

2020 ANNUAL REPORT TO CONGRESS

Whistleblower Program



U.S. SECURITIES AND EXCHANGE COMMISSION

D I S C L A I M E R

This is a report of the Staff of the U.S. Securities and Exchange Commission. The Commission has expressed no view regarding the analysis, findings, or conclusions contained herein.

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MESSAGE FROM THE CHIEF OF THE OFFICE OF THE WHISTLEBLOWER

Fiscal Year (FY) 2020 was a momentous year for the U.S. Securities and Exchange Commission's (SEC or Commission) whistleblower program. FY 2020 not only marked the 10-year anniversary of the inception of the whistleblower program under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), it also marked numerous record-breaking accomplishments in terms of individuals and dollars awarded, claims processed, and tips received. In FY 2020, the Commission and its staff implemented a number of efficiencies designed to improve the claims review and award process, and Chairman Jay Clayton and Stephanie Avakian, Director of the Division of Enforcement (Enforcement), allocated additional resources to the Office of the Whistleblower (the Office or OWB). The Commission also adopted amendments to the rules governing the whistleblower program to provide greater clarity to whistleblowers and increase the program's efficiency and transparency.

The milestones achieved in FY 2020 for the number of claims processed, the amount awarded in a single fiscal year, and the number of whistleblowers awarded are reflections of the Commission's dedication to the program, and efforts by the resolute and dedicated staff in OWB, in partnership with other staff in Enforcement, to increase efficiencies in the review and processing of award claims. We are proud that OWB staff, along with our colleagues across the Commission, were able to continue operations and work effectively despite the challenges of COVID-19.

FY 2020 saw the program reach a significant milestone when the Commission crossed over the \$500 million mark in total whistleblower awards under the program. Whistleblowers awarded this year are diverse. They include, for example, current and former employees of companies who had first-hand knowledge of unlawful conduct; outsiders who provided detailed analysis of wrongdoing; foreign nationals who shone a light on hard to detect fraud happening abroad but impacting U.S. investors and the marketplace; and investors who lost money at the hands of fraudsters. We recognize and applaud the courage of these whistleblowers for stepping forward and reporting unlawful conduct.

We are also gratified by the whistleblower program's contributions to the protection of the Main Street investor. Since the program's inception and through the end of FY 2020, enforcement matters brought with information from meritorious whistleblowers have resulted in orders for more than \$2.7 billion in total monetary sanctions, including more than \$1.5 billion in disgorgement of ill-gotten gains and interest, of which more than \$850 million has been, or is scheduled to be, returned to harmed investors. Several of the awards made in FY 2020 were to whistleblowers who provided information that helped the Commission detect and stop harm to retail investors. For example, in September 2020, the Commission awarded nearly \$30 million to two whistleblowers whose information allowed the agency to return tens of millions of dollars to harmed retail investors.¹

“FY 2020 . . . marked numerous record-breaking accomplishments in terms of individuals and dollars awarded, claims processed, and tips received.”

¹ Order Determining Whistleblower Award, Exchange Act Release No. 90049, File No. 2020-36 (Sept. 30, 2020).

“In FY 2020, the Commission awarded approximately \$175 million to 39 individuals — both the highest dollar amount and the highest number of individuals awarded in a given fiscal year.”

Record-Breaking Awards Paid and Claims Processed in FY 2020

In FY 2020, the Commission awarded approximately \$175 million to 39 individuals — both the highest dollar amount and the highest number of individuals awarded in a given fiscal year. We are particularly proud of the number of individuals awarded under the program this fiscal year, which is triple the number awarded in 2018, the next-highest fiscal year, when the Commission awarded 13 individuals.

Since issuing its first award in 2012 through the end of FY 2020, the Commission has awarded approximately \$562 million to 106 individuals. The awards made in FY 2020 represent 31% of the total dollars awarded to all whistleblowers and 37% of the individual award recipients since the beginning of the program. The awards made in FY 2020 include a nearly \$50 million award — the then largest amount ever awarded to one individual under the program.²

In FY 2020, OWB processed more claims than in any other year of the program, and the Commission issued the largest number of Final Orders resolving whistleblower award claims, including both award and denial orders, in a fiscal year. The Commission issued Final Orders for 197 individual award claims in FY 2020, representing a 140% increase from FY 2019. In addition, OWB processed 315 claims to Preliminary Determination. This is the largest number of Preliminary Determinations issued in a fiscal year, representing a 167% increase from FY 2019.³ It is anticipated that the rule amendments adopted by the Commission will provide additional efficiencies in claims processing for years to come.

Record-Breaking Number of Whistleblower Tips Received in Fiscal Year 2020

In addition to reaching milestones in dollars awarded and the processing of award claims, the Commission also received the highest number of whistleblower tips in a fiscal year. In FY 2020, the Commission received over 6,900 whistleblower tips—a 31% increase from FY 2018, the second highest tip year, and a 130% increase since the beginning of the program. The third quarter of FY 2020 (April-June) resulted in a particularly high number of whistleblower tips. As in prior fiscal years, tips received this fiscal year hailed from a variety of geographic origins, both domestic and foreign. The Commission received tips from individuals in 78 foreign countries, as well as from every state in the United States.

OWB also staffs a public hotline to answer questions from whistleblowers and the general public concerning the whistleblower program or how to submit information to the Commission. In FY 2020, OWB staff returned over 2,850 calls to the public. Since the hotline was established, the Office has returned nearly 26,900 calls responding to questions about the program.

² On October 22, 2020, after the end of FY 2020, the Commission issued the largest award to date under the program when it granted a \$114 million award to a whistleblower. *See* Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 90247, File No. 2021-2 (Oct. 22, 2020).

³ A Preliminary Determination and a Final Order could be issued for the same award claim in a fiscal year.

Notable Enforcement Action in Whistleblower Protections

In FY 2020, the Commission filed an amended complaint in *SEC v. Collector's Coffee, Inc.*⁴ to include a Rule 21F-17 charge against the defendants for impeding the efforts of harmed investors to report misconduct to the Commission. According to the allegations in the amended complaint, after the investors sued the defendants, defendants entered into a settlement agreement with the investors that expressly prohibited the investors from speaking to the Commission about their claims. The amended complaint further alleges the defendants went so far as to sue two investors that they believed breached one of the settlement agreements. The action remains pending in federal court in New York.

Supporting investigations into retaliation and attempts to impede reporting continues to be a high priority for the Office to ensure that whistleblowers feel comfortable and safe reporting to the SEC without fear of reprisal.

Whistleblower Rule Amendments

In FY 2020, the Commission adopted Whistleblower Rule amendments, which were proposed in June 2018. The rule amendments are intended to provide greater transparency, efficiency and clarity, and to strengthen and bolster the program in several ways. The rule amendments increase efficiencies around the review and processing of whistleblower award claims, and provide the Commission with additional tools in making whistleblower awards to appropriately reward meritorious whistleblowers for their efforts and contributions to a successful enforcement action. A more fulsome discussion of the rule amendments begins on page 33.

FY 2020 truly was a historic year that demonstrated the Commission's dedication to the whistleblower program, which continues to have a significant impact on the Commission's enforcement efforts and protection of retail investors. We hope the awards made in FY 2020 continue to incentivize whistleblowers to come forward and report specific, timely, and credible information to the Commission, which in turn enhances the agency's ability to detect wrongdoing and protect investors and the marketplace.

We encourage those who believe they have credible information concerning a potential federal securities law violation to expeditiously submit a tip via the Commission's online portal (www.sec.gov/whistleblower). If individuals or their counsel have any questions about the program, including questions about how to submit a tip to the Commission, we encourage them to call OWB's whistleblower hotline at (202) 551-4790.



JANE NORBERG

Chief, Office of the Whistleblower
November 16, 2020

“FY 2020 truly
was a historic year
that demonstrated
the Commission's
dedication to the
whistleblower
program...”

⁴ Amended Complaint & Demand for Jury Trial, *U.S. Sec. & Exch. Comm'n v. Collector's Coffee, Inc.* (d/b/a Collectors Café) & Mykalai Kontilai, No. 19-cv-04355-LGS-GWG (S.D.N.Y. Nov. 4, 2019).

HISTORY AND PURPOSE

Dodd-Frank⁵ amended the Securities Exchange Act of 1934 (Exchange Act)⁶ by, among other things, adopting Section 21F,⁷ entitled “Securities Whistleblower Incentives and Protection.” Section 21F directs the Commission to make monetary awards to eligible individuals who voluntarily provide original information that leads to successful Commission enforcement actions resulting in monetary sanctions over \$1 million and successful related actions.⁸

Awards must be made in an amount that is 10 percent or more and 30 percent or less of the monetary sanctions collected.⁹ To ensure that whistleblower payments would not diminish the amount of recovery for victims of securities law violations, Congress established a separate fund, called the Investor Protection Fund (Fund), from which eligible whistleblowers are paid.

The Commission established OWB, an office within Enforcement, to administer and effectuate the whistleblower program. It is OWB’s mission to protect investors by administering an efficient, high-quality whistleblower program that is responsive to whistleblower needs and helps the Commission identify and stop securities fraud.

In addition to establishing an awards program to encourage the submission of high-quality information, Dodd-Frank and the Commission’s Whistleblower Rules¹⁰ also establish confidentiality protections for whistleblower submissions,¹¹ including the ability to file a whistleblower tip anonymously with the assistance of an attorney. Employers are prohibited from retaliating against whistleblowers for providing information to the Commission.¹²

Section 924(d) of Dodd-Frank requires OWB to report annually to Congress on OWB’s activities, whistleblower complaints received, and the response of the Commission to such complaints.¹³ In addition, Section 21F(g)(5) of the Exchange Act requires the Commission to submit an annual report to Congress that addresses the following subjects:

“It is OWB’s mission to protect investors by administering an efficient, high-quality whistleblower program that is responsive to whistleblower needs and helps the Commission identify and stop securities fraud.”

⁵ Pub. L. No. 111-203, § 922(a), 124 Stat. 1841 (2010).

⁶ 15 U.S.C. § 78a, *et seq.*

⁷ *Id.* § 78u-6.

⁸ “Related actions” is defined at 15 U.S.C. § 78u-6(a)(5) and 17 C.F.R. § 240.21F-3.

⁹ 15 U.S.C. § 78u-6(b)(1).

¹⁰ 17 C.F.R. §§ 240.21F-1 through 21F-17.

¹¹ *Id.* § 240.21F-7.

¹² 15 U.S.C. § 78u-6(h)(1). The Commission’s rule amendments modify the Whistleblower Rules to comport with the ruling in *Digital Realty* that an employee must report possible securities law violations to the Commission to qualify for protection against retaliation. *See Digit. Realty Tr., Inc. v. Somers*, 138 S. Ct. 767 (2018).

¹³ 15 U.S.C. § 78u-7(d).

- The whistleblower award program, including a description of the number of awards granted and the types of cases in which awards were granted during the preceding fiscal year;
- The balance of the Fund at the beginning of the preceding fiscal year;
- The amounts deposited into or credited to the Fund during the preceding fiscal year;
- The amount of earnings on investments made under Section 21F(g)(4) during the preceding fiscal year;
- The amount paid from the Fund during the preceding fiscal year to whistleblowers pursuant to Section 21F(b);
- The balance of the Fund at the end of the preceding fiscal year; and
- A complete set of audited financial statements, including a balance sheet, income statement, and cash flow analysis.¹⁴

OWB, in consultation with other offices within the Commission, has prepared this report, which covers the period October 1, 2019 through September 30, 2020, to satisfy the reporting requirements of Section 924(d) of Dodd-Frank and Section 21F(g)(5) of the Exchange Act. The sections in this report addressing the activities of OWB, the whistleblower tips received during FY 2020, and the processing of whistleblower tips primarily address the requirements of Dodd-Frank's Section 924(d). The sections addressing the Fund and whistleblower incentive awards made during FY 2020 primarily address the requirements of Section 21F(g)(5) of the Exchange Act. In addition, in connection with the Whistleblower Rule amendments, to add transparency to the administration of the whistleblower program, the Commission directed OWB, beginning in FY 2020, to include in its annual report to Congress, in aggregated form, an overview discussion of the factors that were present in the awards issued throughout the fiscal year, including a qualitative discussion of how the factors affected the Commission's determination of the award amounts.¹⁵ Pages 17 to 18 of this report address the new requirements of amended Rule 21F-6.

¹⁴ 15 U.S.C. § 78u-6(g)(5).

¹⁵ Adopting Release, Sept. 23, 2020, at 13.

ACTIVITIES OF THE OFFICE OF THE WHISTLEBLOWER

Section 924(d) of Dodd-Frank directed the Commission to establish a separate office within the Commission to administer and enforce the provisions of Section 21F of the Exchange Act. Jane Norberg heads the Office as Chief of OWB. The Office recently welcomed a new Assistant Director, Jonathan Carr, to the team. Jonathan, along with Emily Pasquinelli, are the Assistant Directors on the team. In addition to the management team, there are currently thirteen full time attorneys who are dedicated to the work of the Office, which includes, among other things, processing award claims and communications with the public. OWB also currently has three attorneys assigned to OWB on temporary detail to support the work of the Office. OWB's work is also furthered by a number of support staff, including an accountant, paralegals, analysts, law clerks, and an administrative assistant. During FY 2020, OWB also received assistance processing award claims from several other attorneys in the Enforcement Division. The improved efficiencies and increased temporary staffing contributed to OWB's ability to process more award claims in FY 2020. Following is an overview of OWB's primary responsibilities and activities over the past fiscal year.

Assessment of Award Applications

The whistleblower program was designed, in part, to provide monetary incentives to individuals with relevant information concerning potential securities violations to report their information to the Commission. As such, much of OWB's work relates to the assessment of claims for whistleblower awards.

OWB posts a Notice of Covered Action (NoCA) on its webpage¹⁶ for every Commission enforcement action that results in monetary sanctions of over \$1 million. Those individuals who have submitted whistleblower tips pursuant to the program's requirements and whose information significantly advanced the particular investigation that led to the Covered Action may submit an application in response to a posted NoCA.

Although it is ultimately a whistleblower's responsibility to make a timely application for an award, OWB may contact whistleblowers who have been actively working with investigative staff—or who have previously contacted OWB about the posting of a particular Covered Action—to confirm they are aware of the posting and applicable deadline for submitting claims for award.

For every claim, OWB attorneys assess the application and the eligibility of the claimant and confer with relevant investigative or other Commission staff to understand the contribution of the claimant, if any, to the success of the Covered Action. To help prioritize likely meritorious claims, in FY 2020, OWB dedicated two attorneys to reviewing likely non-meritorious claims so that the majority of OWB attorneys are able to focus solely on likely meritorious claims. After the effective date of the Whistleblower Rule amendments, OWB expects to take advantage of the new summary disposition process and serial submitter bar to gain further efficiencies and conserve resources.

¹⁶ www.sec.gov/whistleblower/claim-award

OWB makes recommendations to the Claims Review Staff, currently comprised of seven senior officers in Enforcement, as to award eligibility. Pages 9 to 23 of this report provide a fuller explanation of how applications for awards are processed at the Commission, as well as what awards were made during this past fiscal year.

Advancing Anti-Retaliation Protections and Combating Efforts to Impede Reporting

OWB identifies and monitors whistleblower complaints alleging retaliation by employers or former employers in response to an employee's reporting of possible securities law violations. The Commission may bring an enforcement action against companies or individuals who violate the anti-retaliation provisions of Dodd-Frank. With the Supreme Court's ruling in *Digital Realty Trust, Inc. v. Somers (Digital Realty)*,¹⁷ such enforcement actions can be brought only when a whistleblower reports to the Commission. OWB continues to view anti-retaliation protections as a high priority to ensure that whistleblowers can report to the Commission without fear of reprisal. OWB continues to work with investigative staff to identify cases where companies take reprisals for whistleblowing efforts that may be appropriate for enforcement action.

In addition, OWB monitors reports of the usage of confidentiality, severance, and other kinds of agreements, or engagement in other practices, to interfere with individuals' abilities to report potential wrongdoing to the SEC. Exchange Act Rule 21F-17(a) provides that "[n]o person may take any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement... with respect to such communications."¹⁸ OWB continues to work with staff to identify and investigate practices in the use of confidentiality and other kinds of agreements, or other actions, that may violate Rule 21F-17(a).

Intake of Whistleblower Tips

The Whistleblower Rules specify that individuals who would like to be part of the whistleblower program must submit their tips via the Commission's online portal or by mailing or faxing their tips on Form TCR to OWB.¹⁹ The Commission's Tips, Complaints, and Referrals Intake and Resolution System (TCR System) serves as a central repository for all tips and complaints received by the Commission, as well as referrals from self-regulatory organizations and other government agencies. OWB strongly encourages all individuals to submit their whistleblower tips and any additional information electronically through the Commission's online portal, particularly in the current virtual environment. There are several advantages to using the online portal, including the fact that individuals receive an immediate acknowledgement of their submission along with a confirmation number. The tip is also automatically populated in a queue for staff who triage tips and complaints. In addition, due to the agency's full-time telework posture, any whistleblower tips submitted by mail should be sent to the

“OWB continues to view anti-retaliation protections as a high priority to ensure that whistleblowers can report to the Commission without fear of reprisal.”

¹⁷ 138 S. Ct. 767 (2018).

¹⁸ *Id.*

¹⁹ 17 C.F.R. § 240.21F-9(a).

Agency's alternative mailing address (available at <https://www.sec.gov/whistleblower/submit-a-tip>) instead of the SEC's Washington, DC headquarters. For greater efficiency and quicker review, OWB strongly recommends electronic submission over hard-copy submission.

For more information on the number and types of tips received, please refer to pages 27 to 30 of this report.

Communications with Whistleblowers

OWB serves as the primary liaison between the Commission and individuals who have submitted information or are considering whether to submit information to the agency concerning a possible securities violation. OWB created a whistleblower hotline, in operation since May 2011, to respond to questions from the public about the whistleblower program. Individuals may leave messages on the hotline by calling (202) 551-4790. Calls to the hotline are returned by OWB attorneys generally within 24 business hours.

During FY 2020, the Office returned over 2,850 phone calls from members of the public. Since the hotline was established, OWB has returned nearly 26,900 calls from the public.

Many of the calls OWB receives relate to how the caller should submit a tip to be eligible for an award, how the Commission will maintain the confidentiality of a whistleblower's identity, requests for information on the investigative process or tracking an individual's complaint status, and whether the SEC is the appropriate agency to handle the caller's tip. OWB provides a menu of options with answers to frequently asked questions on the voicemail hotline.

In addition to communicating with the public through the hotline, the Office, as appropriate, communicates with whistleblowers who have submitted tips, claims for awards, and other correspondence to OWB.

Public Outreach and Education

One of OWB's primary goals is to promote public awareness of the Commission's whistleblower program. As part of that outreach effort, the Office aims to promote the program and educate the public about the program through OWB's webpage.²⁰ The webpage contains information about the program, links to the forms required to submit a tip or claim an award, a listing of enforcement actions for which a claim for award may be made, links to helpful resources, including a section dedicated to retaliation-related issues, and answers to frequently asked questions.

OWB also actively participates in numerous webinars, media interviews, presentations, press releases, and other public communications. In FY 2020, OWB continued to participate in public engagements aimed at promoting and educating the public about the Commission's whistleblower program, albeit primarily virtually. The Office's target audience generally includes potential whistleblowers, whistleblower counsel, and corporate compliance counsel and professionals. OWB's Chief also participates in legal panels and forums with other federal agencies with similar whistleblower programs.

²⁰ www.sec.gov/whistleblower

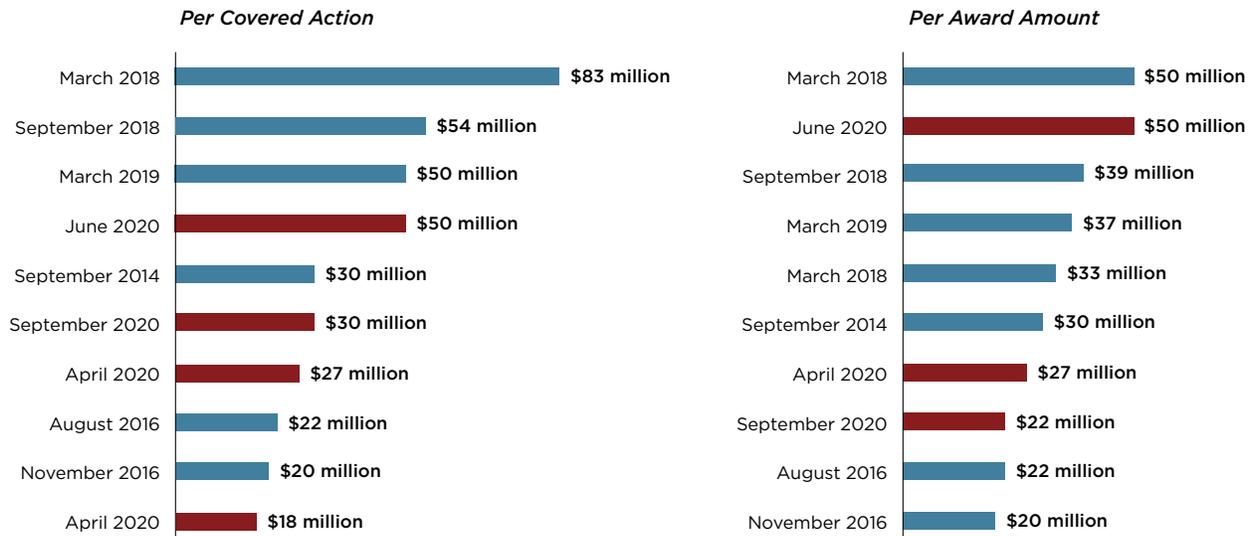
CLAIMS FOR AWARDS

Whistleblower Awards Made in Fiscal Year 2020

In FY 2020, the Commission ordered whistleblower awards of approximately \$175 million to 39 individuals, each of whom voluntarily provided original information that either led to the opening of an investigation or significantly contributed to an existing investigation that led to the successful enforcement action. The number of individuals awarded this year was three times higher as compared to the next highest fiscal years (FY 2016 and FY 2018) when 13 individuals were awarded. The Commission also awarded more money in FY 2020 than in any prior year.

Below are the top ten highest awards made under the SEC's whistleblower program both by Covered Action (*i.e.*, considering all awards made within a single Covered Action) and by award amount from inception of the program through FY 2020. The awards highlighted in red were made this past fiscal year.

TOP 10 SEC WHISTLEBLOWER AWARDS



From program inception to end of Fiscal Year 2020, the SEC awarded approximately \$562 million to 106 individuals.

Four of the top 10 SEC whistleblower awards per covered action and three of the top 10 SEC whistleblower awards per award amount are from FY 2020. Below is an overview of the whistleblower awards made by the Commission during the past fiscal year.

Nearly \$50 Million Awarded to Whistleblower

On June 4, 2020, the Commission announced a nearly \$50 million whistleblower award to an individual who provided detailed, firsthand observations of misconduct by a company, which resulted in a successful enforcement action that returned a significant amount of money to harmed investors. This was, at the time, the largest amount ever awarded to one individual under the SEC's whistleblower program.²¹ On October 22, 2020, the Commission issued an award of over \$114 million, which is the largest award in the program's history, eclipsing the \$50 million award made to the individual in June 2020.

Almost \$30 Million Awarded to Two Whistleblowers

On September 30, 2020, the Commission announced an award of almost \$30 million to two insider whistleblowers whose tips led SEC staff to open an investigation. The first whistleblower, who was the first to alert SEC staff of potential wrongdoing and provided substantial, ongoing assistance, received an award of approximately \$22 million. The second whistleblower provided additional valuable information and received an award of approximately \$7 million. The information and assistance provided by the whistleblowers helped the agency return tens of millions of dollars to harmed retail investors.²²

Over \$27 Million Awarded to Whistleblower

On April 3, 2020, the Commission announced an award of more than \$27 million to a whistleblower who alerted the agency to misconduct occurring, in part, overseas. After providing the tip to the Commission, the whistleblower provided critical investigative leads that advanced the investigation and saved significant Commission resources.²³

Over \$18 Million Awarded to Whistleblower

On April 28, 2020, the Commission announced an award of more than \$18 million to a whistleblower whose significant information prompted an examination that resulted in an important enforcement action. The whistleblower repeatedly reported the problem internally before contacting the SEC and suffered hardships as a result of the internal reporting. Because of this whistleblower's actions, harmed investors were able to recover millions of dollars in losses.²⁴

21 See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 89002, File No. 2020-20 (June 4, 2020); SEC Press Rel. No. 2020-126, "SEC Awards Record Payout of Nearly \$50 Million to Whistleblower."

22 See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 90049, File No. 2020-36 (Sept. 30, 2020); SEC Press Rel. No. 2020-239, "SEC Awards Almost \$30 Million to Two Insider Whistleblowers."

23 See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 88658, File No. 2020-13 (Apr. 16, 2020); SEC Press Rel. No. 2020-89, "SEC Awards Over \$27 Million to Whistleblower."

24 See Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 88759, File No. 2020-17 (Apr. 28, 2020); SEC Press Rel. No. 2020-98, "SEC Awards Over \$18 Million to Whistleblower."

More Than \$10 Million Awarded to Whistleblower

On September 14, 2020, the Commission announced an award of more than \$10 million to a whistleblower whose information and assistance were of crucial importance to a successful SEC enforcement action. The whistleblower made persistent efforts to expose serious financial misconduct and provided extensive and ongoing assistance to the investigative team over the course of the investigation. The whistleblower identified witnesses and helped staff understand complex fact patterns and issues related to the matters under investigation.²⁵

More Than \$7 Million Awarded to Whistleblower

On February 28, 2020, the Commission announced an award of more than \$7 million to a whistleblower whose information and assistance were critically important to the success of an enforcement action that focused on serious financial abuses. The whistleblower, while suffering hardships, showed great tenacity and effort in attempting to expose the misconduct that was the basis for the SEC's action.²⁶

\$5 Million Awarded to Whistleblower

On April 20, 2020, the Commission announced a \$5 million award to a whistleblower who provided significant information that led to a successful enforcement action. The whistleblower provided critical evidence of wrongdoing, which helped save time and resources in the SEC's investigation. The whistleblower also suffered a unique hardship as a result of raising concerns internally.²⁷

\$3.8 Million Awarded to Whistleblower

On July 14, 2020, the Commission announced a \$3.8 million award to a whistleblower who provided significant information that helped the SEC disrupt an ongoing fraudulent scheme. The resulting enforcement action returned millions of dollars to harmed investors.²⁸

Nearly \$2.9 Million Awarded to Whistleblower

On September 30, 2020, the Commission announced an award of nearly \$2.9 million to a whistleblower who alerted the Commission to hard-to-detect violations. The whistleblower provided critical information and supporting evidence that conserved SEC time and resources.²⁹

25 See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 89850, File No. 2020-30 (Sept. 14, 2020); SEC Press Rel. No. 2020-209, "SEC Awards More Than \$10 Million to Whistleblower."

26 See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 88299, File No. 2020-7 (Feb. 28, 2020); SEC Press Rel. No. 2020-46, "SEC Awards More Than \$7 Million to Whistleblower."

27 See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 88689, File No. 2020-15 (Apr. 20, 2020); SEC Press Rel. No. 2020-91, "SEC Issues \$5 Million Whistleblower Award."

28 See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 89311, File No. 2020-23 (July 14, 2020); SEC Press Rel. No. 2020-155, "SEC Issues \$3.8 Million Whistleblower Award."

29 See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 90059, File No. 2020-39 (Sept. 30, 2020); SEC Press Rel. No. 2020-240, "SEC Whistleblower Program Ends Record-Setting Fiscal Year with Four Additional Awards."

Over \$2.5 Million Awarded to Joint Whistleblowers

On September 1, 2020, the Commission announced an award of over \$2.5 million to joint whistleblowers whose tip based largely on highly probative independent analysis of a public company’s filings led to several successful enforcement actions. In addition to their tip, the whistleblowers provided helpful assistance early in the investigation, which helped save the Commission time and resources.³⁰

\$2.4 Million Awarded to Whistleblower

On September 21, 2020, the Commission announced an award of \$2.4 million to a whistleblower whose timely submission of information prompted the agency to initiate an investigation and bring an enforcement action that stopped ongoing misconduct, and whose assistance throughout the investigation contributed to all of the charges brought by the SEC. The whistleblower helped investigative staff target key information and identify important witnesses.³¹

Approximately \$2 Million Awarded to Whistleblower

On April 3, 2020, the Commission announced an award of approximately \$2 million to a whistleblower who provided vital information and assistance that substantially contributed to an ongoing investigation. The whistleblower’s information would have been difficult for the agency to obtain absent the tip. The whistleblower expeditiously reported the information to the Commission and provided valuable assistance despite implied threats from the wrongdoers.³²

Almost \$2 Million Awarded to Whistleblower

On May 4, 2020, the Commission announced an award of nearly \$2 million to a whistleblower whose information and assistance helped the agency bring a successful enforcement action and allowed investors to recover much of their money. The whistleblower’s information and assistance helped the SEC stop an ongoing fraud and aided the Commission’s ability to obtain an asset freeze and prevent the dissipation of investor funds.³³

Over \$1.8 Million Awarded to Whistleblower

On September 25, 2020, the Commission announced an award of over \$1.8 million to a whistleblower who took both personal and professional risks in reporting information through the internal compliance system at a company. The tip revealed overseas conduct that would otherwise have been hard to detect. The whistleblower’s internal report resulted in an internal investigation at the company and a subsequent report of finding to the SEC. The whistleblower also provided information to the SEC.³⁴

³⁰ See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 89721, File No. 2020-28 (Sept. 1, 2020); SEC Press Rel. No. 2020-201, “SEC Awards Over \$2.5 Million to Joint Whistleblowers for Detailed Analysis That Led to Multiple Successful Actions.”

³¹ See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 89929, File No. 2020-32 (Sept. 17, 2020); SEC Press Rel. No. 2020-215, “SEC Issues \$2.4 Million Whistleblower Award.”

³² See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 88547, File No. 2020-12 (Apr. 3, 2020); SEC Press Rel. No. 2020-80, “SEC Awards Approximately \$2 Million to Whistleblower.”

³³ See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 88803, File No. 2020-18 (May 4, 2020); SEC Press Rel. No. 2020-100, “SEC Awards Almost \$2 Million to Whistleblower.”

³⁴ See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 89996, File No. 2020-34 (Sept. 25, 2020); SEC Press Rel. No. 2020-225, “SEC Issues Two Whistleblower Awards for High-Quality Information Regarding Overseas Conduct.”

Over \$1.8 Million Awarded to Whistleblower

On September 28, 2020, the Commission announced an award of over \$1.8 million to a company outsider who expeditiously reported significant information to the Commission about ongoing securities law violations.³⁵

More Than \$1.7 Million Awarded to Whistleblower

On September 30, 2020, the Commission announced an award of more than \$1.7 million to a whistleblower who provided extensive and ongoing assistance to the investigative team over the course of the investigation.³⁶

Over \$1.6 Million Awarded to Whistleblower

On March 23, 2020, the Commission announced an award of more than \$1.6 million to a whistleblower whose information tipped the agency to securities law violations and helped form part of the basis for charges brought in a successful enforcement action. Without the whistleblower's information and assistance, the violations would have been difficult to detect. In addition to the original tip, the whistleblower provided helpful assistance early in the investigation, preserving Commission time and resources.³⁷

Over \$1.25 Million Awarded to Whistleblower

On August 31, 2020, the Commission announced an award of over \$1.25 million to a whistleblower whose significant information prompted the agency to initiate a cause examination and bring an enforcement action that resulted in the return of millions of dollars to harmed investors. The whistleblower's vigilance and prompt reporting helped the agency move quickly to protect investors.³⁸

\$750,000 Awarded to Whistleblower

On September 25, 2020, the Commission announced an award of \$750,000 to a whistleblower who reported securities violations occurring abroad to the SEC, which caused the SEC to open an investigation that resulted in a successful enforcement action. The whistleblower also reported the concerns internally.³⁹

Almost \$700,000 Awarded to Whistleblower

On June 19, 2020, the Commission announced an award of almost \$700,000 to a whistleblower whose significant information helped the agency bring a successful enforcement action that resulted in the return of money to harmed investors. The whistleblower reported the problem internally before contacting the SEC in an effort to remedy the conduct.⁴⁰

35 See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 90021, File No. 2020-34 (Sept. 28, 2020); SEC Press Rel. No. 2020-231, "SEC Issues \$1.8 Million Whistleblower Award to a Company Outsider."

36 See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 90057, File No. 2020-38 (Sept. 30, 2020); SEC Press Rel. No. 2020-240, "SEC Whistleblower Program Ends Record-Setting Fiscal Year with Four Additional Awards."

37 See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 88449, File No. 2020-8 (Mar. 23, 2020); SEC Press Rel. No. 2020-69, "SEC Awards Over \$1.6 Million to Whistleblower."

38 See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 89712, File No. 2020-27 (Aug. 31, 2020); SEC Press Rel. No. 2020-199, "SEC Awards Over \$1.25 Million to Whistleblower."

39 See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 89995, File No. 2020-33 (Sept. 25, 2020); SEC Press Rel. No. 2020-225, "SEC Issues Two Whistleblower Awards for High-Quality Information Regarding Overseas Conduct."

40 See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 89102, File No. 2020-21 (June 19, 2020); SEC Press Rel. No. 2020-138, "SEC Awards Almost \$700,000 to Whistleblower."

Over \$570,000 Awarded to Two Whistleblowers

On March 24, 2020, the Commission announced awards totaling over \$570,000 to two whistleblowers who provided significant information and assistance that helped the Commission bring multiple successful enforcement actions. The first whistleblower, who reported early in the investigation and whose information related to all enforcement actions, received an award of approximately \$478,000. The second whistleblower, whose information was important but only contributed to charges against one of the respondents, received an award of approximately \$94,000.⁴¹

\$450,000 Awarded to Whistleblower

On March 30, 2020, the Commission announced an award of \$450,000 to a whistleblower whose significant information helped focus an ongoing investigation on the violations that were ultimately charged. The whistleblower, who had compliance-related responsibilities, was eligible for an award because the whistleblower reported concerns about the relevant conduct internally within the company and then waited 120 days before reporting to the SEC. This was the SEC's third whistleblower award to an individual who had compliance or internal audit responsibilities.⁴²

Nearly \$400,000 Awarded to Joint Whistleblowers

On September 30, 2020, the Commission announced an award of nearly \$400,000 to two whistleblowers who jointly provided a tip and gave continuing assistance during the course of the investigation. The whistleblowers met with staff and provided detailed information that helped the staff understand key documents and identify witnesses. The whistleblowers also reported their concerns and suffered personal hardships as a result of the reporting.⁴³

More than \$277,000 Awarded to Whistleblower

On January 22, 2020, the Commission announced an award of more than \$277,000 to a whistleblower whose information alerted the agency to an ongoing fraudulent scheme that was preying on retail investors.⁴⁴

Over \$260,000 Awarded to Joint Whistleblowers

On November 15, 2019, the Commission announced a joint award of over \$260,000 to three individuals who jointly submitted a tip alerting the agency to a well-concealed fraud operated by recidivist violators who targeted retail investors. The whistleblowers were harmed investors who provided information and assistance early in the investigation.⁴⁵

41 See Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 88462, File No. 2020-9 (Mar. 24, 2020); SEC Press Rel. No. 2020-71, "SEC Awards Over \$570,000 to Two Whistleblowers."

42 See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 88507, File No. 2020-11 (Mar. 30, 2020); SEC Press Rel. No. 2020-75, "SEC Awards Over \$450,000 to Whistleblower."

43 See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 90054, File No. 2020-37 (Sept. 30, 2020); SEC Press Rel. No. 2020-240, "SEC Whistleblower Program Ends Record-Setting Fiscal Year with Four Additional Awards."

44 See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 88015, File No. 2020-6 (Jan. 22, 2020); SEC Press Rel. No. 2020-15, "SEC Awards Whistleblowers Whose Information Helped Stop Fraud."

45 See Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 87544, File No. 2020-1 (Nov. 15, 2019); SEC Press Rel. No. 2019-238, "SEC Awards Over \$260,000 to Whistleblowers for Their Help in Spotting Securities Fraud."

Almost \$250,000 Awarded to Joint Whistleblowers

On September 17, 2020, the Commission announced an award of nearly \$250,000 to joint whistleblowers. While the case was largely built through the investigative efforts of the staff, the tip caused the opening of an investigation that resulted in a successful enforcement action. The whistleblowers raised concerns internally before reporting the concerns to the Commission.⁴⁶

\$125,000 Awarded to Whistleblower

On June 23, 2020, the Commission announced an award of about \$125,000 to a whistleblower whose information and assistance helped both the SEC and another agency bring successful actions against the perpetrator of a fraudulent securities offering that preyed on a vulnerable investor community.⁴⁷

More than \$45,000 Awarded to Whistleblower

On January 22, 2020, the Commission announced an award of more than \$45,000 to a whistleblower who provided critical information that enabled the SEC staff to recover assets that were later returned to victims. The whistleblower was a harmed investor who lost money in the scheme.⁴⁸

Almost \$30,000 Awarded to Whistleblower

On September 8, 2020, the Commission announced a whistleblower award of almost \$30,000 to a whistleblower whose information alerted the Commission to violations that would have been difficult to detect in the absence of the information. In addition to the tip, the whistleblower provided exemplary assistance that saved the Commission resources and accelerated the pace of the investigation.⁴⁹

Award to Whistleblower

On April 20, 2020, the Commission announced an award to a whistleblower who provided significant information that led to a successful enforcement action. The whistleblower reported the information internally, and in turn, submitted a written tip to the Commission. Enforcement staff opened the investigation after receiving the written tip and phone call with the whistleblower. The Commission brought an action based, in part, on the information provided by the whistleblower.⁵⁰

⁴⁶ See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 89912, File No. 2020-31 (Sept. 17, 2020); SEC Press Rel. No. 2020-214, “SEC Awards Almost \$250,000 to Joint Whistleblowers.”

⁴⁷ See Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 89124, File No. 2020-22 (June 23, 2020); SEC Press Rel. No. 2020-141, “SEC Awards \$125,000 to Whistleblower.”

⁴⁸ See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 88014, File No. 2020-5 (Jan. 22, 2020); SEC Press Rel. No. 2020-15, “SEC Awards Whistleblowers Whose Information Helped Stop Fraud.”

⁴⁹ See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 89780, File No. 2020-29 (Sept. 8, 2020).

⁵⁰ See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 88687, File No. 2020-16 (Apr. 20, 2020).

Award to Whistleblower

On July 21, 2020, the Commission announced a 20% award to a whistleblower who expeditiously provided information concerning an ongoing fraud that prompted Enforcement staff to open an investigation. The claimant was unable to provide assistance beyond the initial tip. The claimant's information resulted in the return of money to harmed investors.⁵¹

Award to Whistleblower

On July 21, 2020, the Commission announced a 30% award to a whistleblower who expeditiously provided information concerning an ongoing fraud that the Commission was not aware of at the time, and the whistleblower continued to provide ongoing assistance to staff in the investigation.⁵²



⁵¹ See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 89354, File No. 2020-25 (July 21, 2020).

⁵² See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 89355, File No. 2020-24 (July 21, 2020).

Rule 21F-6 Factors in Fiscal Year 2020 Awards

In connection with the Whistleblower Rule amendments, to add transparency to the administration of the whistleblower program, the Commission directed OWB to include in its annual report to Congress, in aggregated form, an overview discussion of the factors that were present in the awards throughout the year, including a qualitative discussion of how the factors affected the Commission's determination of the award amounts.⁵³ In assessing the appropriate award amount, Exchange Act Rule 21F-6 provides that the Commission consider: (1) the significance of information provided to the Commission; (2) the assistance provided in the Commission action; (3) law enforcement interest in deterring violations by granting awards; (4) participation in internal compliance systems; (5) culpability; (6) unreasonable reporting delay; and (7) interference with internal compliance and reporting systems.⁵⁴

In FY 2020, the Commission issued whistleblower awards to 39 individuals in connection with 32 covered actions. Approximately two-thirds of the awards were at or near the statutory maximum award amount of 30%.

The significance of the whistleblower's information was positively assessed by the Commission in more than 90% of the awards in FY 2020. In considering the significance of the whistleblower's information, the Commission looks at, among other things, whether the whistleblower's information was the first to alert Commission staff of the alleged misconduct, whether the violations would have been difficult to detect in the absence of the whistleblower's information, and whether there is a close nexus between the whistleblower's information and the resulting charges in the covered action. If the whistleblower's information pertained, for example, only to part of the case, then it is more likely that the award amount was not materially increased based on the significance of the information factor. In one covered action where the Commission awarded less than 30%, the Commission observed that the "charges focused on violations occurring at a different subsidiary than the one identified by Claimant in Claimant's initial tip to the Commission, and . . . the case was largely built through information obtained from other sources."⁵⁵ In another covered action with an award of less than 30%, the Commission considered that the whistleblower's information was "discrete and narrow in scope."⁵⁶

The assistance factor also played a critical role in shaping the appropriate award amount for whistleblowers in FY 2020. In 72% of awards this year, the Commission positively assessed the level of the whistleblower's assistance to the Commission staff.

“Approximately two-thirds of the awards were at or near the statutory maximum award amount of 30%.”

53 Adopting Release, Sept. 23, 2020, at 13.

54 17 C.F.R. § 240.21F-6.

55 Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 89995, File No. 2020-33 (Sept. 25, 2020).

56 Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 89311, File No. 2020-23 (July 14, 2020).

As noted elsewhere in the report, under the Whistleblower Rule amendments, subject to certain exclusions, there is a presumption that a whistleblower’s award will be at the statutory maximum 30% if the award is \$5 million or less. The presumption may be overcome where, for example, the whistleblower only provides limited assistance; however, OWB does not expect to recommend that the presumption be overcome in most circumstances.

“Approximately
81% of insiders
who received
awards in
FY 2020 raised
their concerns
internally....”

In all of the awards made in FY 2020, the existence of law enforcement interests was considered and positively assessed. When viewing the law enforcement interest factor, the Commission examines such things as whether money was returned to harmed investors,⁵⁷ whether the alleged wrongdoing occurred abroad, and the amount of collections in the matter.⁵⁸ To the extent any of these circumstances are present in a case, it is likely the award percentage will be increased because of the high law enforcement interests involved.⁵⁹

Internal reporting is the final positive factor that is considered in determining the appropriate award amount. While a whistleblower’s lack of internal reporting does not mean that the whistleblower will receive less than a maximum award, it can serve to increase an award amount. Approximately 81% of insiders who received awards in FY 2020 raised their concerns internally to their supervisors, compliance personnel, or through internal reporting mechanisms before reporting their information of wrongdoing to the Commission. Approximately 40% of the individuals who received awards this year were outsiders not affiliated with the entity on which they were reporting, and certain of those outsiders also reported internally. When it occurred, internal reporting was positively assessed by the Commission.

Rule 21F-6(b) provides that an award percentage may be reduced because of: (1) the culpability of the whistleblower; (2) unreasonable delay in reporting; or (3) interference with an internal compliance and reporting system. No award amounts were reduced in FY 2020 for culpability or interference with an internal reporting or compliance system. Only two awards were reduced this past fiscal year for unreasonable reporting delay, and both involved delays that extended over multiple-year periods. On the other hand, the Commission determined not to reduce an award amount for unreasonable reporting delay where the whistleblower repeatedly and tenaciously raised concerns internally in an effort to remedy the misconduct.⁶⁰

57 See, e.g., Order Determining Whistleblower Award, Exchange Act Rel. No. 89002, File No. 2020-20 (June 4, 2020).

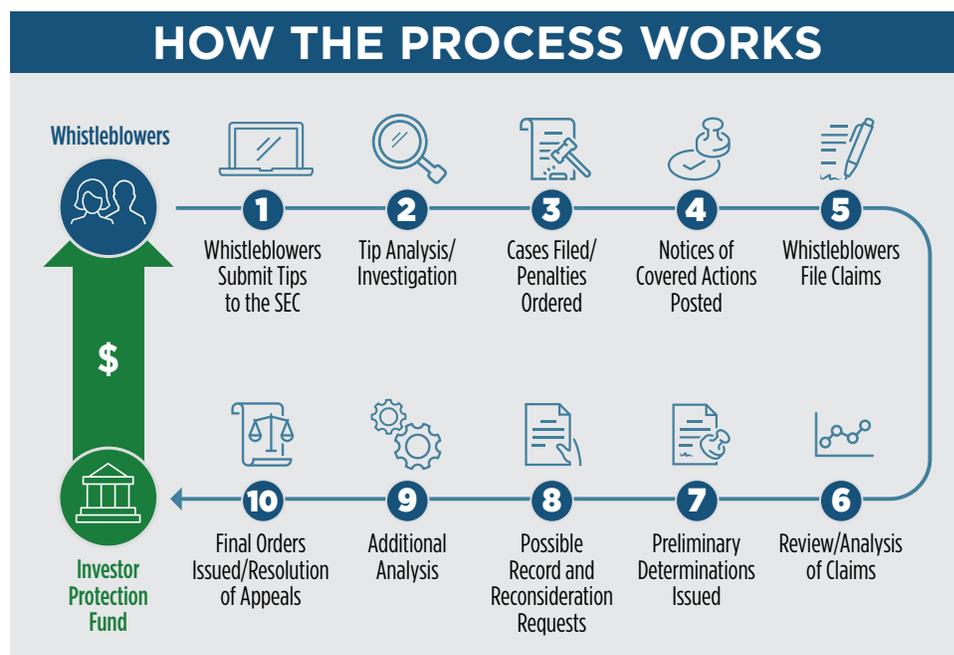
58 See, e.g., Order Determining Whistleblower Award, Exchange Act Rel. No. 89995, File No. 2020-33 (Sept. 25, 2020).

59 See, e.g., Order Determining Whistleblower Award, Exchange Act Rel. No. 88687, File No. 2020-16 (Apr. 20, 2020).

60 See Order Determining Whistleblower Award, Exchange Act Rel. No. 88658, File No. 2020-13 (Apr. 16, 2020).

Overview of Award Process

For a whistleblower to receive an award, there are a number of preconditions that must be met. The diagram below provides a snapshot of the overall process, from the filing of the whistleblower tip to payment of the whistleblower award. As reflected, the time between the submission of a whistleblower tip and when an individual may receive payment of an award can be several years, particularly where the underlying investigation is especially complex, litigation is lengthy, there are multiple, competing award claims, or there are claims for related actions. OWB undertakes appropriate due diligence to ensure a careful and thorough evaluation of all award claims.



The discussion below focuses on the award claims process, from the posting of the NoCA (Step #4 above) to the issuance of a Final Order by the Commission (Step #10 above).

NoCA Posted

OWB posts on its webpage a NoCA for each Commission enforcement action where a final judgment or order, by itself or together with other judgments or orders in the same action, results in monetary sanctions exceeding \$1 million.⁶¹ During FY 2020, OWB posted 105 NoCAs.

OWB sends email alerts to GovDelivery⁶² when the NoCA listing is updated. Whistleblowers and other members of the public may sign up to receive an update via email every time the list of NoCAs on OWB's webpage is updated. OWB posts new NoCAs on its webpage on the last business day of each month.

⁶¹ By posting a NoCA for a particular case, the Commission is not making a determination either that a whistleblower tip, complaint, or referral led to the Commission opening an investigation or filing an action with respect to the case or that an award to a whistleblower will be paid in connection with the case.

⁶² GovDelivery is a vendor that provides communications for public-sector clients.

Whistleblowers File Claims

Once a NoCA is posted, claimants have 90 calendar days to apply for an award by submitting a completed award application on Form WB-APP to OWB.⁶³ Only claimants who have a clear nexus between the information they provided to the Commission and the charges in the underlying action should apply for an award in any given matter. In making that determination, claimants are encouraged to (i) consider whether they had any communications with the relevant Enforcement staff who brought the action and (ii) review the relevant charging documents and consider the proximity between the Commission's specific charges and the claimant's information. The amendments to the Whistleblower Rules include tools intended to deter frivolous claims, which drain resources and slow down the review process for meritorious claims, including providing the Commission with the authority to permanently bar an individual from participation in the whistleblower program if he or she submits three or more award claims that the Commission finds to be frivolous. Frivolous claims can substantially complicate and delay the award process.

While OWB may contact whistleblowers who have worked with investigative staff to inform them of the application deadline, it is the responsibility of the claimant to make a timely application for award. The Commission has denied late-filed award claims. The Court of Appeals for the Second Circuit upheld the Commission's denial of two claimants whose award applications were submitted approximately two years after the required deadline.⁶⁴ As such, OWB encourages whistleblowers and their counsel to regularly review the monthly NoCA postings or to sign up to receive emails to alert them as to when new NoCAs are posted.

Review and Analysis of Award Claims

Based on an initial review of the award application and in consultation with investigative staff, OWB makes a preliminary assessment of the whistleblower claim. In keeping with OWB's goal of processing meritorious claims, claims that appear to be eligible for an award are prioritized for processing. At the same time, during FY 2020, OWB dedicated two attorneys to reviewing likely non-meritorious claims, so that the majority of OWB attorneys may focus their time on processing likely meritorious award claims.

OWB attorneys evaluate each application for a whistleblower award. In addition to analyzing the information provided by the claimant on the Form WB-APP, OWB attorneys may look at prior correspondence between the claimant and the Commission and may consult intra-agency databases to understand the origin of the case and what tips or other correspondence the claimant may have submitted to the Commission. In addition, OWB attorneys work closely with investigative staff responsible for the relevant action, and/or other Commission staff who may have interacted with the claimant or have other relevant knowledge, to understand the contribution or involvement the claimant may have had in the matter.

⁶³ 17 C.F.R. §§ 240.21F-10(a), (b).

⁶⁴ See Order Determining Whistleblower Award Claim, Exchange Act Release No. 77368 (Mar. 14, 2016), *pet. for rev. denied sub nom. Cerny v. SEC*, 707 F. App'x 29 (2d Cir. 2017), *cert. denied*, 138 S. Ct. 2005 (2018); see also *LaViola v. SEC*, No. 19-1079, 2019 WL 3229356 (D.C. Cir. July 16, 2019) (unpublished).

Utilizing the information and materials provided by the claimant in support of the application, as well as other relevant materials reviewed, OWB attorneys prepare a recommendation to the Claims Review Staff as to whether the claimant meets the criteria for receiving an award, and if so, the recommended amount of the award. Depending on the complexity of the claim, the number of claimants who applied, and whether OWB is awaiting input from others, including from other agencies in connection with related action claims, this due diligence process may take a significant amount of time. Generally, all recommendations go through a multi-tiered, robust review process. Certain claims, including all award recommendations, are also reviewed by Enforcement's Office of Chief Counsel and the Commission's Office of the General Counsel.

Preliminary Determinations Issued

The Claims Review Staff, designated by the Director of Enforcement, considers OWB's recommendation on the award application in accordance with the criteria set forth in Dodd-Frank and the Whistleblower Rules. The Claims Review Staff currently is composed of seven senior officers in Enforcement, including the Director and Deputy Director of Enforcement. The Claims Review Staff then issues a Preliminary Determination setting forth its assessment of whether the claim should be approved or denied and, if approved, setting forth the proposed award amount.⁶⁵ Beginning on the effective date of the Whistleblower Rule amendments, OWB expects to follow a summary disposition process for certain categories of denials of award applications that are relatively straightforward. Under this process, OWB, rather than the CRS, would assume responsibility for reviewing the record, and then issue a Preliminary Summary Disposition identifying the basis for the denial of the application for award. We anticipate that using the summary disposition process will help increase efficiencies in the claims review process.

For awards, the Whistleblower Rules outline a number of positive and negative factors that the Commission and Claims Review Staff may consider in assessing an individual's award amount.⁶⁶ Award amounts are based on the particular facts and circumstances of each case.

Factors that may increase an award amount include the significance of the information provided by the whistleblower, the level of assistance provided by the whistleblower, the law enforcement interests at stake, and whether the whistleblower reported the violation internally through an entity's internal reporting channels or mechanisms.⁶⁷

Factors that may decrease an award amount include whether the whistleblower was culpable or involved in the underlying misconduct, including whether the whistleblower financially benefited from the misconduct, interfered with internal compliance systems, or unreasonably delayed in reporting the violation to the Commission.

⁶⁵ 17 C.F.R. § 240.21F-10(d).

⁶⁶ *Id.* § 240.21F-6.

⁶⁷ *But see* the discussion of the *Digital Realty* decision on page 26 of this report.

Possible Record and Reconsideration Requests

A claimant may submit a written request within 30 calendar days of the date of the Preliminary Determination asking for a copy of the record that formed the basis of the Claims Review Staff's decision as to the claim for award. As a precondition to receiving a copy of the record, OWB requires claimants and their counsel, if the claimant is represented, to execute a confidentiality agreement limiting the use of such materials to the claims review process.⁶⁸ In keeping with our statutory obligation of confidentiality, OWB carefully redacts each record to remove any information that could identify another whistleblower in the matter. A claimant also has 30 calendar days from the date of the Preliminary Determination to request a meeting with OWB, which OWB may grant at its discretion.

Claimants may seek reconsideration of the Preliminary Determination by submitting a written response to OWB within 60 calendar days of the later of (i) the date of the Preliminary Determination, or (ii) if the record was requested, the date when OWB made the record available for a claimant's review.⁶⁹ If a claim is denied and the claimant does not object within the time period prescribed under the Whistleblower Rules, then the Preliminary Determination of the Claims Review Staff becomes the Final Order of the Commission through operation of law.

Requests for reconsideration should include new information or arguments and not simply restate what was included in the original award claim application. Requests for reconsideration should be submitted in one written response. OWB attorneys may spend a considerable amount of time evaluating requests for reconsideration. OWB attorneys analyze claimants' legal arguments and take other steps before recommending a Proposed Final Determination for the Claims Review Staff to submit to the Commission. Because of the amount of time it takes to process reconsideration requests, OWB encourages claimants and their counsel to consider the merits of their reconsideration request in a particular matter and not to ask for reconsideration as a matter of course.

Final Order Issued and Resolution of Appeals

After considering any requests for reconsideration, the Claims Review Staff makes a Proposed Final Determination, and the matter is submitted to the Commission for its decision.⁷⁰

All Preliminary Determinations of the Claims Review Staff that involve granting an award are submitted to the Commission for consideration as Proposed Final Determinations irrespective of whether the claimant objected to the Preliminary Determination.⁷¹

⁶⁸ *Id.* § 240.21F-12(b). Rule 21F-12(b) states, "The Office of the Whistleblower may also require you to sign a confidentiality agreement, as set forth in § 240.21F-(8)(b)(4) of this chapter, before providing [Preliminary Determination] materials."

⁶⁹ 17 C.F.R. § 240.21F-10(e).

⁷⁰ *Id.* §§ 240.21F-10(g)-(h).

⁷¹ *Id.* §§ 240.21F-10(f), (h).

Within 30 days of receiving the Proposed Final Determination, any Commissioner may request that the Proposed Final Determination be further reviewed by the Commission. If no Commissioner requests such a review within the 30-day period, then the Proposed Final Determination becomes the Final Order of the Commission. Claimants who are issued a denial have a right to appeal the Commission's Final Order within 30 days of issuance to the United States Court of Appeals for the District of Columbia Circuit, or to the circuit where the claimant resides or has his or her principal place of business.⁷²

Final Orders of the Commission are publicly available on the Commission's website and OWB's webpage. The public Final Orders are redacted to protect award claimants' confidentiality.

There are several factors that may affect the length of time it takes for OWB to review an award claim and for the Commission to issue a Final Order. For example, the number of claimants, both meritorious and non-meritorious, applying for an award in connection with a Covered Action affects the time it takes to process a claim. Similarly, the presence of novel or complex issues, or the need to supplement the record with additional information from the claimant, may also lengthen the time it takes to process a claim. There may be a delay when there is a claim for an award in connection with a related action, requiring OWB to coordinate with or receive assistance from another regulator to understand what contribution the whistleblower may have made in the related action. Additionally, requests for the record and for reconsideration can substantially delay the issuance of a Final Order.

⁷² *Id.* § 240.21F-10(h). A whistleblower's rights of appeal from a Commission Final Order are set forth in Section 21F(f) of the Exchange Act, 15 U.S.C. § 78u-6(f), and Exchange Act Rule 21F-13(a), 17 C.F.R. § 240.21F-13(a).

PROFILES OF AWARD RECIPIENTS

“Protecting
whistleblower
confidentiality is an
integral component
of the whistleblower
program.”

Protecting whistleblower confidentiality is an integral component of the whistleblower program. Dodd-Frank prohibits the Commission and its staff from disclosing any information that reasonably could be expected to reveal the identity of a whistleblower, subject to certain exceptions. Consequently, information that may tend to reveal a whistleblower’s identity is redacted from Commission orders granting or denying awards before they are issued publicly. This may include redacting the name of the enforcement action upon which the award is based, as well as the award percentage.

Consistent with our statutory obligation to maintain whistleblower confidentiality but in an effort to provide more transparency, this section provides information about the profiles of past award recipients—from the whistleblower program’s inception to the end of FY 2020—while still protecting the identity of any particular individual.

Since program inception, the Commission has issued awards of approximately \$562 million to 106 individuals in connection with 87 Covered Actions, as well as in connection with several related actions. Many of the tips or complaints that were submitted by these successful whistleblowers share similar characteristics. The information provided by each award recipient was specific. For example, the whistleblowers identified particular individuals involved in the misconduct, or provided specific documents that substantiated their allegations or explained where such documents could be located. In some instances, the whistleblowers identified specific financial transactions that evidenced fraud, or provided detailed assessment of the wrongdoing. The misconduct reported by award recipients is often relatively current or ongoing at the time it was reported to the Commission. Additionally, nearly all of the award recipients provided Commission staff with additional assistance and/or information (*e.g.*, answered staff questions or provided testimony) after they submitted their initial tips.

An individual may be eligible to receive an award where his or her information leads to a successful enforcement action—meaning generally that the original information either caused the staff to open an examination or investigation, or the original information significantly contributed to a successful enforcement action where the matter was already under examination or investigation. Of the whistleblowers who have received awards under the program, approximately 71% provided original information that caused staff to open an investigation or examination, and approximately 29% received awards because their original information significantly contributed to an already-existing investigation or examination. In assessing whether information assisted with an ongoing matter, the Commission considers factors such as whether the information allowed the Commission to bring an action in significantly less time or with fewer resources, and whether it supported additional successful charges, or successful claims against additional individuals or entities.⁷³ When the Commission has found claimants to be ineligible for awards on non-procedural grounds, it is often because the claimants’ information did not result in the opening of an investigation or examination or opening of a new line of inquiry in an existing investigation or examination, or significantly contribute to an ongoing investigation or examination.

⁷³ Securities Whistleblower Incentives and Protections, 76 Fed. Reg. 34,300, 34,325 (June 13, 2011).

There is no requirement under the Whistleblower Rules that an individual be an employee or company insider to be eligible for an award. However, approximately 68% of the award recipients to date were current or former insiders of the entity about which they reported information of wrongdoing to the SEC. Of those recipients, approximately 84% raised their concerns internally to their supervisors, compliance personnel, or through internal reporting mechanisms, or understood that their supervisor or relevant compliance personnel knew of the violations, before reporting their information of wrongdoing to the Commission.

Award recipients have also included investors who had been victims of the fraud, professionals working in the same or related industry, or other types of outsiders, such as individuals who had a personal relationship with the wrongdoer or individuals who have a special expertise in the market.

Whistleblowers have helped the Commission bring cases against a variety of individuals and entities, many of which are involved in the financial services industry. Individuals comprised approximately 45% of the defendants and respondents in cases resulting in whistleblower awards. Approximately 33% of the defendants and respondents in cases in which a whistleblower received an award concerned entities registered with the Commission, including broker-dealers, investment advisers, or other registered market participants. Unregistered entities comprised approximately 22% of the defendants and respondents.

In addition, whistleblowers have assisted the Commission in bringing enforcement cases involving an array of securities violations, including offering frauds, such as Ponzi schemes, false or misleading statements in a company's offering memoranda or marketing materials, false pricing information, accounting violations, internal controls violations, Foreign Corrupt Practices Act violations, and insider trading, among other types of misconduct.

Under the Whistleblower Rules, individuals are permitted to jointly submit a tip to the Commission. Twelve of the matters for which whistleblower awards were ordered involved two or more whistleblowers jointly submitting information to the Commission.

Individuals who provide information that leads to successful SEC actions resulting in monetary sanctions over \$1 million also may be eligible to receive an award if the same information led to a related action, such as a parallel criminal prosecution. Ten award recipients to date have received payments based, in part, on collections made in related criminal or other qualifying related actions.

Past whistleblower award recipients hail from several different parts of the United States, and 19 recipients were foreign nationals or residents of foreign countries at the time they submitted their tips to the Commission.

PRESERVING INDIVIDUALS' RIGHTS TO REPORT TO THE COMMISSION AND SHIELDING EMPLOYEES FROM RETALIATION

Section 21F(h)(1) of Dodd-Frank expanded protections for whistleblowers and broadened prohibitions against retaliation.⁷⁴ Following the passage of Dodd-Frank, the Commission implemented rules that enabled the SEC to take legal action against employers who have retaliated against whistleblowers. To date, the Commission has brought three anti-retaliation enforcement actions.

“To date,
the Commission
has brought
12 enforcement
actions or
administrative
proceedings involving
violations of
Rule 21F-17.”

Exchange Act Rule 21F-17(a) prohibits any person from taking any action to prevent an individual from contacting the SEC directly to report a possible securities law violation. The Rule states that “[n]o person may take any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement . . . with respect to such communications.”⁷⁵ To date, the Commission has brought 12 enforcement actions or administrative proceedings involving violations of Rule 21F-17. In the most recent action, *Collector’s Coffee*,⁷⁶ the Commission included a Rule 21F-17 charge against the defendants for impeding the efforts of harmed investors to report misconduct to the Commission. According to the allegations in the amended complaint, after the investors sued the defendants, defendants entered into a settlement agreement with the investors that expressly prohibited the investors from speaking to the Commission about their claims. The amended complaint further alleges the defendants went so far as to sue two investors that they believed breached one of the settlement agreements. The Commission’s enforcement action remains pending in federal court in New York.

In February 2018, the Court in *Digital Realty* held that the whistleblower provisions of the Exchange Act require that an employee report a possible securities law violation to the Commission to qualify for protection against employment retaliation under Section 21F. The Court thus invalidated the Commission’s rule interpreting Section 21F’s anti-retaliation protections to apply in cases where an employee had reported only internally. The rule amendments modify Rule 21F-2 to comport with the Court’s holding by, among other things, establishing a uniform definition of “whistleblower” that would apply to all aspects of Exchange Act Section 21F.

Retaliation protection remains a key tenet of the whistleblower program. OWB continues to support enforcement investigations involving (1) whistleblowers who suffered retaliation after reporting securities violations to the Commission and (2) whistleblowers who were impeded from communicating directly with staff in violation of Rule 21F-17(a). For example, OWB continues to work with investigative staff to identify and investigate practices in the use of confidentiality and other kinds of agreements that interfere with individuals’ abilities to report potential wrongdoing to the Commission.

⁷⁴ 15 U.S.C. § 78u-6(h)(1).

⁷⁵ 17 C.F.R. § 240.21F-17(a).

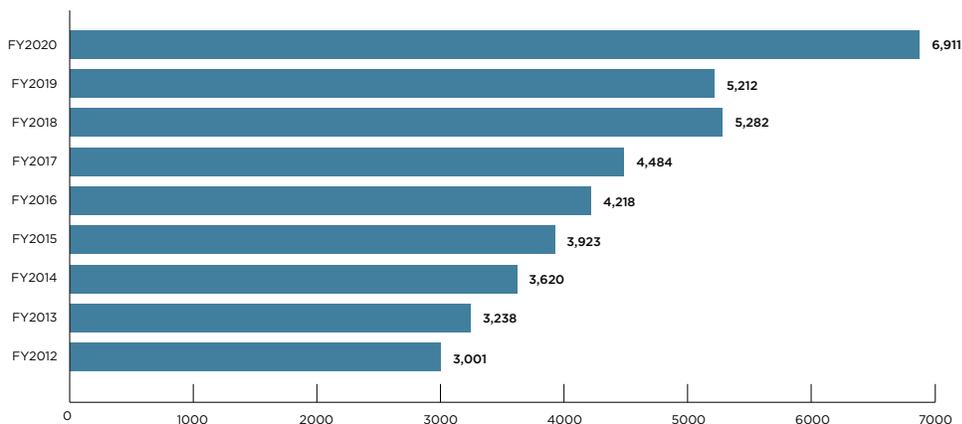
⁷⁶ *U.S. Sec. & Exch. Comm’n v. Collector’s Coffee, Inc. (d/b/a Collectors Café) & Mykalai Kontilai*, No. 19-cv-04355-LGS-GWG (S.D.N.Y.) (Nov. 4, 2019).

WHISTLEBLOWER TIPS RECEIVED

The Whistleblower Rules specify that individuals who would like to be part of the whistleblower program must submit their tips via the Commission’s online portal or by mailing or faxing their tips on Form TCR to OWB.⁷⁷ The Whistleblower Rule amendments, as discussed below, allow individuals to submit their Form TCR within 30 days of providing their original information to the Commission or of first obtaining actual or constructive notice of the requirements. Whistleblowers who use the online portal to submit a tip receive a computer-generated confirmation of receipt with a TCR submission number. All whistleblower tips referring to potential securities law violations are entered into the TCR System and are evaluated by the Commission’s Office of Market Intelligence (OMI) within Enforcement. The Commission’s TCR System was updated in FY 2018 to include more user-friendly features, including the ability to upload larger attachments. OWB encourages individuals and their counsel to submit tips using the Commission’s online portal, rather than through a hard-copy Form TCR. Due to the increasing volume of mailed and faxed submissions, and the ready availability of electronic submissions, OWB no longer provides acknowledgement letters in response to paper filings. Claimants and their counsel are encouraged to submit their tip via only one method. For example, the same tip should not be entered through the online portal and then mailed in hard-copy to the office. This can create duplication of work for intake staff.

Number of Whistleblower Tips

In FY 2020, the Commission received over 6,900 whistleblower tips—the largest number of whistleblower tips received in a fiscal year, which represents a 31 percent increase over FY 2018 for which the Commission received the second highest number of whistleblower tips in a fiscal year. Since August 2011, the Commission has received over 40,200 whistleblower tips. The table below shows the number of whistleblower tips received by the Commission on a yearly basis since the inception of the whistleblower program.⁷⁸



“In FY 2020, the Commission received over 6,900 whistleblower tips—the largest number of whistleblower tips received in a fiscal year.”

⁷⁷ 17 C.F.R. § 240.21F-9(a).

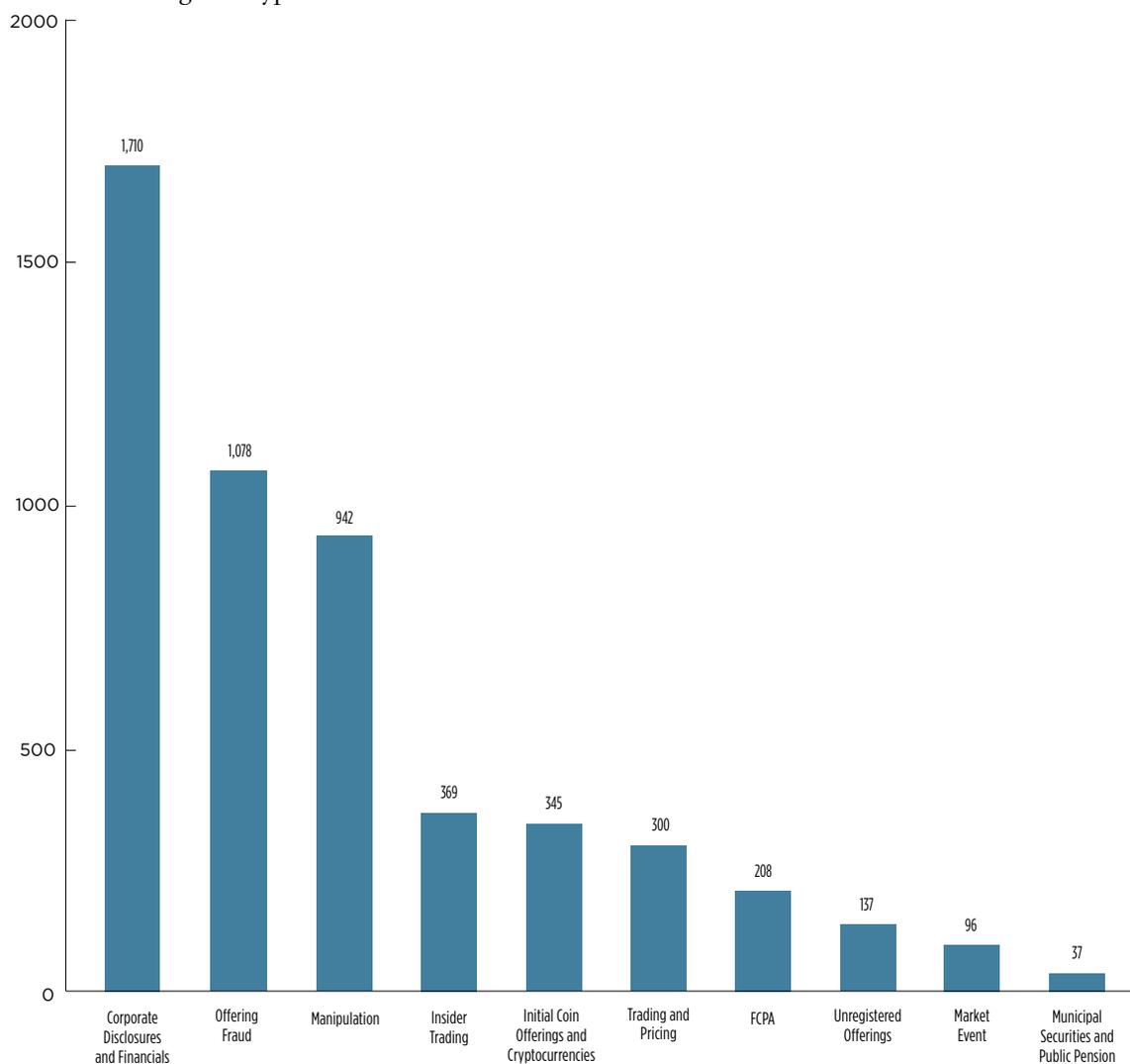
⁷⁸ The Commission also receives tips from individuals who do not wish to be part of the whistleblower program. The data in this report is limited to whistleblower tips and does not reflect all tips or complaints received by the Commission during the fiscal year.

From FY 2012, the first year for which we have full-year data,⁷⁹ to FY 2020, the number of whistleblower tips received by the Commission has grown by approximately 130 percent.

Whistleblower Allegation Type

Whether submitting tips on Form TCR or through the online portal, whistleblowers should identify the nature of their complaint allegations. In FY 2020, the most common complaint categories reported by whistleblowers were Corporate Disclosures and Financials (25 percent), Offering Fraud (16 percent), and Manipulation (14 percent).⁸⁰

The following graph reflects the number of whistleblower tips received in FY 2020 by allegation type.⁸¹

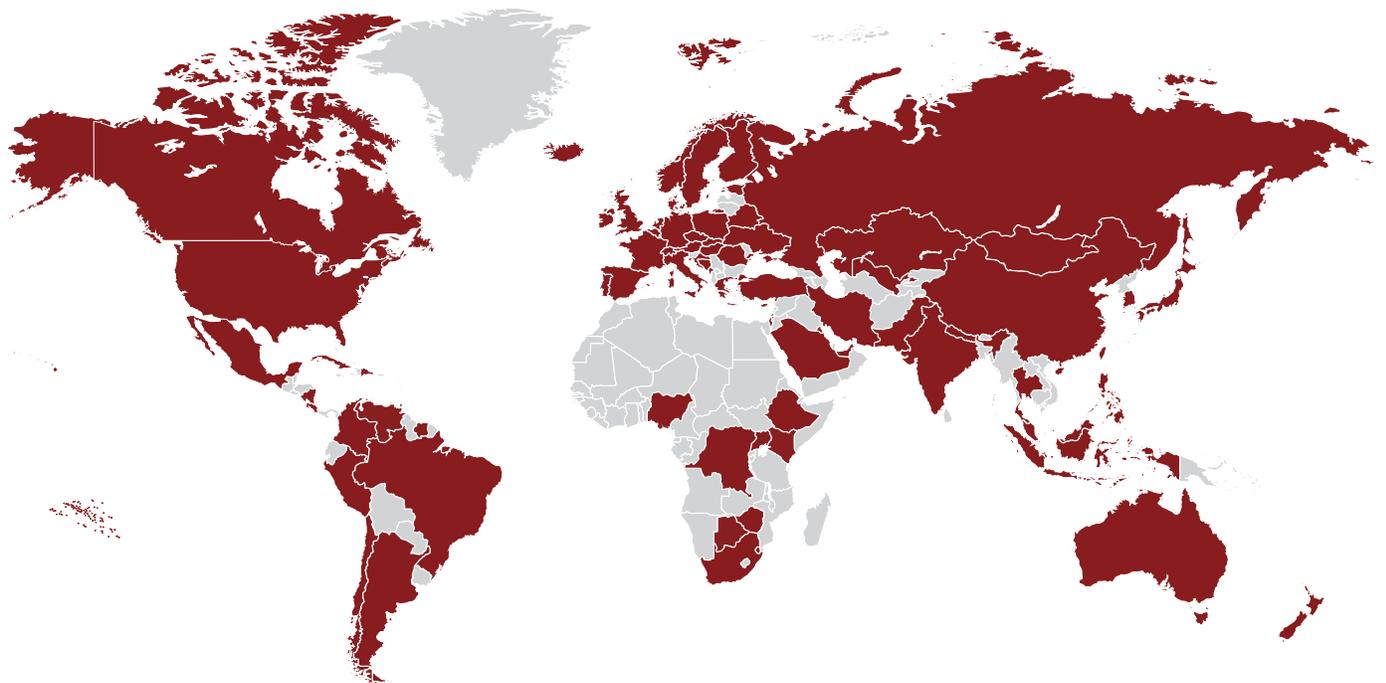


⁷⁹ Because the Whistleblower Rules became effective on August 12, 2011, only seven weeks of whistleblower data is available for FY 2011.

⁸⁰ This breakdown reflects the categories selected by whistleblowers and, thus, the data represents the whistleblower's own characterization of the violation type.

⁸¹ In addition, there were approximately 1,689 whistleblower tips where the submitter identified the whistleblower TCR as not fitting into any allegation category that is listed on the questionnaire or did not provide an allegation category.

Since the beginning of the whistleblower program, the Commission has received whistleblower tips from individuals in approximately 130 countries outside the United States. In FY 2020 alone, the Commission received whistleblower submissions from individuals in 78 foreign countries. After the United States, OWB received the highest number of whistleblower tips this past fiscal year from individuals in Canada, the United Kingdom, and the People's Republic of China. The map below reflects the countries in which whistleblower tips originated during FY 2020.



Appendices B and C to this report provide detailed information concerning the sources of domestic and foreign whistleblower tips that the Commission received during FY 2020.

PROCESSING OF WHISTLEBLOWER TIPS

Intake of Hard-Copy Form TCRs

Prior to July 2020, OWB staff provided for the intake of hard-copy tips on Form TCRs and uploaded them to the Commission's TCR System. In order to allow OWB staff to focus more on the processing of award claims, in July, the responsibilities associated with the intake of hard-copy tips were moved to OMI. Not only did this allow OWB to focus more time and resources on the processing of award claims, it also created greater efficiencies in the triaging of tips, as OMI reviews and evaluates all tips, whether submitted in hard-copy or through the on-line portal.

We strongly encourage whistleblowers to submit any TCRs and additional information using the SEC's online portal, particularly given the full-time mandatory telework posture due to COVID-19. Any TCRs or additional information submitted by mail should be sent to the SEC's alternative mailing address, which is posted on the SEC whistleblower program webpage, until further notice.

TCR Evaluation

OMI reviews every TCR submitted by a whistleblower to the Commission that references a possible securities law violation. OMI examines each tip to identify those with high-quality information that warrant the additional allocation of Commission resources. Generally, when the evaluation of a tip could benefit from the specific expertise of another Division or Office within the SEC, the tip is forwarded to staff in that Division or Office for further analysis. When OMI determines that a tip should be considered for investigation, OMI assigns the tip to one of the Commission's eleven regional offices, a specialty unit, or to an Enforcement group in the Home Office. Tips that relate to an existing investigation are forwarded to the staff working on the matter.

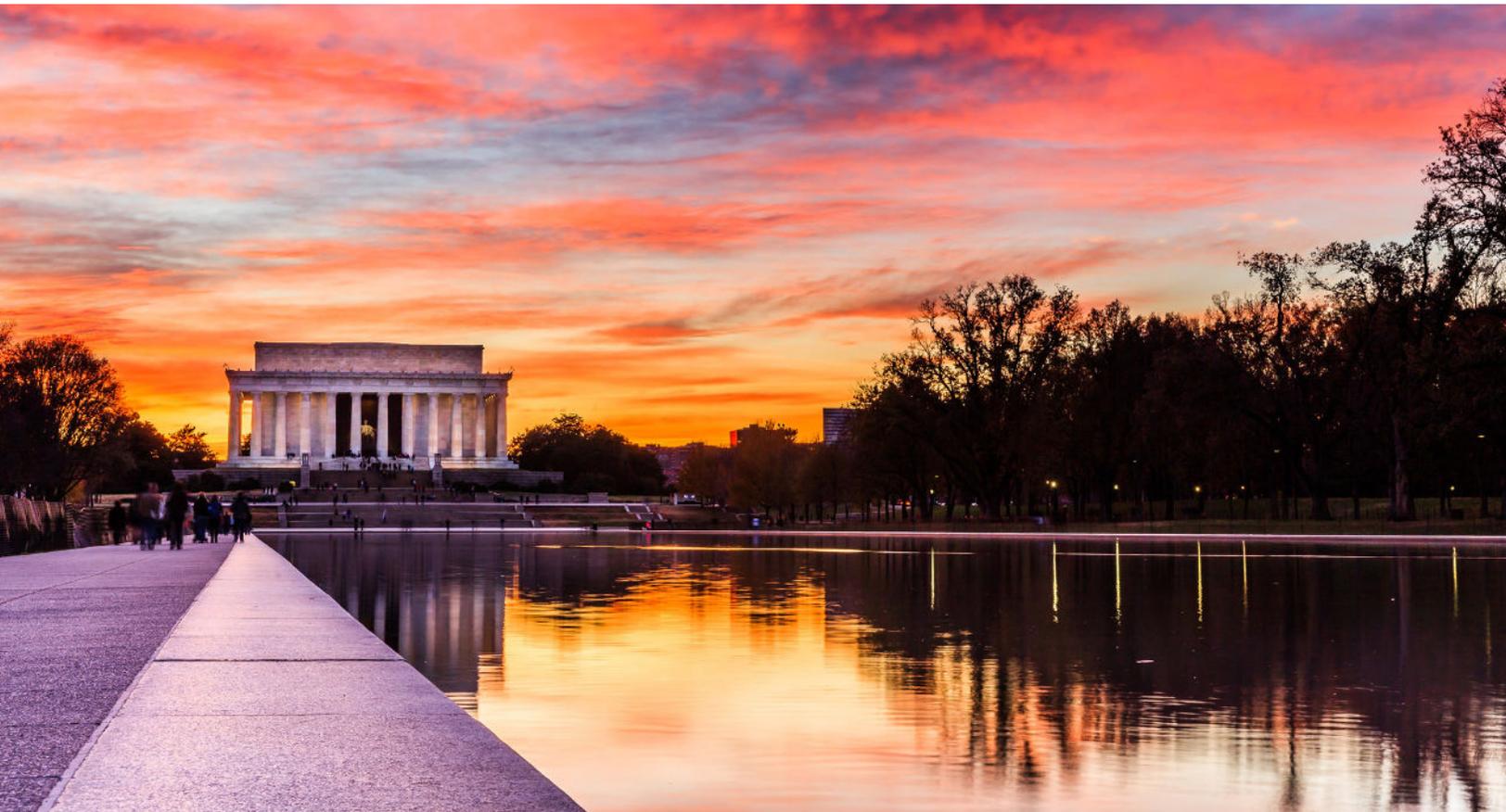
The Commission may use information from whistleblower tips in several different ways. For example, the Commission may initiate an enforcement investigation based on the whistleblower's tip. Even if the tip does not cause an investigation to be opened, it may still help lead to a successful enforcement action if the whistleblower provides additional information that significantly contributes to an ongoing or already-existing investigation. Tips may also prompt the Commission to commence an examination of a regulated entity, which may lead to an enforcement action.

OWB tracks whistleblower tips that are referred to Enforcement staff for investigation. OWB currently is tracking over 1,100 matters in which a whistleblower's tip has caused a Matter Under Inquiry or investigation to open, or has been forwarded to Enforcement staff for review and consideration in connection with an ongoing investigation. Not all of these matters, however, will result in an enforcement action, or an enforcement action where the required threshold of over \$1 million in monetary sanctions will be ordered. Whistleblower tips may also be used to open an examination or referred to examination staff in connection with a planned or ongoing exam.

In general, whistleblower tips that are specific, credible, and timely, and that are accompanied by corroborating documentary evidence, are more likely to be forwarded to investigative staff for further analysis or investigation. For instance, if the tip identifies individuals involved in the scheme, provides examples of particular fraudulent transactions, or points to non-public materials evidencing the fraud, the tip is more likely to be assigned to Enforcement staff for investigation. Tips that make blanket assertions or general inferences based on market events are less likely to be forwarded to or investigated by Enforcement staff.

In certain instances, OMI or other Enforcement staff may determine it is more appropriate that a whistleblower's tip be investigated by another regulatory or law enforcement agency. When this occurs, the tip is referred to the other agency in accordance with the Exchange Act's whistleblower confidentiality requirements.

Tips that relate to the financial affairs of an individual investor or a discrete investor group usually are forwarded to the Commission's Office of Investor Education and Advocacy (OIEA) for resolution. Comments or questions about agency practice or the federal securities laws also are forwarded to OIEA.



AMENDMENTS TO WHISTLEBLOWER RULES

On September 23, 2020, the Commission voted to adopt amendments to the Whistleblower Rules designed to provide greater clarity to whistleblowers and increase the program's efficiency and transparency. The amendments will become effective on December 7, 2020. The rule amendments increase efficiencies around the review and processing of whistleblower award claims, and provide the Commission with additional tools to appropriately reward meritorious whistleblowers for their efforts and contributions to a successful matter.

Additional Tools in Award Determinations

- *Presumption of the statutory maximum award amount for certain awards of \$5 million and less:* Historically, approximately 75% of the awards issued in the whistleblower program have been \$5 million or less.
 - For awards where the statutory maximum award amount for the covered action and any related actions is in the aggregate \$5 million or less, newly added Exchange Act Rule 21F-6(c) provides a presumption that the Commission will pay a meritorious claimant the statutory maximum amount where none of the negative award criteria specified in Rule 21F-6(b) are present, subject to certain limited exceptions.
 - For awards over \$5 million, the Commission will continue to analyze the award factors identified in Rule 21F-6 and issue awards based on the application of those factors. Based on the historical application of the award factors, if none of the negative criteria specified in Rule 21F-6(b) are present, the award amount would be expected to be in the top third of the award range.
 - After carefully considering the comments received, the Commission determined not to adopt proposed Exchange Act Rule 21F-6(d)(2), which would have provided a formalized process for the Commission to conduct an enhanced review of certain awards.
- *Allowing awards based on deferred prosecution agreements (DPAs) and non-prosecution agreements (NPAs) entered into by the U.S. Department of Justice (DOJ), or a settlement agreement entered into by the Commission outside of the context of a judicial or administrative proceeding to address violations of the securities laws:* This amendment will ensure that whistleblowers are not disadvantaged because of the particular form of an action that the Commission or DOJ may elect to pursue. Under the amendment, the Commission has the ability to make award payments to whistleblowers based on money collected as a result of such DPAs and NPAs, as well as under settlement agreements entered into by the Commission outside of the context of a judicial or administrative proceeding to address violations of the securities laws.

- The amendment to the definition of “action” to include NPAs, DPAs, and similar Commission settlement agreements will apply to any such agreement that was entered into after July 21, 2010 (the date Dodd-Frank became effective). Individuals will have 90 days from the effective date of the amendments to apply for an award in connection with any such agreement that was entered between the July 2010 date and the effective date of the amendments.
- *Clarifying the current definition of “related action”*: This amendment codifies the Commission’s approach to determining whether an action is a related action, including clarifying that a law-enforcement or separate regulatory action does not qualify as a “related action” if the Commission determines that there is a separate award scheme that more appropriately applies to such law-enforcement or separate regulatory action. The presence of such a separate award scheme would not affect the Commission’s determination of the award based on the monetary sanctions collected by the Commission in the covered SEC action and any related action where such an award scheme was not present.

Uniform Definition of “Whistleblower”

In response to the Supreme Court’s decision in *Digital Realty*, the Commission modified Rule 21F-2 to establish a uniform definition of “whistleblower” that will apply to all aspects of Exchange Act Section 21F—i.e., the award program, the heightened confidentiality requirements, and the employment anti-retaliation protections.

- For purposes of retaliation protection, an individual is required to report information about possible securities laws violations to the Commission “in writing.” As required by the Supreme Court’s decision, to qualify for the retaliation protection under Section 21F, the individual must report to the Commission before experiencing the retaliation.
- To be eligible for an award or to obtain heightened confidentiality protection, the additional existing requirement that a whistleblower submit information on Form TCR or through the Commission’s online tips portal remains in place, subject to the additional discretion of the Commission to grant waivers described below.
- Additionally, the Commission is issuing interpretive guidance defining the scope of retaliatory conduct prohibited by Section 21F(h)(1)(A), which includes any retaliatory activity by an employer against a whistleblower that a reasonable employee would find materially adverse.

Increased Efficiency in Claims Review Process

The new presumption for certain awards of \$5 million or less, described above, should result in gains in efficiency from streamlining the award determination process for those awards. Two further amendments are designed to help increase the Commission's efficiency in processing whistleblower award applications.

- New subparagraph (e) to Exchange Act Rule 21F-8 codifies the Commission's practice of barring applicants who include materially false, fictitious, or fraudulent statements in their whistleblower submission, in their other dealings with the Commission, or in related actions, and provides an important new tool for the Commission in processing frivolous award applications.
 - To prevent repeat submitters from abusing the award application process, the rule permits the Commission to permanently bar any applicant from seeking an award after the Commission determines that the applicant has abused the process by submitting three frivolous award applications.
 - For the first three applications determined to be frivolous, OWB will notify a claimant of its assessment and give the claimant the opportunity to withdraw the application.
- New Exchange Act Rule 21F-18 affords the Commission with a summary disposition procedure for certain types of common denials, such as untimely award applications, applications that involve a tip that was not provided to the Commission in the form and manner that the rules require, and applications where the claimant's information was never provided to or used by staff responsible for the investigation.
 - The more streamlined process is designed to help facilitate a more timely resolution of such relatively straightforward denials, while freeing up staff resources to focus on processing potentially meritorious award claims. Claimants will still have an opportunity to contest a preliminary denial of their claim before the Commission makes its final determination.

Clarification and Enhancement of Certain Policies and Procedures

The rule amendments also clarify and enhance certain policies, practices, and procedures in implementing the program. These amendments include the items listed below.

- Exchange Act Rule 21F-4(e) was amended to clarify the definition of “monetary sanctions,” consistent with the Commission’s existing practice.
- Section 21F of the Exchange Act provides that the determination of the amount of an award is in the discretion of the Commission. Exchange Act Rule 21F-6 was amended to clarify the Commission’s discretion in applying the award factors and setting the award amount, including the discretion to apply the award factors in percentage terms, dollar terms, or some combination thereof. The amendments also confirm that the Commission will consider only the enumerated award factors set forth in the rule when determining the award amount.
- Exchange Act Rule 21F-9 was amended to provide the Commission with additional flexibility to modify the manner in which individuals may submit Form TCR.
 - Further, the amendment clarifies that the Commission may waive compliance with Rule 21F-9(a) and (b) for a meritorious whistleblower who provided a Form TCR:
 - within 30 days of first providing the information that he or she relies upon as a basis for a claim, or
 - within 30 days of first obtaining actual or constructive notice about those requirements (or 30 days from the date the whistleblower retains counsel to represent him or her in connection with the submission of original information, whichever occurs first).
 - The waiver of non-compliance with Rule 21F-9(a) and (b) is automatic, rather than discretionary, when the Commission finds that the whistleblower has established that the specified conditions are satisfied.
 - The Commission continues to retain its separate discretionary exemptive authorities under Rule 21F-8(a) and Exchange Act Section 36(a) for circumstances that may warrant exemptive relief.
- Exchange Act Rule 21F-8 was amended to provide the Commission with additional flexibility regarding the forms used in connection with the whistleblower program.
- Exchange Act Rule 21F-12 was amended to clarify the list of materials that the Commission may rely upon in making an award determination.
- Exchange Act Rule 21F-13 was amended to clarify the materials that may comprise the administrative record for purposes of judicial review.

Commission Interpretive Guidance

In addition to the foregoing rule amendments, the Commission published interpretive guidance to help clarify the meaning of “independent analysis” as that term is defined in Exchange Act Rule 21F-4 and utilized in award applications.

- Under the guidance, in order to qualify as “independent analysis,” a whistleblower’s submission must provide evaluation, assessment, or insight beyond what would be reasonably apparent to the Commission from publicly available information.
- In making that determination, the Commission will consider whether the whistleblower’s conclusion of possible securities violations derives from multiple sources, including sources that are not readily identified and accessed by a member of the public without specialized knowledge, unusual effort, or substantial cost, and the sources collectively raise a strong inference of a potential securities law violation that is not readily inferable by the Commission from any of the sources individually.

Finally, the Commission did not adopt a specific time-based presumption of “unreasonable delay” as interpretive guidance. The Commission will continue to assess the facts and circumstances of each case to determine whether any delay was reasonably attributable to actions taken by or circumstances out of the control of the whistleblower or to unreasonable actions by the whistleblower.

Guidance from the Office of the Whistleblower

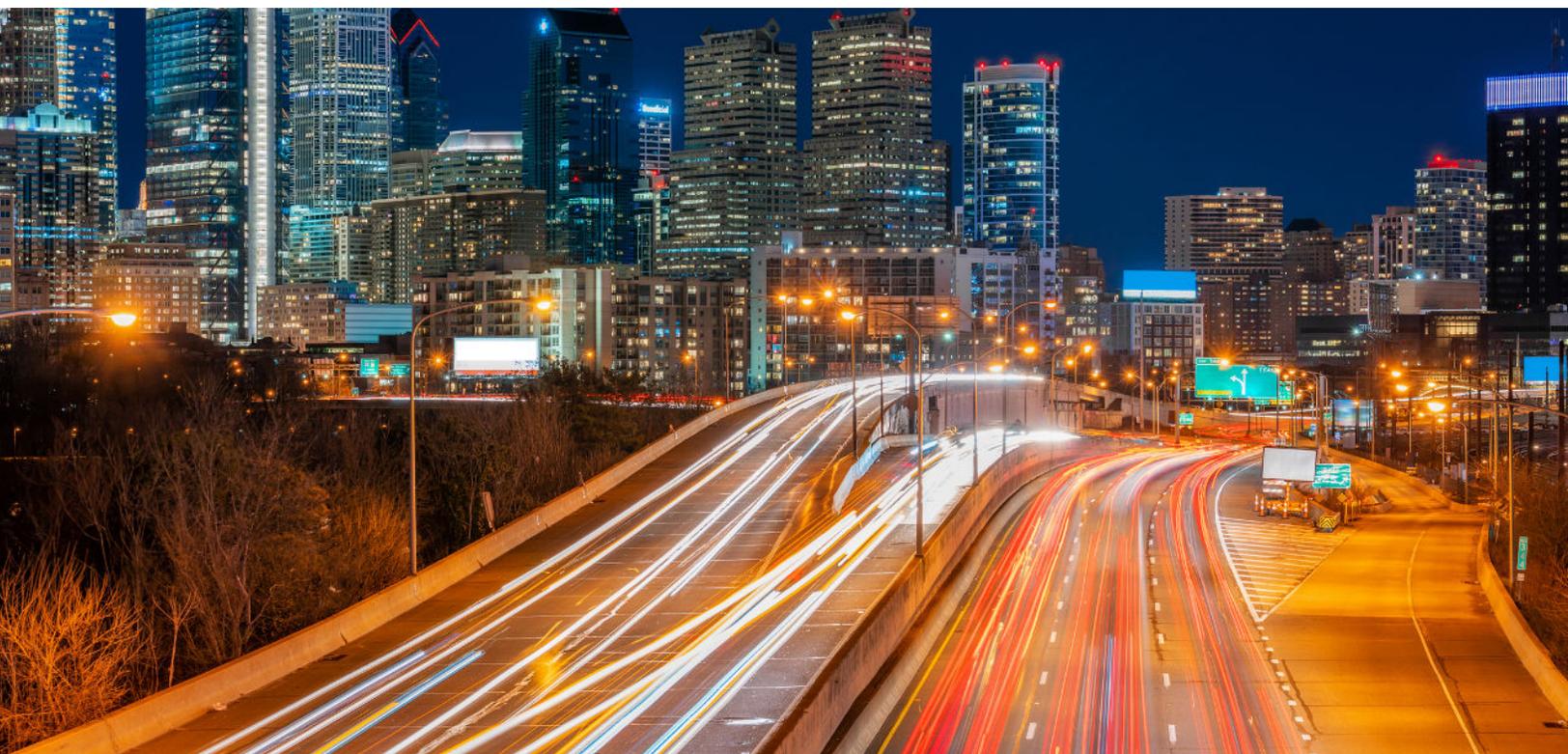
To increase clarity and transparency in the award determination process, OWB issued staff guidance regarding the process for determining award amounts for eligible whistleblowers, contemporaneously with the adoption of the rule amendments. The guidance reflects OWB’s experience with the program as well as the implementation of the rule amendments, and it sets forth the process for OWB to propose award amounts to the Claims Review Staff. This guidance is publicly available on the OWB’s web page at <https://www.sec.gov/files/owb-award-determination-guidance2.pdf>.

Additional Information to Congress

The Commission also directed OWB to include in its annual reports to Congress (beginning with this FY 2020 report), in an aggregated manner, an overview discussion of the factors that were present in the awards throughout the year, including (to the extent practicable) a qualitative discussion of how these factors affected the Commission’s determination of award amounts. Pages 17 to 18 of this report address this requirement.

SECURITIES AND EXCHANGE COMMISSION INVESTOR PROTECTION FUND

Section 922 of Dodd-Frank established the Investor Protection Fund to provide funding for the Commission’s whistleblower award program, including the payment of awards in related actions.⁸² As required by statute, all payments are made out of this Fund, which is financed entirely through monetary sanctions paid to the SEC by securities law violators. No money has been taken or withheld from harmed investors to pay whistleblower awards. The Fund also is used to finance the operations of the suggestion program of the SEC’s Office of Inspector General.⁸³ The suggestion program is intended for the receipt of suggestions from SEC employees for improvements in work efficiency, effectiveness, productivity, and the use of resources at the Commission, as well as allegations by SEC employees of waste, abuse, misconduct, or mismanagement within the Commission, and is operated outside of OWB.⁸⁴



⁸² Section 21F(g)(2)(A) of the Exchange Act, 15 U.S.C. § 78u-6(g)(2)(A).

⁸³ Section 21F(g)(2)(B) of the Exchange Act, 15 U.S.C. § 78u-6(g)(2)(B), provides that the Fund shall be available to the Commission for “funding the activities of the Inspector General of the Commission under section 4(i).” The Commission’s Office of General Counsel has interpreted this section to refer to Exchange Act Section 4D, which established the Inspector General’s suggestion program. That section provides that the “activities of the Inspector General under this subsection shall be funded by the Securities and Exchange Commission Investor Protection Fund established under Section 21F.” *Id.* § 78d-4(e).

⁸⁴ Section 4D(a) of the Exchange Act, *id.* § 78d-4(a).

Section 21F(g)(5) of the Exchange Act requires certain Fund information to be reported to Congress on an annual basis. Below is a chart containing Fund-related information for FY 2020.

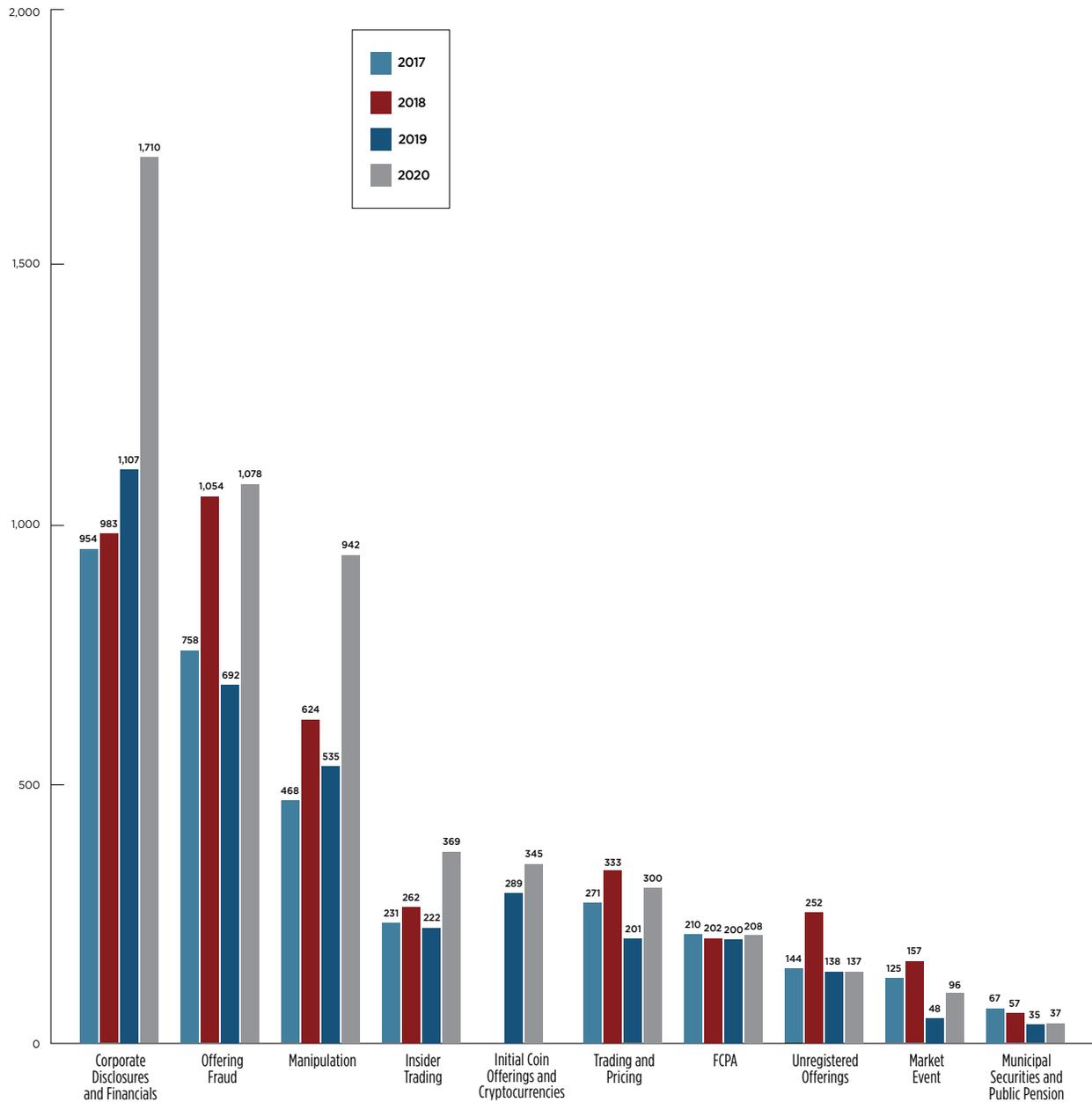
	FY 2020
Balance of Fund at beginning of fiscal year	\$ 403,975,928.95
Reversal of prior year sequestered amount ⁸⁵	\$ 10,112,385.86
Amounts deposited into or credited to Fund during fiscal year	\$ 17,057,314.18
Amounts of interest receipts from investments during fiscal year	\$ 4,960,413.69
Current year sequestered amount ⁸⁵	\$ (1,299,045.94)
Amounts paid from Fund during fiscal year to whistleblowers	\$ (95,733,263.56)
Amounts estimated to be paid from Fund during fiscal year to whistleblowers	\$ (95,317,161.45)
Reversal of obligations accrued in prior years	\$ 16,538,714.03
Amount disbursed to Office of the Inspector General during fiscal year	\$ (13,731.50)
Balance of Fund at end of fiscal year	\$ 260,281,554.26

Whenever the balance of the Fund falls below \$300 million, a statutory replenishment mechanism is triggered. For a complete description of the mechanisms that Congress established to replenish the Fund, *see* Section 21F(g)(3) of the Exchange Act, 15 U.S.C. 78-6(g)(3).

Section 21F(g)(5) of the Exchange Act also requires the Commission to provide a complete set of audited financial statements for the Fund, including a balance sheet, income sheet, income statement, and cash-flow analysis. That information will be included in the Commission's Agency Financial Report, which will be separately submitted to Congress.

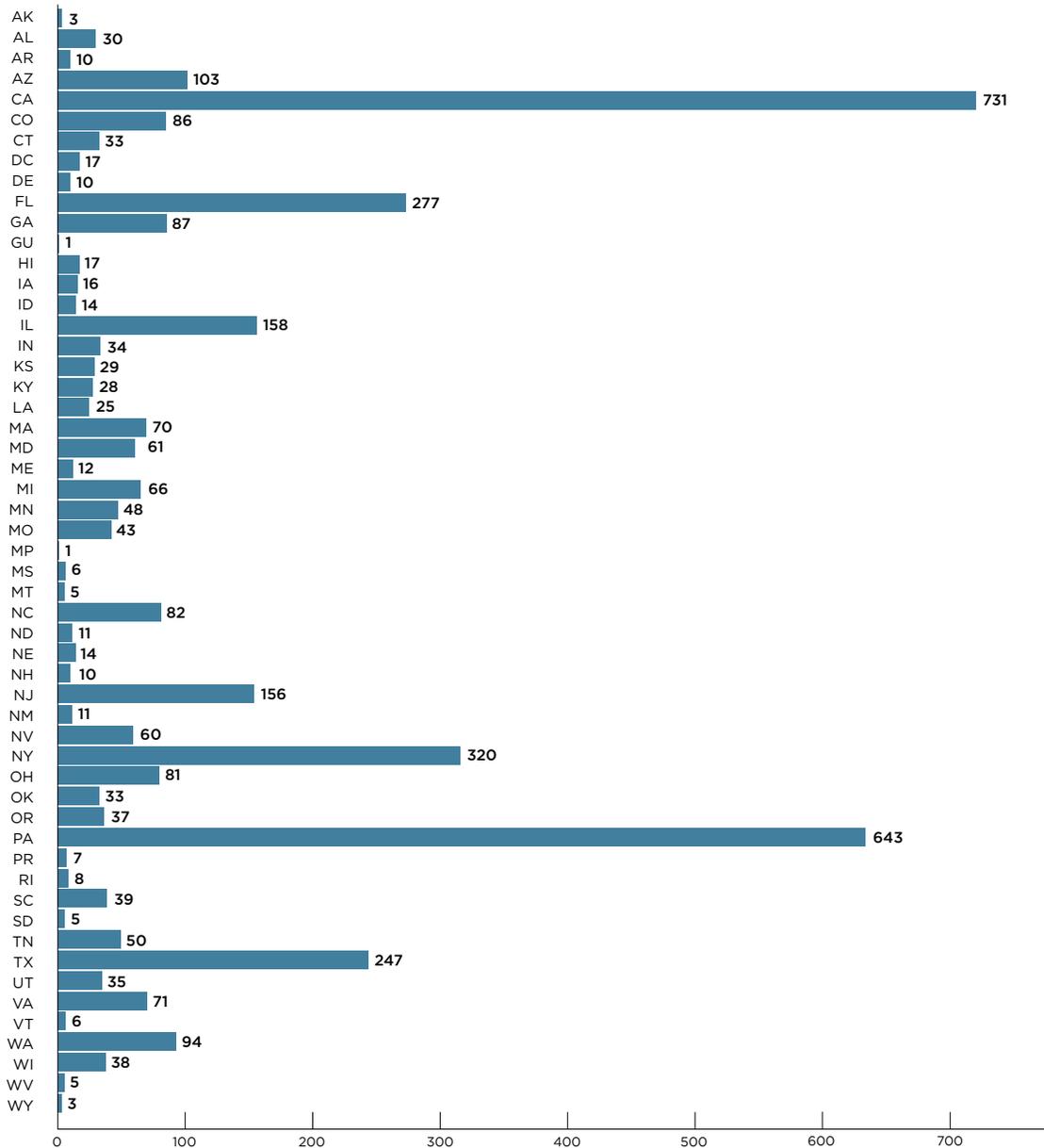
⁸⁵ Amounts relate to available resources temporarily reduced during the fiscal year as a result of the Budget Control Act of 2011 through the process known as "sequestration." These amounts become available at the beginning of the following fiscal year.

APPENDIX A WHISTLEBLOWER TIPS BY ALLEGATION TYPE COMPARISON OF FISCAL YEARS 2017-2020



*The "Crypto Currency" allegation category was introduced during the fourth quarter of FY 2018. In addition to what is depicted in the graph, there were several whistleblower tips where the submitter identified the WB TCR as not fitting into any allegation category that is listed on the questionnaire or did not provide an allegation category.

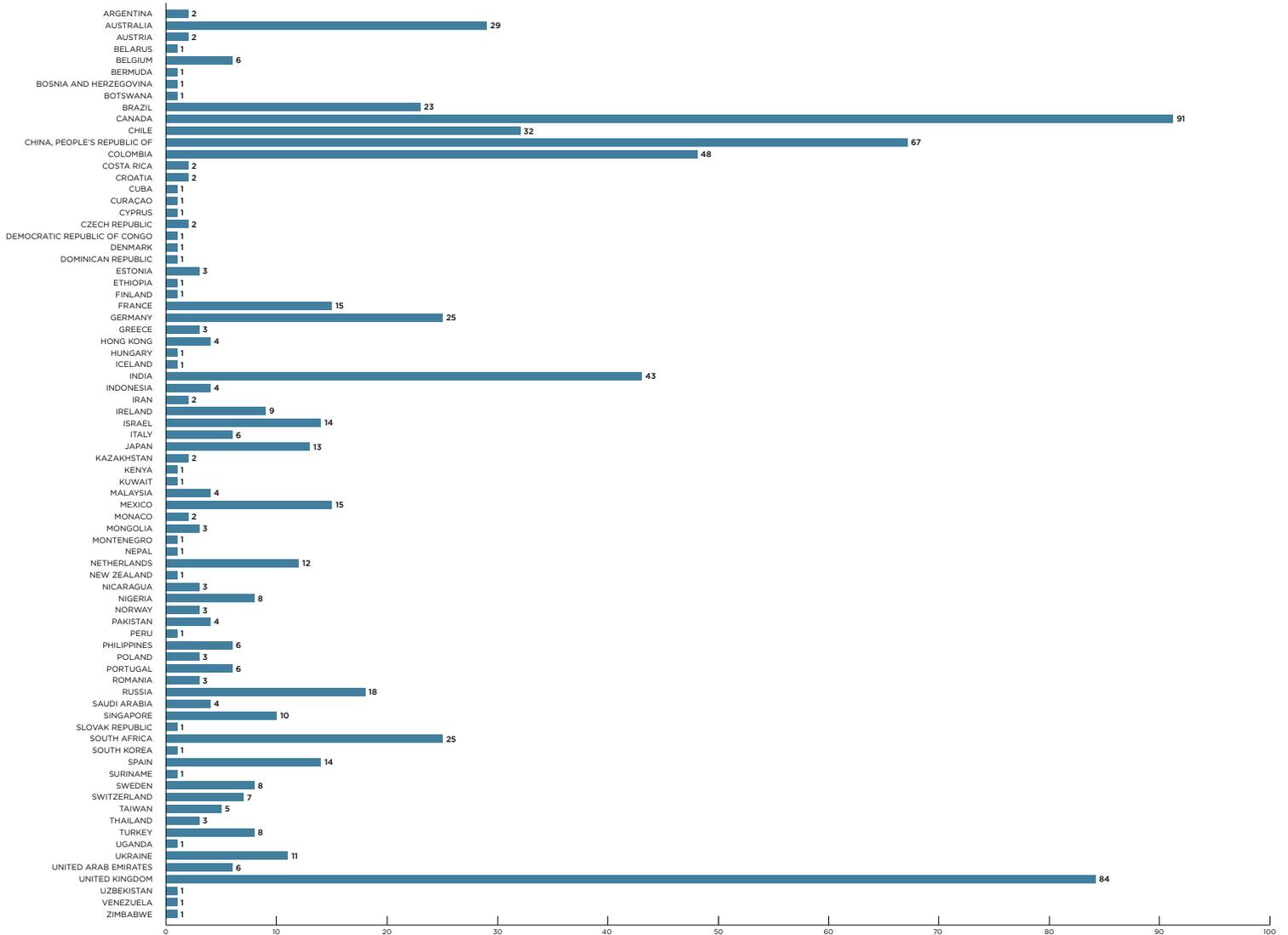
APPENDIX B
WHISTLEBLOWER TIPS RECEIVED BY GEOGRAPHIC LOCATION
UNITED STATES AND ITS TERRITORIES, FISCAL YEAR 2020*



*Approximately 4,087 WB TCRs were submitted in the United States or a U.S. territory during FY 2020, which constitutes approximately 59 percent of the WB TCRs submitted during this period. In addition, approximately 2,073 WB TCRs, constituting approximately 30 percent of the WB TCRs submitted in FY 2020, were submitted with an unknown foreign or domestic geographical categorization or were submitted anonymously through counsel.

APPENDIX C

WHISTLEBLOWER TIPS RECEIVED BY GEOGRAPHIC LOCATION INTERNATIONAL, FISCAL YEAR 2020*



* Approximately 751 WB TCRs were submitted from abroad during FY 2020, which constitutes approximately 11 percent of the WB TCRs submitted during this period.

OFFICE OF THE WHISTLEBLOWER

Washington, DC