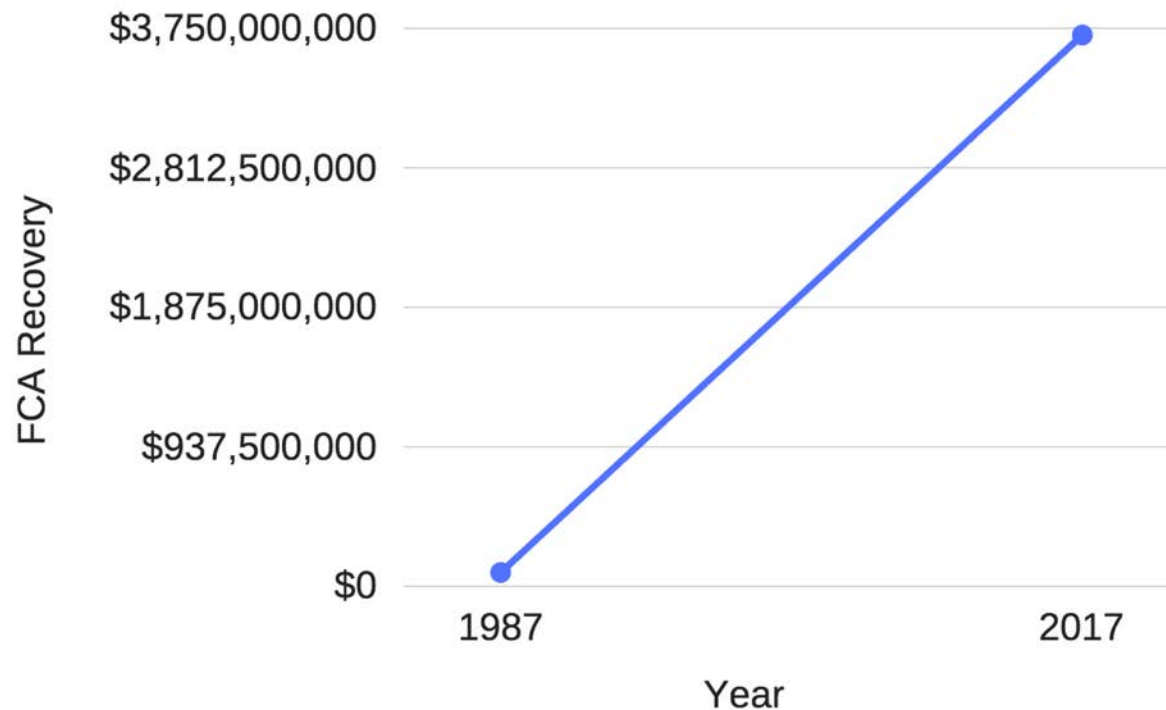
A Whistleblower Program Delivers Significant Benefits

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

**numbers are approximate, see prior slide for exact amounts*



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.



- Since its modernization on October 27, 1986, the False Claims Act has increased the overall annual recoveries from fraudsters who cheated the government.
- The total fraud recovered in the United States increased from \$88.4 million in FY 1987 to \$3.7 billion in FY 2017 based on whistleblower disclosures under the FCA.
- Since FY 1987 whistleblowers were responsible for 72% of the funds recovered in contracting or procurement fraud cases.

FALSE CLAIMS ACT FRAUD STATISTICS OVERVIEW FY 1986 - FY 2017

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FRAUD STATISTICS - OVERVIEW
October 1, 1986 - September 30, 2017
Civil Division, U.S. Department of Justice

FY	NEW MATTERS ₁		SETTLEMENTS AND JUDGMENTS ₂					RELATOR SHARE AWARDS ₃		
	NON QUI TAM	QUI TAM	NON QUI TAM TOTAL	QUI TAM			TOTAL QUI TAM AND NON QUI TAM	WHERE U.S. INTERVIEWED OR OTHERWISE PURSUED	WHERE U.S. DECLINED	TOTAL
				WHERE U.S. INTERVIEWED OR OTHERWISE PURSUED	WHERE U.S. DECLINED	TOTAL				
1987	343	30	86,479,949	0	0	0	86,479,949	0	0	0
1988	210	43	173,287,663	2,309,354	33,750	2,343,104	175,630,767	88,750	8,438	97,188
1989	224	87	197,202,180	15,111,719	1,681	15,113,400	212,315,580	1,446,770	200	1,446,970
1990	243	72	189,564,367	40,483,367	75,000	40,558,367	230,122,734	6,590,936	20,670	6,611,606
1991	234	84	270,530,467	70,384,431	69,500	70,453,931	340,984,398	10,667,537	18,750	10,686,287
1992	285	114	137,958,206	133,949,447	994,456	134,943,903	272,902,109	24,121,648	259,784	24,381,432
1993	304	138	181,945,576	183,643,787	6,603,000	190,246,787	372,192,363	27,576,235	1,766,902	29,343,137
1994	280	216	706,022,897	379,018,205	2,822,323	381,840,528	1,087,863,425	69,453,350	838,897	70,292,246
1995	233	269	269,989,642	239,024,292	1,635,000	240,659,292	510,648,934	45,162,296	465,800	45,628,096
1996	185	340	247,357,271	124,361,203	13,522,433	137,883,636	385,240,908	22,119,619	3,731,978	25,851,597
1997	186	547	465,568,061	621,919,274	6,021,200	627,940,474	1,093,508,535	65,857,419	1,658,485	67,515,904
1998	120	468	151,435,794	438,834,846	30,248,075	469,082,921	620,518,715	70,264,372	8,486,645	78,751,017
1999	140	493	195,390,485	492,924,785	5,067,503	497,992,288	693,382,773	63,018,064	1,374,487	64,392,552
2000	95	363	367,887,197	1,208,370,688	1,688,957	1,210,059,645	1,577,946,841	183,679,377	375,143	184,054,520
2001	85	311	494,496,974	1,215,525,916	128,587,151	1,344,113,067	1,838,610,042	187,590,470	30,701,881	218,292,350
2002	61	319	119,598,292	1,078,174,023	25,786,140	1,103,960,162	1,223,558,454	161,377,822	4,582,319	165,960,141
2003	92	334	711,098,299	1,534,862,352	5,185,911	1,540,048,263	2,251,146,563	337,307,857	1,382,741	338,690,598
2004	111	432	115,656,023	561,717,502	9,261,879	570,979,382	686,635,404	110,224,220	2,376,128	112,600,348
2005	105	406	276,914,983	1,140,047,524	7,481,593	1,156,529,117	1,433,444,099	168,580,543	2,031,695	170,612,237
2006	71	385	1,712,459,257	1,491,105,499	22,711,363	1,513,816,862	3,226,276,119	219,976,072	5,647,836	225,623,908
2007	129	365	564,826,844	1,251,726,955	160,246,894	1,411,973,849	1,976,800,693	192,888,212	4,616,899	197,505,111

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	NON QUI TAM	QUI TAM	NON QUI TAM TOTAL	QUI TAM			TOTAL QUI TAM AND NON QUI TAM	WHERE U.S. INTERVIEWED OR OTHERWISE PURSUED	WHERE U.S. DECLINED	TOTAL
				WHERE U.S. INTERVIEWED OR OTHERWISE PURSUED	WHERE U.S. DECLINED	TOTAL				
2008	161	379	312,193,480	1,045,582,229	12,678,936	1,058,261,165	1,370,454,645	201,682,144	2,997,615	204,679,759
2009	132	433	469,334,681	1,963,356,256	33,776,480	1,997,132,735	2,466,467,417	249,567,135	9,684,147	259,251,282
2010	140	576	647,383,493	2,280,378,123	109,778,613	2,390,156,737	3,037,540,230	370,856,551	30,915,991	401,772,542
2011	125	634	241,365,995	2,648,552,414	173,888,703	2,822,441,117	3,063,807,112	510,875,463	49,041,606	559,917,069
2012	144	652	1,608,112,862	3,344,478,500	45,248,343	3,389,726,844	4,997,839,706	436,125,743	12,711,743	448,837,485
2013	101	756	169,126,772	2,868,519,362	127,348,056	2,995,867,418	3,164,994,190	528,312,018	30,449,937	558,761,955
2014	98	715	1,676,564,226	4,386,325,409	81,378,451	4,467,703,859	6,144,268,085	696,768,578	14,868,000	711,636,578
2015	111	639	732,432,286	1,896,482,996	512,357,184	2,408,840,181	3,141,272,467	344,083,870	137,955,425	482,039,295
2016	147	706	1,856,329,432	2,815,841,067	106,098,069	2,921,939,136	4,778,268,567	497,141,013	29,658,600	526,799,613
2017	125	674	265,583,089	3,011,269,763	425,767,335	3,437,037,099	3,702,620,187	349,365,587	43,593,801	392,959,388
TOTAL	5,020	11,980	15,614,096,744	38,493,281,288	2,056,363,980	40,549,645,268	56,163,742,012	6,152,769,671	432,222,541	6,584,992,211

Sanctions from
whistleblower cases

Rewards paid to
whistleblowers

2017	125	674	265,583,089	3,011,269,763	425,767,335	3,437,037,099	3,702,620,187	349,365,587	43,593,801	392,959,388
TOTAL	5,020	11,980	15,614,096,744	38,493,281,288	2,056,363,980	40,549,645,268	56,163,742,012	6,152,769,671	432,222,541	6,584,992,211

Source: [U.S. Department of Justice](https://www.justice.gov/civil/division)



"[T]he False Claims Act has provided ordinary Americans with essential tools to combat fraud . . . their impact has been nothing short of profound."

— Former Attorney General Eric Holder, U.S. Department of Justice, [remarks at the 25th anniversary of the False Claims Act](#) (January 31, 2012).



INTERNATIONAL APPLICATIONS OF U.S. WHISTLEBLOWER REWARD LAWS



IRS/Tax/Bank Secrecy-FBAR Whistleblower Law

“The IRS’s serious efforts to combat offshore tax evasion... [were] brought to our attention... by whistleblowers...”

— John A. Koskinen, Commissioner of the IRS, [Remarks](#) before the U.S. Council for International Business-OECD International Tax Conference



IRS/Tax Whistleblower Law

Whistleblowers can file confidential claims regarding tax fraud, underpayment of tax or the failure to file appropriate information to the U.S. Department of Treasury.

Independent Office of the Whistleblower accepts whistleblower cases, adjudicates rewards, helps coordinate investigations and issues the final reward determinations.

The whistleblower program has been successfully used to police illegal offshore banking, including fines and penalties against foreign banks and bankers.

Whistleblowers who provide original information that leads to a successful enforcement action entitled to a mandatory reward of between 15-30% of the collected proceeds.



A 2018 Amendment to Tax Whistleblower Law Significantly Expanded its Reach

The tax whistleblower law was expanded in 2018 by an amendment to the Bipartisan Budget Act of 2018, [Public Law 115-123, § 41108](#).

The 2018 amendment expanded the the scope of the IRS whistleblower law to explicitly cover criminal fines, civil forfeitures, and violations of **any** IRS reporting requirement.

The new provisions cover violations of the Foreign Tax Compliance Act (FATCA), the FBAR reporting requirements under the Bank Secrecy Act and any other law for which the IRS is authorized to administer, enforce or investigate.



IRS/Tax Whistleblower Law

- Tax whistleblowers were paid \$429.1 million in awards between [2012-2017](#)
- Whistleblowers were the critical source of information on [policing offshore Swiss banking violations](#)
- Private banker Bradley Birkenfeld obtained the largest ever whistleblower award for turning in illegal UBS offshore banking practices ([\\$104 million](#))





Foreign Corrupt Practices Act 15 U.S.C. §§ 78m, 78dd, 78ff

The FCPA prohibits publicly-traded corporations, both U.S. and international, from paying bribes to foreign officials and mandates proper financial recordkeeping.

The FCPA established U.S. jurisdiction for bribes paid in foreign countries by foreign nationals to foreign government officials.

FCPA whistleblowers can obtain protection and financial rewards even if bribes are paid in a foreign country and the whistleblower is a foreign national.



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 \$30 million has been paid to non-U.S. citizens who reported bribes paid overseas, in a single case.

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



International Tips Received by U.S. Securities and Exchange Commission, 2011 - 2017



Foreign Corrupt Practices Act

Whistleblowers can file anonymous and confidential claims. Restrictive Non Disclosure Agreements ("NDAs") are prohibited.

Independent Office of the Whistleblower accepts whistleblower cases, adjudicates rewards, coordinates investigations into wrongdoing, and actively publicizes the program.

Jurisdiction over all U.S. persons and publicly-traded foreign companies that permit U.S. investors to buy their stocks through the use of American Depositary Receipts (ADRs).

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.



“ . . . 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](#) Determining Whistleblower Award Claim



Securities and Commodity Exchange Act

Whistleblowers can file anonymous and confidential claims

Eligibility 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.

Jurisdiction is established when foreign companies permit U.S. investors to buy their stocks through the use of American Depositary Receipts (ADRs).



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)



Commodities Future Trading Commission

- In 2018, the first foreign whistleblower was awarded under the CFTC rewards program.
- Total awards in FY 2018 were over \$75 million.





Commodities Future Trading Commission

CFTC announced whistleblower eligibility for numerous international cases including:

- [Société Générale](#) — *attempted manipulation and false reporting in connection with LIBOR and Euribor rates*
- [Tallinex](#) — *operated as an unregistered FX dealer by accepting leveraged FX transactions with retail clients in the US*
- [BNP Paribas](#) — *attempted manipulation of the ISDAFIX benchmark*



False Claims Act / Qui Tam

- Numerous banks and foreign companies have been sanctioned under the False Claims Act
 - Toyo Ink (Japan) — \$45 million
 - Infosys Technologies (India) — \$34 million
 - Royal Dutch Shell (Netherlands) — \$110 million
 - BNP Paribas (France) — \$80 million
 - Ranbaxy Laboratories (India) — \$150 million
 - GlaxoSmithKline (Great Britain) — \$750 million
 - Deutsche Bank (Germany) — \$202 million
 - Bank of America (USA) — \$1 billion
 - Citigroup (USA) — \$158 million





False Claims Act / Qui Tam

Whistleblowers file confidential disclosure statements to the Department of Justice and a lawsuit under court ordered seal.

Law covers all false claims to the United States, or “reverse” false claims, such as contractor fraud, Medicare fraud and the failure to pay mandatory fees. Qui tam provisions permit whistleblowers to act as private attorney generals and pursue litigation on behalf of the United States.

Jurisdiction over any entity or person who does business with the United States, including international entities.

Whistleblowers who provide original information that leads to a successful enforcement action entitled to a mandatory reward of between 15-30% of the collected proceeds.



NON-DISCLOSURE AGREEMENTS



Restrictive NDAs



Dodd-Frank Act/Foreign Corrupt Practices Act

Prohibits Non Disclosure Agreements (“NDAs”) that restrict an employee/individual from reporting potential crimes to the government.

Additionally, contracts cannot be used to require employees to inform their employers of contacts with the government or information which they have provided to the government.



Defend Trade Secrets Act

Prohibits private companies from using trade secrets to hide wrongdoing. Employees are fully protected from retaliation if they disclose information classified by their employer as a trade secret.



Obstruction of Justice

Economic retaliation against any person who provides truthful information to law enforcement is a felony, subjecting the retaliator to up to 10 years imprisonment.

Management doesn't like the term
'whistleblower', they prefer
'unemployed'!



FRAN



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



“Empowering these whistleblowers to prosecute fraud proved to be smarter, faster, and more effective than just relying on the government.”

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

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:

- New Legal Tools: [Rule 1](#)
- False Claims Act / Qui Tam: [Rule 6](#)
- Tax Whistleblowers: [Rule 7](#)
- Foreign Corrupt Practices Act: [Rule 9](#)
- Non-Disclosure Agreements: [Rule 28](#)
- International Whistleblowing: [International Toolkit](#)



Stephen M. Kohn
Partner, [Kohn, Kohn & Colapinto, LLP](#)
Founding Director, [National Whistleblower Center](#)

[Stephen M. Kohn](#), a partner in the law firm of [Kohn, Kohn & Colapinto](#) and a founding director of the [National Whistleblower Center](#), has represented whistleblowers since 1984, successfully setting numerous precedents that have helped define modern whistleblower law. He currently represents whistleblowers at major international financial institutions, including the [Danske Bank manager](#) who reported a massive multi-billion dollar money laundering scheme. He obtained the [largest reward ever paid](#) to an individual whistleblower (\$104 million for exposing illegal offshore bank accounts) and is widely recognized as the leading U.S. authority on whistleblower laws. Mr. Kohn is the most published author on whistleblower law, including [The New Whistleblower's Handbook: A Step-by-Step Guide to Doing What's Right and Protecting Yourself](#).

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National Whistleblower Center

www.whistleblowersblog.org | www.whistleblowers.org



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Sources

Statutes

- False Claims Act | [31 U.S.C. § 3729-3732](#)
- Internal Revenue Code | [26 U.S.C. § 7623](#)
- Securities Exchange Act | [15 U.S.C. § 78u-6](#)
- Commodity Exchange Act | [7 U.S.C. § 26](#)

Statements from Officials

- 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).
- Bill Baer - Remarks at [American Bar Association's 11th National Institute](#) on the Civil False Claims Act and Qui Tam Enforcement (2016)
- Chad A. Readler, Department of Justice, Civil Division, in press release titled, "[Justice Department Recovers Over \\$3.7 Billion From False Claims Act Cases in Fiscal Year 2017](#)" (December 2017).
- Charles Grassley, Chairman of Senate Judiciary Committee, speech given on National Whistleblower Day (July 30, 2018) --- Watch the [Video](#) --- Read the [Speech](#)
- Christopher Ehrman, Director of the CFTC's Whistleblower Office, [Press Release](#) "CFTC Announces Multiple Whistleblower Awards Totaling More than \$45 Million"
- Eric Holder, U.S. Department of Justice, [remarks at the 25th anniversary of the False Claims Act](#) (January 31, 2012).
- John A. Koskinen, Commissioner of the IRS, [Remarks](#) before the U.S. Council for International Business-OECD International Tax Conference

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Statements from Officials, cont.

- Kevin M. O'Neill, Deputy Secretary, Securities and Exchange Commission, [Order Determining Whistleblower Award Claim](#)
- Mary Jo White, Securities and Exchange Commission, [Remarks at the Securities Enforcement Forum](#), Washington DC (October 2013)
- Stuart Delery - [Remarks](#) at American Bar Association's 10th National Institute on the Civil False Claims Act and Qui Tam Enforcement (2014) and U.S. Department of Justice, [remarks at American Bar Association's 10th National Institute](#) on the Civil False Claims Act and Qui Tam Enforcement (June 5, 2014).

Reports and other Laws

- 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).
- Federal Obstruction of Justice, [18 U.S.C. §1513](#)
- SEC Enforcement Action on NDAs, [In re KBR](#).
- Report Published by the National Whistleblower Center:
 - [Foreign Corrupt Practices Act: How the Whistleblower Reward Provisions Have Worked](#)