



INTERNATIONAL APPLICATION OF U.S. WHISTLEBLOWER REWARD LAWS

Stephen M. Kohn
Partner, Kohn, Kohn & Colapinto, LLP
Chairman of the Board of Directors
National Whistleblower Center



“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](#)



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).



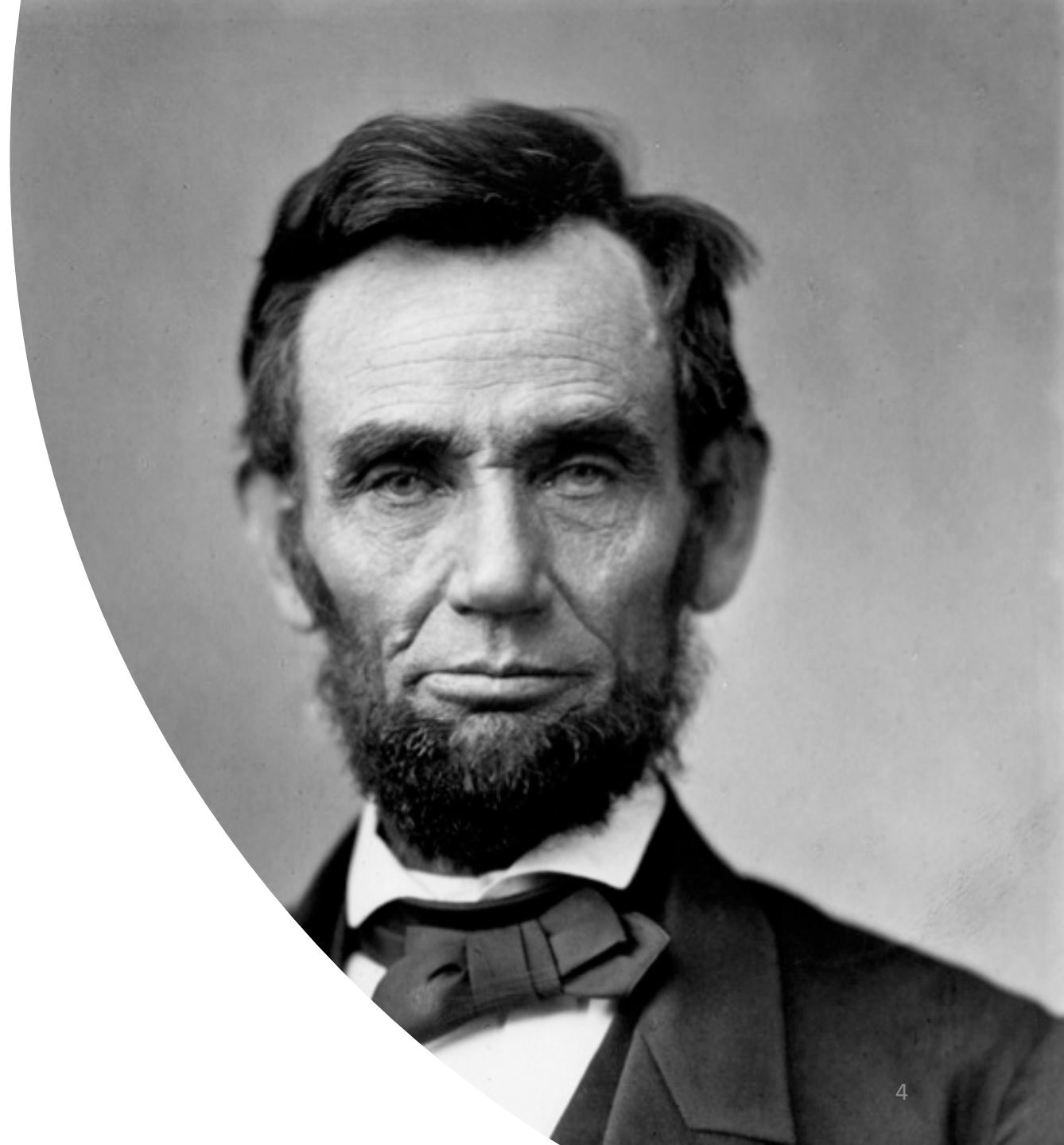
The Solution

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"), targeting fraud in government contracting.

It was modernized in 1986.

The FCA incentivizes reporting and is the model for all current whistleblower reward laws.





The Framework for qui tam and Reward Laws

Initial disclosures are filed with the agency responsible for enforcing the whistleblower law. FCA claims are initially filed under “seal” in federal court

Emphasis is on the quality of the information, not on a whistleblower’s employment discrimination case.

Whistleblowers who provide original information that leads to a successful enforcement action are entitled to a **mandatory reward** under the modern reward laws of between 10-30% of the collected proceeds triggered by their disclosures.

Mandatory rewards available under the [False Claims Act](#), [Dodd-Frank Act](#), [Tax and Money Laundering](#), [Foreign Corrupt Practices Act](#), [Securities and Exchange Act](#) and [Commodity Exchange Act](#).

THE LAWS



False Claims Act | 31 U.S.C. § 3729-3732

Rewards for reporting fraud in government contracting, procurement or failure to pay mandatory fees, including customs violations.



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

Rewards to whistleblowers who provide original information about bribes paid to foreign government officials.



Securities and Exchange Act | 33 U.S.C. § 1908(a)

Rewards to individuals who provide information to the SEC which leads to the recovery of monetary sanctions which exceed \$1 million.



Commodity Exchange Act | 7 U.S.C. § 26

Rewards to qualified persons who provide information concerning violations of the Commodities laws,, including violations of money laundering laws.



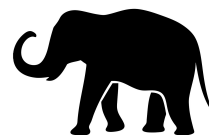
Act to Prevent Pollution from Ships | 33 U.S.C. § 1908(a)

Permits federal courts to grant rewards to whistleblowers whose disclosure pollution on the high seas



Fish and Wildlife Improvement Act | 16 U.S.C. § 7421(c)(3)

Rewards for reporting violations of any wildlife protection laws enforced by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service. Rewards can be paid for information prior to a prosecution.



Endangered Species Act | 15 U.S.C. § 78u-6 and Lacey Act | 16 U.S.C. § 3375(d)

Permits the Departments of Agriculture, Commerce, Interior, and Treasury to reward whistleblowers who disclose violations of the Endangered Species Act.



Internal Revenue Act | 26 U.S.C. § 7623

Rewards to IRS whistleblowers who report tax frauds and underpayments of taxes. Covers all laws investigated by the IRS, including international money laundering.



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)



“The taxpayers owe a debt of gratitude to those who often put much on the line to expose such [fraudulent] schemes.”

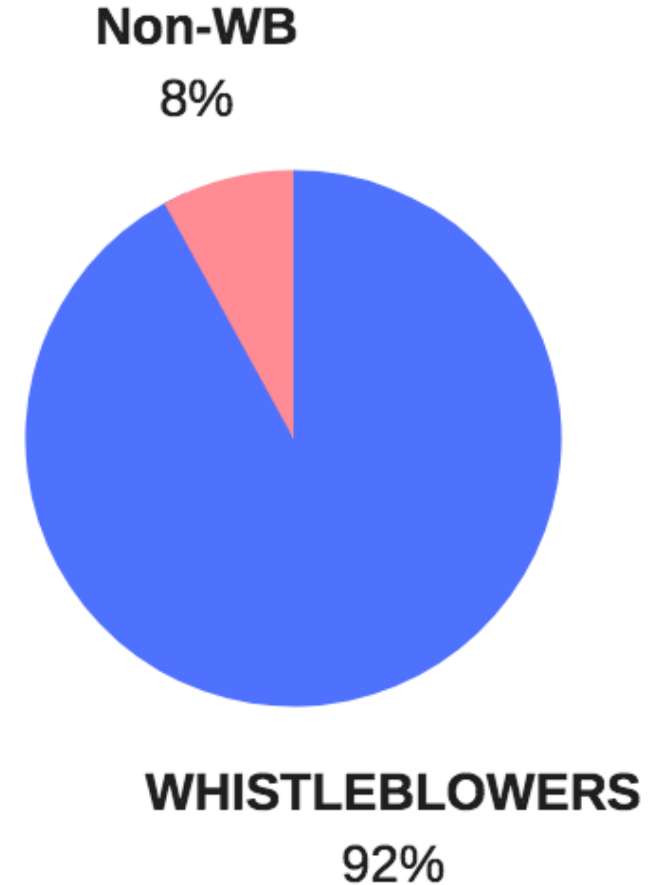
— Assistant Attorney General Jody Hunt – [Remarks](#) on the False Claims Act, DOJ Press Release (2018)



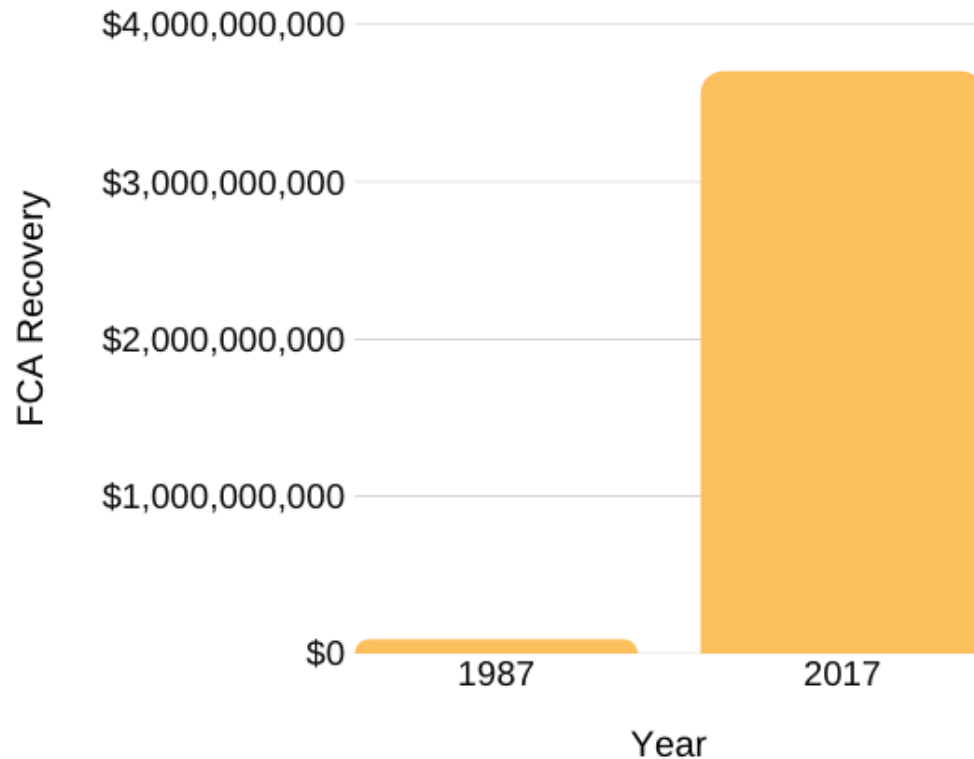
A Whistleblower Program Delivers Significant Benefits

- In FY 2017, the U.S government recovered over \$3.7 billion through its civil fraud program.
- Whistleblowers were directly responsible for reporting of over \$3.4 billion of these recoveries.
- Whistleblowers were the source of the detection of 91.8% of all civil fraud recovered in FY 2017.

Source: [U.S. Department of Justice](#)



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.



Source: [U.S. Department of Justice](#)

- 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

Page: 1 of 2
12/19/2017

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	QUI TAM			TOTAL QUI TAM AND NON QUI TAM	WHERE U.S. INTERVENED OR OTHERWISE PURSUED	WHERE U.S. DECLINED	TOTAL
				TOTAL	WHERE U.S. INTERVENED OR OTHERWISE PURSUED	WHERE U.S. DECLINED				
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	1,149,047,524	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	1,978,800,693	192,888,212	4,616,899	197,505,111

Page: 2 of 2
12/19/2017

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

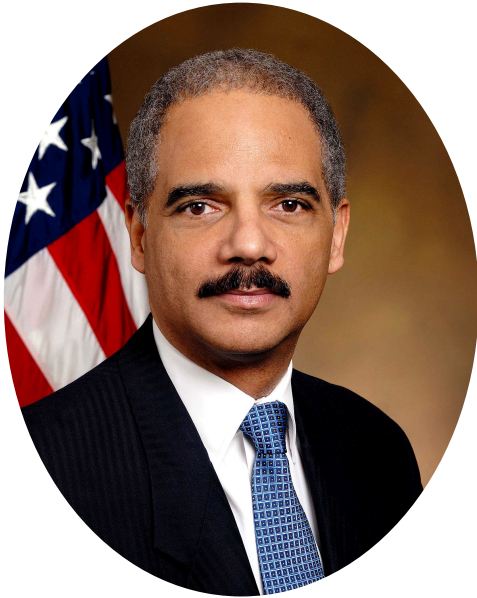
FY	NEW MATTERS ₁		SETTLEMENTS AND JUDGMENTS ₂					RELATOR SHARE AWARDS ₃		
	NON QUI TAM	QUI TAM	NON QUI TAM	QUI TAM			TOTAL QUI TAM AND NON QUI TAM	WHERE U.S. INTERVENED OR OTHERWISE PURSUED	WHERE U.S. DECLINED	TOTAL
				TOTAL	WHERE U.S. INTERVENED OR OTHERWISE PURSUED	WHERE U.S. DECLINED				
2008	161	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](#)

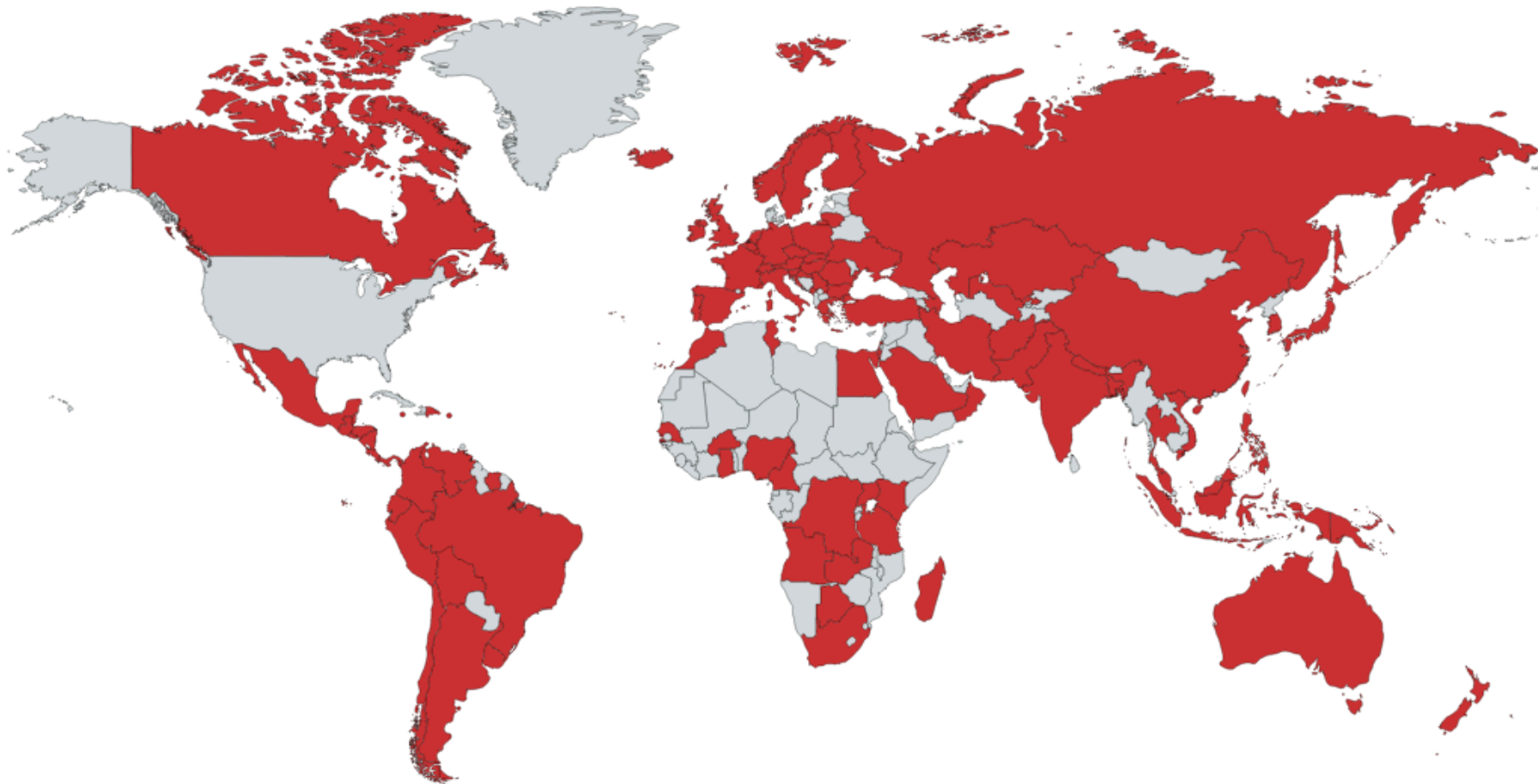


"[T]he False Claims Act has provided ordinary Americans with essential tools to combat fraud . . . their impact has been nothing short of profound."

— 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



International Tips Received by U.S. Securities and Exchange Commission, 2011 - 2018



“ . . . 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



“Whistleblowers, whether they are located in the U.S. or abroad, provide a valuable service to investors and help us stop wrongdoing... This award recognizes the continued, important assistance provided by the whistleblower throughout the course of the investigation.”

— Jane Norberg, Chief of the Office of the Whistleblower, Securities and Exchange Commission, [Press Release](#) on award to overseas whistleblower



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)



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.

FCPA Cases for which Whistleblowers are Eligible for Rewards

- [Petroleo Brasileiro](#) (Brazil based company) — \$1.78 billion
- [Quad/Graphics](#) (Bribes paid in Peru and China) — \$10 million sanction
- [Telefonica Brasil](#) (World Cup bribery) — \$4.125 million
- [Fresenius Medical](#) (German based company) — \$231 million
- [Sanofi](#) (corrupt payments in Kazakhstan and Middle East) — \$25 million
- [Credit Suisse](#) (Swiss based company corrupt payments in Asia-Pacific) — \$77 million
- [Telia](#) (Sweden-based company; bribery in Uzbekistan) — \$965 million
- [SQM](#) (Chilean based company) — \$30 million
- [Biomet](#) (Polish based company) — \$30 million

Securities Exchange Commission Press Release

Petróleo Brasileiro (Sept. 27, 2018)

"The SEC charged Brazilian oil-and-gas company Petróleo Brasileiro S.A. with . . . filing false financial statements that concealed a massive bribery and bid-rigging scheme at the company".

"In connection with the settlement . . . Petrobras has agreed to pay a total of \$933 million in disgorgement and prejudgment interest and an \$853 million penalty."

"The SEC appreciates the assistance of the . . . Brazilian Federal Prosecution Service, the Brazilian Federal Police, and Brazil's Comissão de Valores Mobiliários."



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 financial rewards even if bribes are paid in a foreign country and the whistleblower is a foreign national.



False Claims Act (FCA)

- Whistleblowers have filed successful FCA cases exposing violations of customs laws and import laws.
- Customs violations have include undervaluation and misclassification of goods entering the U.S.
- The FCA requires that damages be trebled, and that wrongdoers pay a large penalty for each false claim.
- Settlements in recent [FCA customs violation cases](#) have exceeded \$56 million.

The FCA can be used to impose liabilities on individuals or companies who commit customs violations at the U.S.' borders, using paperwork to catch other illegal activities.



Holding Importers Accountable

“[C]ompanies purchasing imported goods cannot turn a blind eye to fraud committed by their business partners. We will be vigilant in holding accountable all parties who engage in or contribute to fraudulent conduct.”

[U.S. Department of Justice Press Release in *U.S. v. Yingshun Garments*](#)



Attacking the Global Supply Chain

“As global supply chains grow more complex, it is important for American businesses to know their suppliers and be confident of their integrity. The outcome of this case is a testament to [our] dedication . . . in enforcing our nation’s trade laws and holding accountable those perpetrating this type of fraud.”

[U.S. Department of Justice Press Release in *U.S. v. Yingshun Garments*](#)



Defense Attorneys Warn: Importers Beware

"Importers are facing potential additional liability for actions they take in connection with importing items into the United States... [T]he U.S. Department of Justice ("DOJ") (has) been bringing cases under the False Claims Act."

[Jones Day law firm \(April 2015\)](#)





Importers Beware of FCA Liability

- “The FCA is a particularly powerful enforcement tool as it allows for treble damages and penalties, and because FCA claims can be initiated by private qui tam plaintiffs [whistleblowers].”

[Jones Day law firm \(April 2015\)](#)





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





IRS Whistleblower Law

- Tax whistleblowers were paid \$778 million in awards between [FY 2012 to FY 2018](#).
- Whistleblowers were the critical source of information on [policing offshore Swiss banking violations](#).
- Every known U.S. secret Swiss bank account was closed. Over \$16 billion was directly recovered in fines and penalties. 50,000 U.S. taxpayers entered the voluntary disclosure program.





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



International Application of IRS Whistleblower Law

NON-PROSECUTION AGREEMENTS EXECUTED UNDER THE SWISS BANK PROGRAM

NUMBER	BANK NAME	DATE	PRESS RELEASE	NPA and Attachments
1	BSI SA	3/30/15	Press Release	NPA and SOF (176.16 KB) Statement of Facts (209.47 KB) Board Resolution (64.37 KB)
2	Vadian Bank AG	5/8/15	Press Release	NPA and SOF (406.6 KB)
3	Finter Bank Zurich	5/15/15	Press Release	NPA and SOF (24.14 MB)
4	Société Générale Private Banking (Lugano-Svizzera)	5/28/15	Press Release	NPA and SOF (403.13 KB)
5	MediBank AG	5/28/15	Press Release	NPA and SOF (315.33 KB)
6	LBBW (Schweiz) AG	5/28/15	Press Release	NPA and SOF (338.89 KB)
7	Scobag Privatbank AG	5/28/15	Press Release	NPA and SOF (396.38 KB)
8	Rothschild Bank AG	6/3/15	Press Release	NPA and SOF (444.58 KB)
9	Banca Credinvest SA	6/3/15	Press Release	NPA and SOF (506.47 KB)
10	Société Générale Private Banking (Suisse) SA	6/9/15	Press Release	NPA and SOF (433.58 KB)
11	Berner Kantonalbank AG	6/9/15	Press Release	NPA and SOF (411.23 KB)
12	Bank Linth LLB AG	6/19/15	Press Release	NPA and SOF (566.31 KB)
13	Bank Sparhafen Zurich AG	6/19/15	Press Release	NPA and SOF (439.96 KB)
14	Ersparniskasse Schaffhausen AG	6/26/15	Press Release	NPA and SOF (3.16 MB)
15	Privatbank Von Graffenried AG	7/2/15	Press Release	NPA and SOF (5.13 MB)



16	Banque Pasche SA	7/9/15	Press Release	NPA and SOF (4.05 MB)
17	ARVEST Privatbank AG	7/9/15	Press Release	NPA and SOF (3.84 MB)
18	Mercantil Bank (Schweiz) AG	7/16/15	Press Release	NPA and SOF (336.05 KB)
19	Banque Cantonale Neuchâteloise	7/16/15	Press Release	NPA and SOF (353.24 KB)
20	Nidwaldner Kantonalbank	7/16/15	Press Release	NPA and SOF (383.84 KB)
21	SB Saanen Bank AG	7/23/15	Press Release	NPA and SOF (4.14 MB)
22	Privatbank Bellerive AG	7/23/15	Press Release	NPA and SOF (3.19 MB)
23	PKB Privatbank AG	7/30/15	Press Release	NPA and SOF (3.19 MB)
24	Falcon Private Bank AG	7/30/15	Press Release	NPA and SOF (3.97 MB)
25	Credito Privato Commerciale in liquidazione SA	7/30/15	Press Release	NPA and SOF (2.24 MB)
26	Bank EKI Genossenschaft	8/3/15	Press Release	NPA and SOF (5.59 MB)
27	Privatbank Reichmuth & Co.	8/6/15	Press Release	NPA and SOF (3.49 MB)
28	Banque Cantonale du Jura SA	8/6/15	Press Release	NPA and SOF (4.57 MB)
29	Banca Intermobiliare di Investimenti e Gestioni (Suisse) SA	8/6/15	Press Release	NPA and SOF (3.62 MB)
30	Bank Zweiplus Ag	8/20/15	Press Release	NPA and SOF (3.37 MB)
31	Banca dello Stato del Cantone Ticino	8/20/15	Press Release	NPA and SOF (3.88 MB)
32	Hypothekarbank Lenzburg AG	8/27/15	Press Release	NPA and SOF (392.71 KB)
33	Schroder & Co. Bank AG	9/3/15	Press Release	NPA and SOF (4.04 MB)
34	Valiant Bank AG	9/10/15	Press Release	NPA and SOF (13.3 MB)
35	Bank La Roche & Co AG	9/15/15	Press Release	NPA and SOF (344.31 KB)
36	St. Galler Kantonalbank AG	9/17/15	Press Release	NPA and SOF (1.49 MB)
37	E. Gutzwiller & Cie, Banquiers	9/17/15	Press Release	NPA and SOF (2.28 MB)
38	Migros Bank AG	9/25/15	Press Release	NPA and SOF (503.35 KB)
39	Graubündner Kantonalbank	9/25/15	Press Release	NPA and SOF (390.52 KB)
40	BHF-Bank (Schweiz) AG	10/1/15	Press Release	NPA and SOF (2.44 MB)
41	Schaffhauser Kantonalbank	10/8/15	Press Release	NPA and SOF (897.82 KB)
42	BBVA Suiza S.A.	10/16/15	Press Release	NPA and SOF (2.74 MB)
43	Piguet Galland & Cie SA	10/23/15	Press Release	NPA and SOF (2.79 MB)
44	Luzerner Kantonalbank AG	10/29/15	Press Release	NPA and SOF (391.78 KB)
45	Habib Bank AG Zurich (HBZ)	10/29/15	Press Release	NPA and SOF (509.23 KB)
46	Banque Heritage S.A.	10/29/15	Press Release	NPA and SOF (352.61 KB)
47	Hyposwiss Private Bank Genève S.A.	10/29/15	Press Release	NPA and SOF (425.12 KB)
48	Banque Bonhôte & Cie SA	11/3/15	Press Release	NPA and SOF (368.33 KB)

49	Banque Internationale à Luxembourg (Suisse) SA	11/12/15	Press Release	NPA and SOF (400.06 KB)
50	Zuger Kantonalbank	11/12/15	Press Release	NPA and SOF (382.13 KB)
51	Standard Chartered Bank (Switzerland) SA	11/13/15	Press Release	NPA and SOF (472.58 KB)
52	Maerki Baumann & Co. AG	11/17/15	Press Release	NPA and SOF (460.31 KB)
53	BNP Paribas (Suisse) SA	11/19/15	Press Release	NPA and SOF (497.99 KB)
54	KBL (Switzerland) Ltd.	11/19/15	Press Release	NPA and SOF (469.25 KB)
55	Bank CIC	11/19/15	Press Release	NPA and SOF (388.06 KB)
56	Privatbank IHAG Zürich AG	11/24/15	Press Release	NPA and SOF (464.83 KB)
57	Deutsche Bank (Suisse) SA	11/24/15	Press Release	NPA and SOF (431.79 KB)
58	EFG Bank European Financial Group SA, Geneva, and EFG Bank AG	12/3/15	Press Release	NPA and SOF (588.89 KB)
59	Aargauische Kantonalbank	12/8/15	Press Release	NPA and SOF (468.96 KB)
60	Cornèr Banca SA	12/10/15	Press Release	NPA and SOF (446.77 KB)
61	Bank Coop AG	12/10/15	Press Release	NPA and SOF (404.48 KB)
62	Crédit Agricole (Suisse) SA	12/15/15	Press Release	NPA and SOF (454.09 KB)
63	Dreyfus Sons & Co Ltd, Banquiers	12/15/15	Press Release	NPA and SOF (512.32 KB)
64	Baumann & Cie, Banquiers	12/15/15	Press Release	NPA and SOF (453.32 KB)
65	Bordier & Cie Switzerland	12/17/15	Press Release	NPA and SOF (394.78 KB)
66	PBZ Verwaltungs AG	12/17/15	Press Release	NPA and SOF (582.22 KB)
67	PostFinance AG	12/17/15	Press Release	NPA and SOF (385.3 KB)
68	Edmond de Rothschild (Suisse) SA and Edmond de Rothschild (Lugano) SA	12/18/15	Press Release	NPA and SOF (480.3 KB)
69	Bank J. Safra Sarasin AG	12/23/15	Press Release	NPA and SOF (447.66 KB)
70	Coutts & Co Ltd	12/23/15	Press Release	NPA and SOF (460.87 KB)
71	Gonet & Cie	12/23/15	Press Release	NPA and SOF (372.35 KB)
72	Banque Cantonal du Valais	12/23/15	Press Release	NPA and SOF (481.25 KB)
73	Banque Cantonale Vaudoise	12/23/15	Press Release	NPA and SOF (392.63 KB)
74	Bank Lombard Odier & Co Ltd	12/31/15	Press Release	NPA and SOF
75	DZ Privatbank (Schweiz) AG	12/31/15	Press Release	NPA and SOF
76	Union Bancaire Privée, UBP SA	1/6/16	Press Release	NPA and SOF (495.2 KB)
77	Leodan Privatbank AG	1/20/16	Press Release	NPA and SOF (496.86 KB)
78	HSZH Verwaltungs AG	1/27/16	Press Release	NPA and SOF (756.21 KB)
79	NPB Neue Privat Bank	7/18/18	Press Release	NPB Executed Signed Resolution Statement of Facts
80	Mirelis Holding	7/24/18	Press Release	NPA and SOF
81	Lombard Odier	7/31/18	Press Release	NPA Addendum



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.

Since 2011 the SEC has paid over \$300 million in rewards.

Rewards to Foreign Whistleblowers under the Dodd-Frank Act/FCPA *Read the Decisions*

- [August 29, 2019](#) (SEC) — \$1.8 million
- [July 23, 2019](#) (SEC) — \$500,000
- [September 24, 2018](#) (SEC) — \$4 million
- [July 12, 2018](#) (CFTC) — \$70,000
- [December 5, 2017](#) (SEC) — \$4.1 million
- [September 22, 2014](#) (SEC) — between \$30 to \$35 million

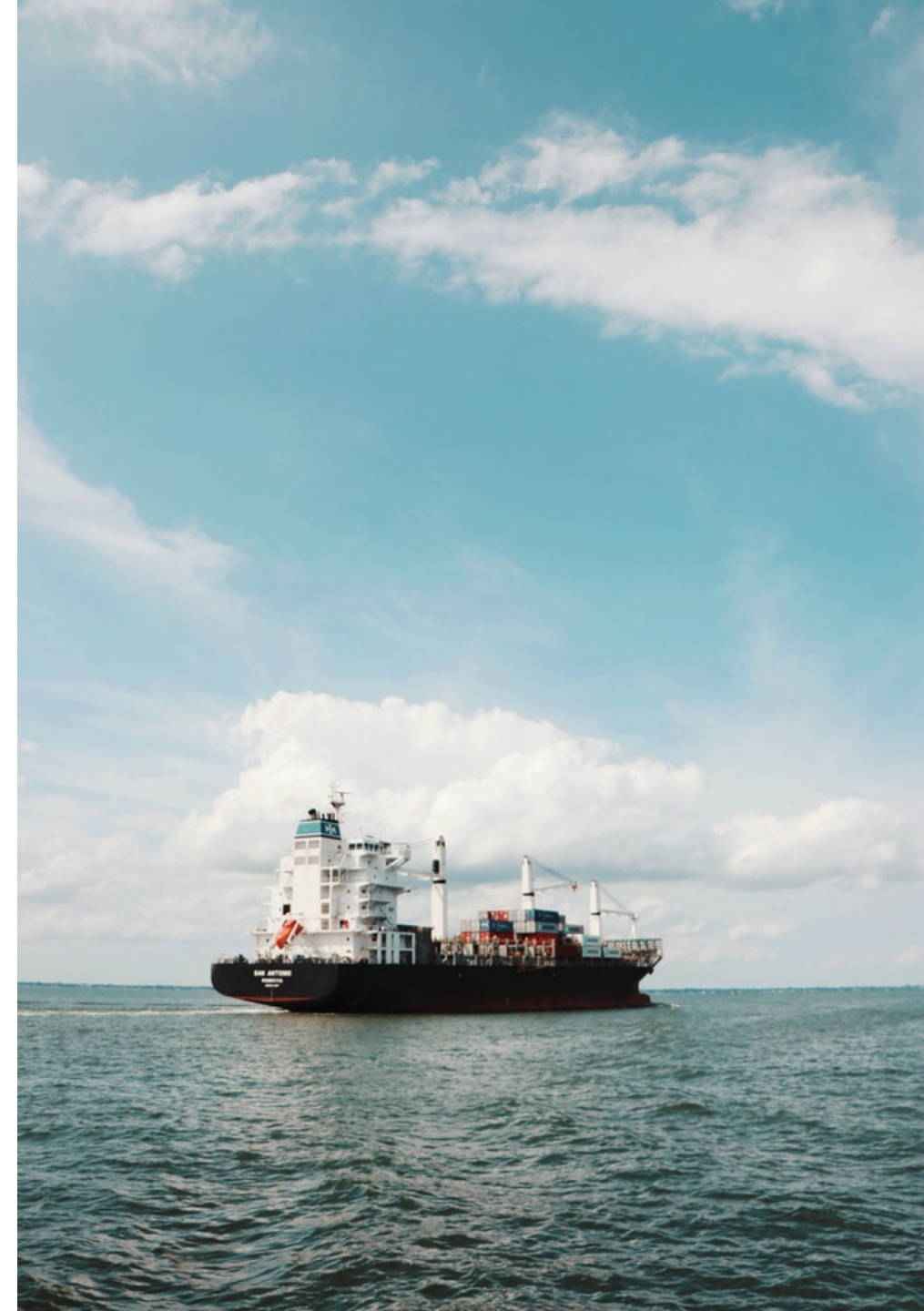
International Cases Under the Commodity Exchange Act Published by the CFTC as Eligible for Whistleblower Rewards

- [Société General](#) (French) — \$2.5 million sanction
- [Commerzbank AG](#) (German) — \$12 million sanction
- [Statoil ASA](#) (Norway) — \$4 million
- [JSC VTB Banks](#) (Russia) — \$5 million
- [Weidong Ge](#) (China) — \$1.5 million



Act to Prevent Pollution on Ships (APPS)

- APPS and wildlife trafficking crimes originate outside of the U.S.
- Both APPS and other wildlife protection laws cover violations of international conventions, such as MARPOL and CITES, that occur outside the United States.
- The U.S. is the number one enforcer of MARPOL because of whistleblowers.





THE REALITY "ON THE GROUND"

"The availability of the award aptly reflects the realities of life at sea... A monetary award both rewards the crew member for taking that risk and may provide an incentive for other crew members on other vessels to alert inspectors and investigators regarding similar crimes."

– U.S. Department of Justice, Natural Resources Division Brief in *U.S. v. Odfjell*



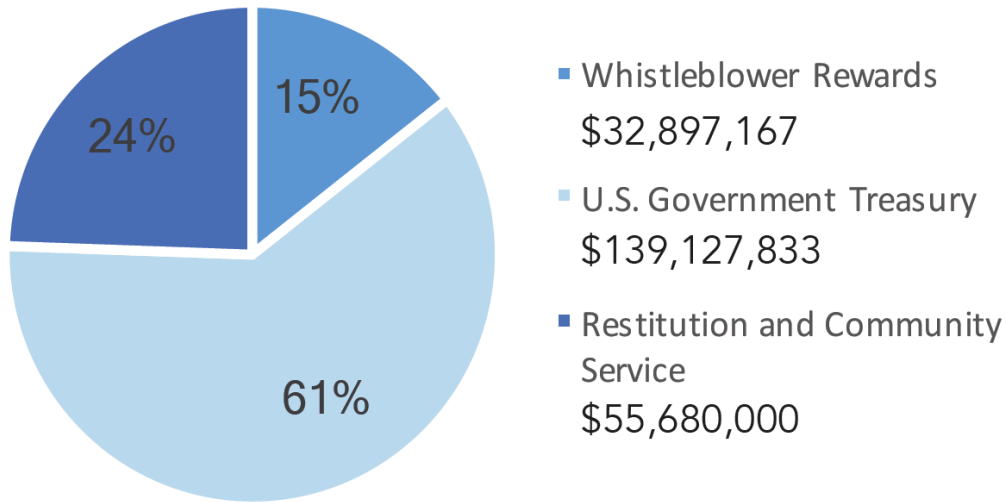
"Absent crew members with firsthand knowledge of the illegal conduct coming forward, APPS violations are extremely difficult to uncover." (U.S. v. Noble Drilling)

"Very few other countries have any track record of prosecuting deliberate MARPOL violations, let alone a legal process that would protect witnesses from obstruction of justice such as occurred in the vast majority of vessel pollution prosecutions." (U.S. v. Efploia)

*"Information of this nature is otherwise difficult, if not **virtually impossible to obtain** [without help from the whistleblower]."*
(U.S. v. Consultores De Navegacion S.A.)



Revenue Distribution from APPS Cases Involving Whistleblowers¹



Total Money Recovered Based on Whistleblower Information: **\$177,593,000**

- The U.S. government has awarded 205 whistleblowers a sum of approximately \$33 million in the 100 most recent prosecution under APPS.
- The largest reward paid for an individual whistleblower was \$2,100,000 (*USA v. Omi Corporation*).
- \$5,250,000 is the largest amount paid to a group of APPS whistleblowers from the Philippines (*USA v. Overseas Shipping*).
- The average reward paid per whistleblower in a recent survey of 75 cases was \$163,575.



Sample of Groups That Obtained Restitution or Community Service Payments

- The National Fish and Wildlife Foundation
- The National Marine Sanctuary Foundation
- The National Parks Foundation
- The National Marine Fisheries Service of Oceanic and Atmospheric Administration (NOAA)
- Smithsonian Environmental Research Center
- Florida National Keys Marine Sanctuary
- Alaska Sealife Center
- Pinellas County, Florida Environmental Fund (PCEF)
- International Arctic Research Center
- Puget Sound Marine Conservation Fund
- Stenson Bank National Marine Sanctuary
- North American Wetlands Conservation Fund
- Columbia River Conservation
- Channel Islands National Park

Examples of Projects Targeted for Use From These Payments

- Benefit, preserve and restore the environments and ecosystems in U.S. waters
- Activities of conservation and management of fish, wildlife, and plant resources of the U.S. coastline
- Restoration of marine and aquatic injured resources and protected coral reefs, sea grass beds, and species dependent on that habitat
- Scientific research of marine resources and habitats
- Education regarding protection of the marine environment from pollution
- Louisiana habitat conservation



Wildlife Trafficking Reward Laws

Corruption is a key facilitator of wildlife crime, while wildlife crime serves as a money-making venture to entrench existing illegal avenues and further existing goals which work against good governance.



Examples of Legal Tools Available to the U.S. Government Agencies Responsible for Implementing and Enforcing International Wildlife Trafficking Laws

The Department of Interior, and Fish and Wildlife Service can pay rewards under every trafficking law, including plants, animals, and IUU fishing, pursuant to the Lacey Act and Endangered Species Act.

The Department of Commerce, NOAA, and National Marine Fisheries Service have jurisdiction under U.S. laws for every maritime anti-trafficking fishing protection law.

Fish and Wildlife Service and National Marine Fisheries Service have the liberty to pay rewards for information *pre-prosecution* worldwide for every violation of anti-trafficking protection law within their respective jurisdictions, under the Fish and Wildlife Improvement Act.

The Department of Agriculture and the National Forest Service have jurisdiction to pay rewards on all plants, including illegal lumbering, for all violations of CITES as to plants and illegal lumber.

The Department of the Treasury is granted authority to pay rewards under The Endangered Species and Lacey Acts in order to ensure that monies are available for the payment of rewards to whistleblowers.



Current wildlife whistleblower laws identical to the Lacey Act's provisions:

- Endangered Species Act
| 16 U.S.C. § 1540(d)
- Rhinoceros and Tiger Conservation Act
| 16 U.S.C. § 5305a(f)
- Antarctic Conservation Act
| 16 U.S.C. §§ 2409; 2439
- Fish and Wildlife Improvement Act
| 16 U.S.C. § 7421(c)(3)
- Wild Bird Conservation Act
| 16 U.S.C. §§ 4912(c); 4913(b)

These laws were enacted after Congress amended the Lacey Act in 1981 to include whistleblower rewards.

Other laws that permit rewards to whistleblowers who report trafficking in fish, animals, and plants:

- African Elephant Conservation Act
 - American Fisheries Act
 - Atlantic Tunas Convention
 - Bald and Golden Eagle Act
 - Fur Seal Act
 - Illegal, Unreported, and Unregulated Fishing Enforcement Act
 - Magnuson-Stevens Fishery Conservation
 - Marine Mammal Protection Act
 - Migratory Bird Treaty Act
 - National Wildlife Refuge System
 - Ocean Thermal Energy Conservation Act
 - Shark Finning Prohibition Act
 - Sustainable Fisheries Act
 - Whaling Convention
- ... among numerous other wildlife protection laws



Monetary whistleblower rewards are given after the successful conclusion of a case:

“[T]he Secretary [of Commerce, Interior, or Agriculture] or the Secretary of the Treasury . . . shall pay, from sums received as penalties, fines, or forfeitures of property for any violation of this chapter [Lacey Act/Endangered Species Act]. . . a reward to any person who furnishes information which leads to an arrest, a criminal conviction, civil penalty assessment, or forfeiture of property for any violation of this chapter. . . .”

— [Lacey Act, 16 U.S.C. § 3375\(d\)](#)

Yet monetary rewards can also be given for information before prosecution even begins:

“With respect to any undercover or other enforcement operation which is necessary for the detection and prosecution of violations of any laws administered by... the National Marine Fisheries Service relating to fish, wildlife... the Secretary of Commerce may... use appropriations for payment for information, rewards, or evidence...”

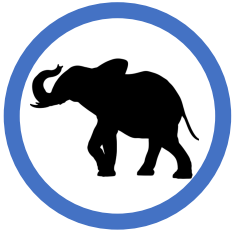
- [Fish and Wildlife Improvement Act, 16 U.S.C § 742l\(k\)](#)

These laws provide for different types of monetary whistleblower rewards to account for different purposes.

Wildlife Whistleblowing is the Key to Enforcement!

In response to a Freedom of Information Act request, the U.S. Fish and Wildlife Service ("FWS") produced records confirming the critical role whistleblowers play in their enforcement cases.





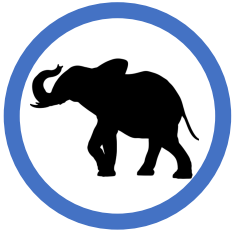
FWS Confirmed Critical Role of Whistleblowers in Wildlife Successful Wildlife Prosecutions

- The whistleblower *"provided crucial information resulting in saving the U.S. Fish and Wildlife Service thousands of dollars and investigator hours."*
- *"In order to complete the mission and purpose of the USFWS, Office of Law Enforcement, it is extremely important and critical to provide a monetary award to the individuals who come forward and provide information to investigators."*

[Asian Elephant Tusk and QT Aquarium Cases, FOIA document p. 630.](#)

[Case Name Redacted by FWS, FOIA document p. 132.](#)



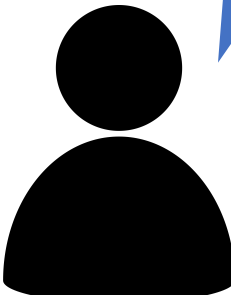


FWS Confirmed Critical Role of Whistleblowers in Wildlife Successful Wildlife Prosecutions

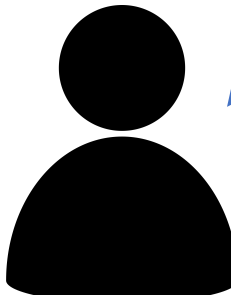
- “Rewards expand the informant reporting network critical to law enforcement success.” [*Case Name Redacted by FWS, FOIA document p. 199.*](#)
- “Without [the whistleblower’s] candor in coming forward with this in-formation, his willingness to aid Service agents by contacting former employees, and to provide testimony in federal court, this case would have never reached fruition.” [*Lochridge Ranch Case, FOIA document p. 104.*](#)
- The whistleblower’s “assistance was of such significance that it is highly unlikely this case would have been successful without [it].” [*Case Name Redacted by FWS, FOIA document p. 423.*](#)




U.S. Fish and Wildlife Service Testimony to U.S. Congress: "It has been found in case after case that the most effective technique for combatting this type of crime [wildlife trafficking] is purchasing evidence and information through informants and offering cash rewards to private citizens for useful information."



"Without the assistance of [the whistleblower] it would have been unlikely we would have received the information about the illegal activity and never been able to identify the subjects involved in the activity." "The initial targets are believed to have ties to organized crime organizations in Mexico and were suspected of having created fake identities to acquire U.S. citizenship and travel freely between both countries."



"This case would not have been possible had [the whistleblower] not first made law enforcement aware of the crime and second, worked with law enforcement over a two and one-half year period to gather evidence necessary to charge and convict those involved in criminal activity..."



"I have approved the payment ...for an individual who provided crucial information resulting in saving the U.S. Fish and Wildlife service thousands of dollars and investigator hours. Without the individual's cooperation, knowledge, and commitment, the investigation would not have been successful." "The recipient was instrumental in obtaining three successful felony convictions [for trafficking in Endangered Species..."



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](#)

BEST PRACTICES

Confidential and
anonymous reporting

Independent and
empowered Whistleblower
Office with authority to
investigate allegations, and
reward/protect employees

Strong civil, criminal and
administrative sanctions
punishing fraud, bribery
and corruption.

Prohibition against
retaliation. Financial
Incentives to promote
reporting of major frauds



Confidential and Anonymous Submissions



False Claims Act

Complaint filed under “seal” and only served on the government, not the defendant. This permits the government to investigate the case without the company knowing who the whistleblower is, or what information the whistleblower has disclosed.



Dodd-Frank Act/Foreign Corrupt Practices Act

Permits anonymous filings, in which the government does not know who the whistleblower is. Requires government investigators to ensure that information that could identify the whistleblower is not shared with the defendant/company under investigation.



Financial Incentives



Reward employees based on quality of information and success of prosecutions

Employees are incentivized to report frauds when there is strong evidence.

Compensation is based on the quality of information, not on how much suffering an employee experiences as a result of retaliation.

All rewards are paid as a percentage of the successful enforcement action triggered by the whistleblower.



Proactive Protection

A reward based whistleblower program permits an employee to take proactive steps to avoid retaliation. It is the only program that realistically permits confidential reporting and careful pre-screening of whistleblower disclosures.

Because a reward can only be paid if there is a successful enforcement action, whistleblowers are incentivized to report strong cases of major frauds.



Effective Anti-Fraud Laws



Criminal Penalties

Large criminal penalties applicable to private corporations and individuals



Powerful Civil Penalties

Large civil fines and penalties are a key to all anti-fraud laws. Criminal cases are hard to prove and the defendants enjoy significant rights. Most of these protections do not apply to civil prosecutions.



Foreign Corrupt Practices Act

The FCPA permits the Securities and Exchange Commission to obtain large fines in civil cases, including disgorgement of all profits..



False Claims Act

The FCA provides for treble damages and permits a \$20,000.00 sanction for each false claim filed, in addition to all other penalties



FILE CONFIDENTIAL WHISTLEBLOWER CLAIMS UNDER CURRENT LAWS

- FCPA: Foreign Bribery
- FCA: Illegal Imports
- IRS: Money Laundering/Illegal Banking and Tax Evasion
- Lacey Act: Wildlife Trafficking
- Endangered Species Act: Wildlife Trafficking
- APPS: Ocean Pollution

File Confidentially (attorney-client protected) intake form at www.report-fraud-now.info/contact-nwldef

For questions, email: help@whistleblowers.org

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

[Stephen M. Kohn](#), a partner in the law firm of [Kohn, Kohn & Colapinto](#) and the Chairman of the Board of Directors 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](#).

Contact

Stephen M. Kohn
Kohn, Kohn and Colapinto
1710 N Street, N.W.
Washington, D.C. 20036
Website: www.kkc.com
Email: contact@kkc.com.

National Whistleblower Center:
contact@whistleblowers.org

Connect with the NWC



@NationalWhistleblowerCenter



@StopFraud



National Whistleblower Center

www.whistleblowersblog.org | www.whistleblowers.org



© Stephen M. Kohn, 2019,
Reproduction permitted with credit.

Read the Original Sources

Mandatory Reward Laws

- 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](#)
- Foreign Corrupt Practices Act | [15 U.S.C. § 78m](#)

Discretionary Reward Laws

- Act to Prevent Pollution from Ships | [33 U.S.C. § 1908\(a\)](#)
- Lacey Act | [16 U.S.C. § 3375\(d\)](#)
- Endangered Species Act | [15 U.S.C. § 78u-6](#)

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).

Statements from Officials, cont.

- John A. Koskinen, Commissioner of the IRS, [Remarks](#) before the U.S. Council for International Business-OECD International Tax Conference
- 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).
- SEC Press Release ([Petrobras](#)): <https://www.kkc.com/wp-content/uploads/2019/11/SEC.gov--Petrobras-Reaches-Settlement-With-SEC-for-Misleading-Investors.pdf>
- Jane Norberg, Chief of the Office of the Whistleblower, Securities and Exchange Commission, [Press Release](#) on award to overseas whistleblower

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](#)

International Cases under the Foreign Corrupt Practices Act Published by the SEC

- [Petroleo Brasileiro](#)
- [Quad/Graphics](#)
- [Telefonica Brasil](#)
- [Fresenius Medical](#)
- [Sanofi](#)
- [Credit Suisse](#)
- [Telia](#)
- [SQM](#)
- [Biomet](#)

International Cases under the Commodity Exchange Act Published by the CFTC

- [Société General](#)
- [Commerzbank AG](#)
- [Statoil ASA](#)
- [JSC VTB Banks](#)
- [Weidong Ge](#)