

2017

ANNUAL REPORT

TO CONGRESS

Whistleblower Program



U.S. SECURITIES AND EXCHANGE COMMISSION

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MESSAGE FROM THE CHIEF OF THE OFFICE OF THE WHISTLEBLOWER

As we enter into the seventh year of the U.S. Securities and Exchange Commission's (SEC, Commission, or agency) whistleblower program, the demonstrable benefits of the program continue to materialize. Whistleblowers have provided tremendous value to the SEC's enforcement efforts and significant help to investors. Whistleblower information has aided the SEC's efforts to uncover and stop fraudulent investment schemes. But the value of the whistleblower program is exhibited most directly and importantly by the hundreds of millions of dollars returned to investors as a result of actionable information that whistleblowers brought to the agency. Since the program's inception, the SEC has ordered wrongdoers in enforcement matters involving whistleblower information to pay over \$975 million in total monetary sanctions, including more than \$671 million in disgorgement of ill-gotten gains and interest, the majority of which has been, or is scheduled to be, returned to harmed investors.

Investor Protection Actions Based on Whistleblower Tips

The Commission brought several enforcement actions in Fiscal Year (FY) 2017 that illustrate the critical role whistleblowers play in investor protection. Earlier this fiscal year, the SEC awarded a whistleblower who promptly came forward with valuable information that enabled the SEC to quickly initiate an enforcement action against wrongdoers before they could squander their ill-gotten funds, leading to a near total recovery and return of investor funds. Recently, in July 2017, the SEC awarded a whistleblower whose critical information helped the agency stop a hard-to-detect fraud and return millions of dollars to harmed investors in the process.

In the past year, we have also seen whistleblower information aid SEC staff in detecting and stopping active, ongoing investment schemes that directly targeted and victimized unsophisticated investors. In January, the Commission awarded a whistleblower who provided information that helped end an ongoing fraud that predominately targeted a more vulnerable investor community. Also in January of this year, the Commission awarded three whistleblowers whose information halted a scheme to which hundreds of investors, many of whom were unsophisticated, had fallen victim.

The success of the SEC's whistleblower program is further illustrated by the number and amount of awards over this past year, as well as since the program's inception. This fiscal year, the SEC ordered whistleblower awards totaling nearly \$50 million to 12 individuals. Since the agency issued its first award in 2012 through the end of September 2017, the program has awarded approximately \$160 million in whistleblower awards to 46 individuals whose information and cooperation assisted the agency in bringing successful Commission enforcement actions and related actions brought by non-SEC enforcement authorities.

Awareness of the Whistleblower Program

Awareness of the whistleblower program has grown significantly over the years. This year, we have continued to experience a consistent increase in the number of whistleblower tips received. In FY 2017, we received over 4,400 tips, an increase of nearly 50 percent since FY 2012, the first year for which we have full-year data.

“... the value of the whistleblower program is exhibited most directly and importantly by the hundreds of millions of dollars returned to investors as a result of actionable information that whistleblowers brought to the agency.”

Whistleblower Protections

During FY 2017, the Commission brought a number of important actions to address instances in which companies unlawfully retaliated against their employees or impeded employees' ability to report freely to the Commission.

In one such action brought in January 2017, the Commission found that HomeStreet, Inc., a Seattle-based financial services company, attempted to uncover the identity of a presumed whistleblower after being contacted by SEC staff regarding potential accounting violations. In its efforts to root out the whistleblower, the company suggested that it could deny indemnification for legal costs to the individual whom the company believed to be the whistleblower. The company also required former employees to sign severance agreements waiving potential whistleblower awards or otherwise risk losing their severance payments and other post-employment benefits. Without admitting or denying the findings, the company agreed to, among other things, cease and desist from violating Rule 21F-17 of the Securities Exchange Act of 1934 (Exchange Act) and pay a \$500,000 civil penalty.

“Reviewing fact patterns of retaliation against whistleblowers and potential actions to impede communications with the Commission will continue to be a focus for the Office of the Whistleblower ...”

The SEC also continued its enforcement of Rule 21F-17 by bringing two actions against companies for using restrictive language in separation and severance agreements that specifically targeted the Commission's whistleblower rules and incentives. In December 2016, the Commission found that Virginia-based technology company NeuStar, Inc. used broad non-disparagement clauses in its severance agreements that specifically named the SEC as a regulator to whom employees were forbidden from communicating any disparaging information or else forfeit all but \$100 of their severance. In a subsequent Rule 21F-17 enforcement action brought in January 2017, the Commission found that BlackRock, Inc. used separation agreements that required departing employees to waive their right to receive any incentives for reporting misconduct under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Dodd-Frank).

The SEC also brought a settled action against Oklahoma-based oil and gas company, SandRidge Energy, Inc., for terminating an employee in retaliation for raising concerns to company management about how the company calculated its reserves. Along with findings that the company had violated the whistleblower anti-retaliation provisions of Dodd-Frank, the Commission also found that the company had violated Rule 21F-17 by entering into separation agreements with hundreds of employees that prohibited voluntary, direct communication with the Commission.

Reviewing fact patterns of retaliation against whistleblowers and potential actions to impede communications with the Commission will continue to be a focus for the Office of the Whistleblower (OWB or Office) in the upcoming fiscal year to ensure that whistleblowers can freely report information to the Commission and feel comfortable reporting wrongdoing without fear of reprisal.

Whistleblower Processes

We encourage those who believe they have information concerning a potential securities law violation to submit a tip via the online portal on OWB's webpage (www.sec.gov/whistleblower) or by submitting a Form TCR, which is also available on OWB's webpage, by mail or fax.

Moreover, to help promote the agency's whistleblower program and establish a line of communication with the public, OWB operates a hotline where whistleblowers, their attorneys, or other members of the public with questions about the program may call to speak to OWB staff. During FY 2017, we returned nearly 3,200 calls from members of the public, exceeding the number of calls returned the prior fiscal year. Since May 2011 when the hotline was established, OWB has returned over 18,600 calls from the public.

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.

Conclusion

We attribute the public's active interest in the whistleblower program to its three key features that Congress created as part of Dodd-Frank: the promise of monetary awards to whistleblowers whose information leads to successful enforcement actions, provisions to safeguard whistleblower confidentiality, and enhanced anti-retaliation protections. We believe that these features will continue to incentivize company insiders, market participants, and others with knowledge of potential securities law violations to step forward and report their information to the agency. And we expect that the Commission will continue to receive high-quality tips that can be leveraged to detect and halt fraud earlier and more effectively.

We are proud that the whistleblower program continues to positively impact the SEC's enforcement of the federal securities laws. We are confident that it will continue to bolster the agency's mission of protection of investors and the markets in the years ahead.



JANE NORBERG

Chief, Office of the Whistleblower
November 15, 2017

“... we expect that the Commission will continue to receive high-quality tips that can be leveraged to detect and halt fraud earlier and more effectively.”

HISTORY AND PURPOSE

The Dodd-Frank Act¹ amended the Exchange Act² by, among other things, adopting Section 21F,³ 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.⁴

Awards must be made in an amount equal to 10 to 30 percent of the monetary sanctions collected.⁵ 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 the SEC’s Division of Enforcement (Enforcement), to administer and effectuate the whistleblower program. It is OWB’s mission to administer a vigorous whistleblower program that will help the Commission identify and halt securities frauds early and quickly to minimize investor losses.

In addition to establishing an awards program to encourage the submission of high-quality information, Dodd-Frank and the Commission’s implementing regulations (Whistleblower Rules)⁶ prohibit retaliation by employers against employees who report possible wrongdoing based on a reasonable belief that a possible securities violation has occurred, is in progress, or is about to occur.⁷

In adopting the Whistleblower Rules, the Commission recognized that whistleblower reporting through internal compliance procedures can enhance the Commission’s enforcement efforts in appropriate circumstances.⁸ Consequently, the Commission adopted strong incentives and protections for employees who choose to work within their company’s own compliance structure because they believe that the employer’s internal compliance function is an effective mechanism to address any potential wrongdoing.⁹

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

2 15 U.S.C. § 78a, *et seq.*

3 *Id.* § 78u-6.

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

5 15 U.S.C. § 78u-6(b)(1).

6 17 C.F.R. § 240.21F-1 through 21F-17.

7 15 U.S.C. § 78u-6(h)(1); 17 C.F.R. § 240.21F-2(b).

8 *Securities Whistleblower Incentives and Protections*, 76 Fed. Reg. 34,300, 34,359 n.450 (June 13, 2011).

9 See 17 C.F.R. §§ 240.21F-4(b)(7), 240.21F-6(a)(4), (b)(3).

Dodd-Frank's Section 924(d) requires OWB to report annually to Congress on OWB's activities, whistleblower complaints received, and the response of the Commission to such complaints.¹⁰ 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:

- 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.¹¹

OWB, in consultation with other offices within the Commission, has prepared this report to satisfy the reporting requirements of Section 924(d) of the Dodd-Frank Act 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 2017, 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 2017 primarily address the requirements of Section 21F(g)(5) of the Exchange Act.

¹⁰ 15 U.S.C. § 78u-7(d).

¹¹ 15 U.S.C. § 78u-6(g)(5).

ACTIVITIES OF THE OFFICE OF THE WHISTLEBLOWER

“... OWB focused on employers’ usage of confidentiality, severance, and other kinds of agreements, or engagement in other practices, to interfere with individuals’ ability to report potential wrongdoing to the SEC.”

Section 924(d) of the Dodd-Frank Act 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. In May 2017, Emily Pasquinelli was promoted to Deputy Chief to fill the role vacated by Ms. Norberg when she was promoted to Chief. Additionally, OWB is staffed by eleven attorneys, four paralegals, and an administrative assistant. Below 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 a monetary incentive to corporate insiders and others 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 webpage (www.sec.gov/whistleblower/claim-award) for every Commission enforcement action that results in monetary sanctions of over \$1 million. Anyone who believes that (s)he is entitled to a whistleblower award may submit an application in response to a posted NoCA. Before submitting an application, however, a whistleblower should ensure that there is a nexus between a whistleblower tip that (s)he provided to the Commission and what was ultimately charged in the enforcement matter.

OWB staff tracks investigations where a whistleblower has provided information or assistance to Enforcement staff. This case-tracking initiative provides early information to OWB about which matters may ultimately result in an award payout and allows OWB staff to provide subject matter expertise to Enforcement staff on whistleblower investigations, as needed. 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 Enforcement staff—or who have previously contacted the office about the posting of a particular covered action—to confirm they are aware of the posting and applicable deadline for submitting claims for award.

After receiving an application for an award, OWB attorneys assess the application and the eligibility of the claimant and confer with relevant Enforcement or other Commission staff to understand the contribution of the claimant, if any, to the covered action. OWB then makes recommendations to the Claims Review Staff, currently comprised of five senior officers in Enforcement, as to award eligibility. Pages 10-15 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 FY 2017.

Reviewing Restrictive Agreements

During FY 2017, OWB focused on employers’ usage of confidentiality, severance, and other kinds of agreements, or engagement in other practices, to interfere with individuals’ ability 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.”¹² In FY 2017, the Commission instituted administrative proceedings against four companies for violating Rule 21F-17(a). OWB continues to work closely with investigative 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). For more information about these activities, please see pages 19-21 of this report.

Advancing Anti-Retaliation Protections

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 internally or to the Commission. The Commission may bring an enforcement action against companies or individuals who violate the anti-retaliation provisions of the Dodd-Frank Act. In FY 2017, the Commission brought a retaliation case against a company for retaliating against an employee who reported concerns of possible securities laws violations internally to his company, but did not also separately report to the Commission. Bringing retaliation cases illustrates the high priority placed on ensuring an environment where whistleblowers can report internally or to the Commission without fear of reprisal. OWB continues to work with Enforcement staff to identify cases where companies and individuals take reprisals against employees for whistleblowing efforts that may be appropriate for enforcement action.

OWB also monitors federal court cases involving the anti-retaliation provisions of the Dodd-Frank Act and the Sarbanes-Oxley Act of 2002.¹³ OWB works with the SEC’s Office of General Counsel, which has filed *amicus curiae* briefs on behalf of the Commission and appeared in federal courts around the country advocating the Commission’s position that anti-retaliation protections under Dodd-Frank apply to employees who report potential violations of the securities laws internally or to other federal law enforcement agencies without also having informed the Commission of the same.¹⁴ On June 26, 2017, the United States Supreme Court granted certiorari in *Digital Realty Trust, Inc. v. Somers* to address a lower court split on the scope of the Dodd-Frank Act anti-retaliation protections.¹⁵ On October 17, 2017, the United States Solicitor General, acting on behalf of the Department of Justice and joined by the Commission, filed an *amicus curiae* brief in the Supreme Court in support of the whistleblower-respondent. The United States’ *amicus curiae* brief in *Digital Realty* continues the Commission’s advocacy efforts and urges the Supreme Court to recognize that Dodd-Frank’s statutory language, its legislative history, and the Commission’s rules require that individuals who internally report potential securities violations at a publicly-traded company are entitled to employment retaliation protection, regardless of whether they have separately reported that information to the Commission. For more information about these activities, please see pages 21-22 of this report.

¹² 17 C.F.R. § 240.21F-17(a).

¹³ 18 U.S.C. § 1514A.

¹⁴ The SEC’s interpretive guidance may be found on OWB’s webpage, www.sec.gov/whistleblower/retaliation, and also has been published in the Federal Register at 80 Fed. Reg. 47,829 (Aug. 10, 2015).

¹⁵ 850 F.3d 1045 (9th Cir. 2017), *cert. granted*, No. 16-1276 (U.S. June 26, 2017).

“During FY 2017,
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Intake of Whistleblower Tips

The Commission has an internal database called the Tips, Complaints, and Referrals Intake and Resolution System (TCR System) that 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. Exchange Act Rule 21F-9 provides whistleblowers the option to submit tips either electronically through an online portal that feeds directly into the TCR System or by mailing or faxing a hard-copy Form TCR directed to OWB. This flexibility supports whistleblowers who may not have ready access to a computer or who, for other reasons, may prefer to submit their information in hard copy. In cases where whistleblowers elect to submit a hard-copy Form TCR, OWB and other SEC staff manually enter the tips into the TCR System so they can be appropriately reviewed, assigned, and tracked in the same manner as tips received through the online portal. For more information on the number and types of tips received, please refer to pages 23-26 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. All calls to the hotline are returned by OWB attorneys within 24 business hours (3 business days).

During FY 2017, the Office returned nearly 3,200 phone calls from members of 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 recently updated the hotline voicemail to provide a menu of options with answers to frequently asked questions.

In addition to communicating with whistleblowers through the hotline, the Office sends letters to whistleblowers who have submitted tips, additional information, claims for awards, and other correspondence to OWB.

Public Outreach and Education

One of the Office'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 whistleblower program, and educate the public about the whistleblower program, through OWB's webpage (www.sec.gov/whistleblower). The webpage contains information about the program, copies of 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, and answers to frequently asked questions. In FY 2017, the Office updated its webpage to provide the public with additional information about the whistleblower program, including adding a new section dedicated to retaliation-related issues.

OWB also actively participates in numerous webinars, media interviews, presentations, press releases, and other public communications. In FY 2017, OWB participated in many public engagements aimed at promoting and educating the public about the Commission's whistleblower program. The Office's target audience generally includes potential whistleblowers, whistleblower counsel, and corporate compliance counsel and professionals. OWB's Chief has also participated in legal panels and other forums with other federal agencies with similar whistleblower programs.

CLAIMS FOR AWARDS

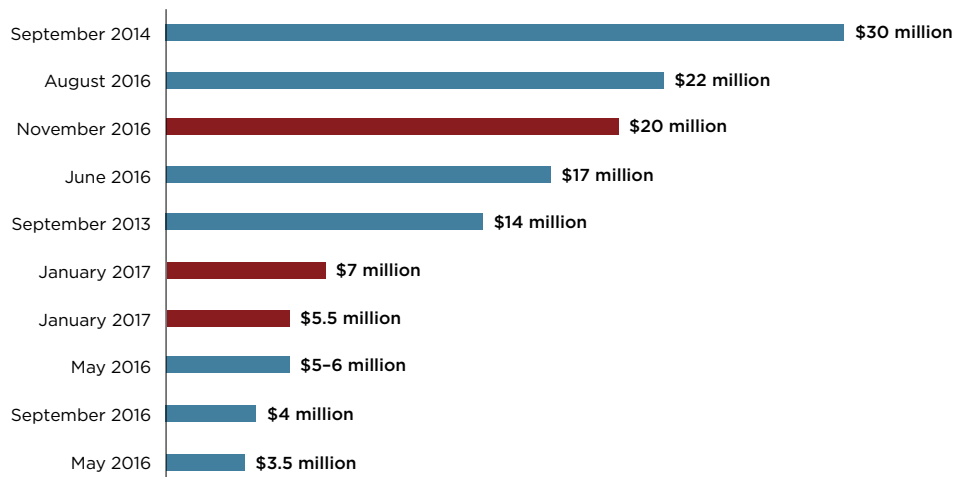
Whistleblower Awards Made in Fiscal Year 2017

In FY 2017, the Commission ordered whistleblower awards of nearly \$50 million to 12 individuals, each of whom provided new information, of which the agency was previously unaware, that either led to the opening of an investigation or significantly contributed to a successful enforcement action.

Below are the top ten highest awards made under the SEC's whistleblower program through FY 2017.

TOP 10 SEC WHISTLEBLOWER AWARDS

From program inception to end of Fiscal Year 2017, the SEC awarded approximately \$160 million to 46 whistleblowers.



As reflected in the graphic, three of the ten largest whistleblower awards were made by the Commission during FY 2017. The more than \$30 million award issued by the Commission in September 2014 remains the highest award made to date under the program.¹⁶

Below is an overview of the whistleblower awards made by the SEC during the past fiscal year.

Third-Highest Award of Over \$20 Million

On November 14, 2016, the Commission announced an award of more than \$20 million to a whistleblower who promptly came forward with valuable information that enabled the SEC to quickly initiate an enforcement action against wrongdoers before they could squander the money, leading to a near total recovery of investor funds.¹⁷ This was the third-highest award made since the program issued its first award in 2012.

¹⁶ See Order Determining Award Claim, Exchange Act Rel. No. 73174, File No. 2014-10 (Sept. 22, 2014); SEC Press Rel. No. 2014-206, "SEC Announces Largest-Ever Whistleblower Award."

¹⁷ See Order Determining Award Claim, Exchange Act Rel. No. 79294, File No. 2017-1 (Nov. 14, 2016); SEC Press Rel. No. 2016-237, "SEC Issues \$20 Million Whistleblower Award."

\$7 Million Awarded to Three Whistleblowers

On January 23, 2017, the Commission announced an award of more than \$7 million to three whistleblowers who helped the SEC stop an investment scheme that defrauded hundreds of investors, many of whom were unsophisticated.¹⁸ One whistleblower provided information that was the primary impetus for the beginning of the Commission's investigation. This individual received an award of more than \$4 million. The other two whistleblowers split more than \$3 million for voluntarily providing new information during the SEC's investigation that significantly contributed to the success of the Commission's action.

Company Insider Receives \$5.5 Million Award

On January 6, 2017, the Commission announced an award of more than \$5.5 million to a company insider who provided information that led to a successful Commission enforcement action.¹⁹ Not only did the information help open the investigation, but the whistleblower also continued to provide information and assistance throughout the course of the investigation, which ultimately helped end an ongoing fraud that chiefly targeted a vulnerable investor community.

\$4 Million Award to Whistleblower for Providing Industry-Specific Expertise

On April 25, 2017, the Commission announced an award of almost \$4 million to a whistleblower whose information was the primary cause for an investigation's opening.²⁰ The whistleblower provided industry-specific knowledge and expertise that allowed the Commission to effectively bring the underlying action with fewer resources.

\$3.5 Million Award

On December 5, 2016, the Commission announced an award of nearly \$3.5 million to a whistleblower who came forward with information that led to a successful SEC enforcement action.²¹

Information Launched Investigation and Earned Whistleblower a \$2.5 Million Award

On July 25, 2017, the Commission announced an award of nearly \$2.5 million to an employee of a domestic government agency whose whistleblower tip helped launch an SEC investigation and whose continued assistance enabled the SEC to address a company's misconduct.²² This individual provided timely ongoing assistance along with critical documents that accelerated the pace of the Commission's enforcement investigation.

18 See Order Determining Award Claim, Exchange Act Rel. No. 79853, File No. 2017-6 (Jan. 23, 2017); SEC Press Rel. No. 2017-27, "SEC Announces \$7 Million Whistleblower Award."

19 See Order Determining Award Claim, Exchange Act Rel. No. 79747, File No. 2017-5 (Jan. 6, 2017); SEC Press Rel. No. 2017-1, "SEC Awards \$5.5 Million to Whistleblower."

20 See Order Determining Award Claim, Exchange Act Rel. No. 80521, File No. 2017-8 (Apr. 25, 2017); SEC Press Rel. No. 2017-84, "SEC Awards Nearly \$4 Million to Whistleblower."

21 See Order Determining Award Claim, Exchange Act Rel. No. 79464, File No. 2017-2 (Dec. 5, 2016); SEC Press Rel. No. 2016-255, "SEC Awards \$3.5 Million to Whistleblower."

22 See Order Determining Award Claim, Exchange Act Rel. No. 81200, File No. 2017-12 (July 25, 2017); SEC Press Rel. No. 2017-130, "SEC Announces \$2.5 Million Whistleblower Award."

Company Insider Awarded More than \$1.7 Million for Help with Difficult to Detect Fraud

On July 27, 2017, the Commission announced a whistleblower award of more than \$1.7 million to a company insider who provided the agency with critical information to help stop a fraud that would have otherwise been difficult to detect.²³ Millions of dollars were returned to harmed investors as a result of the SEC's ensuing investigation and enforcement action.

Award of More Than \$900,000 for Assistance with Multiple Actions

On December 9, 2016, the Commission announced an award of more than \$900,000 to a whistleblower whose tip enabled the SEC to bring multiple enforcement actions against wrongdoers.²⁴

Award of More Than \$500,000

On May 2, 2017, the Commission ordered an award of more than \$500,000 to a company insider whose information prompted the Commission's investigation of a well-hidden and hard-to-detect securities violation.²⁵ This award highlights how company insiders are in a unique position to provide specific information that allows the Commission to better protect investors and the marketplace.

20 Percent Award

On February 28, 2017, the Commission announced a whistleblower award of 20 percent of amounts collected or to be collected to a whistleblower who voluntarily provided original information to the agency that led to a successful enforcement action.²⁶

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²³ See Order Determining Award Claim, Exchange Act Rel. No. 81227, File No. 2017-13 (July 27, 2017); SEC Press Rel. No. 2017-134, “SEC Announces Whistleblower Award of More Than \$1.7 Million.”

²⁴ See Order Determining Award Claim, Exchange Act Rel. No. 79517, File No. 2017-3 (Dec. 9, 2016); SEC Press Rel. No. 2016-260, “SEC Awards Nearly \$1 Million to Whistleblower.”

²⁵ See Order Determining Award Claim, Exchange Act Rel. No. 80571, File No. 2017-9 (May 2, 2017); SEC Press Rel. No. 2017-90, “Whistleblower Award of More Than Half-Million Dollars for Company Insider.”

²⁶ See Order Determining Award Claim, Exchange Act Rel. No. 80115, File No. 2017-7 (Feb. 28, 2017).

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 an award payment can be several years, particularly where the underlying investigation is especially complex, where there are multiple, competing award claims, or where there are claims for related actions.



The discussion below focuses on the award claims process, from the posting of the NoCA to the issuance of a Final Order by the Commission.

NoCA Posted

The Office 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 issued after July 21, 2010, results in monetary sanctions exceeding \$1 million.²⁷ During FY 2017, OWB posted 193 NoCAs.

OWB announces on Twitter each time a new group of NoCAs is posted to its webpage, and sends email alerts to GovDelivery when the NoCA listing is updated.²⁸ 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.

²⁷ OWB posts a NoCA for every enforcement action that results in monetary sanctions exceeding \$1 million. 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.

²⁸ GovDelivery is a vendor that provides communications for public-sector clients.

“Once a NoCA is posted, individuals have 90 calendar days to apply for an award by submitting a completed award application on Form WB-APP to OWB.”

Award Claim Submitted

Once a NoCA is posted, individuals have 90 calendar days to apply for an award by submitting a completed award application on Form WB-APP to OWB.²⁹ 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 recently upheld the Commission’s denial of two claimants whose award applications were submitted approximately two years after the required deadline.³⁰ As such, we encourage 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.

Award Claim Reviewed

OWB attorneys evaluate each application for a whistleblower award. OWB works closely with investigative staff responsible for the relevant action, as well as other Commission staff who may have interacted with the claimant, to understand the contribution or involvement the applicant may have had in the matter.

Utilizing the information and materials provided by the claimant in support of the application, as well as other relevant materials, OWB prepares a written recommendation to the Claims Review Staff as to whether the applicant meets the criteria for receiving an award, and if so, the percentage of the award.

Preliminary Determination Issued

The Claims Review Staff, designated by the co-Directors of Enforcement, considers OWB’s recommendation on the award application in accordance with the criteria set forth in the Dodd-Frank Act and the Whistleblower Rules. The Claims Review Staff currently is composed of five senior officers in Enforcement, including one of the co-Directors of Enforcement. The Claims Review Staff then issues a Preliminary Determination setting forth its assessment of whether the claim should be allowed or denied and, if allowed, setting forth the proposed award percentage amount.³¹

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 percentage. Award percentages are based on the particular facts and circumstances of each case, and are not based on any hard-set mathematical formula.

Factors that may increase an award percentage 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 his or her firm’s internal reporting channels or mechanisms.

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

²⁹ 17 C.F.R. §§ 240.21F-10(a), (b).

³⁰ *Cerny v. SEC*, No. 16-934, 2017 WL 3911581 (2d Cir. Sept. 7, 2017) (affirming Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 77368 (Mar. 14, 2016)).

³¹ 17 C.F.R. § 240.21F-10(d).

Record and Reconsideration Requested

An applicant 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 applicant's 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.³² A claimant also has 30 calendar days 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.³³ If a claim is denied and the applicant 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.

Final Order Issued

After considering any requests for reconsideration, the Claims Review Staff issues a Proposed Final Determination, and the matter is submitted to the Commission for its decision.³⁴

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 applicant objected to the Preliminary Determination.³⁵

Within 30 days of receiving the Proposed Final Determination, any Commissioner may request that the Proposed Final Determination be 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.³⁶

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 applicants' confidentiality.

32 *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."

33 17 C.F.R. § 240.21F-10(e).

34 *Id.* §§ 240.21F-10(g), (h).

35 *Id.* § 240.21F-10(f), (h).

36 *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).

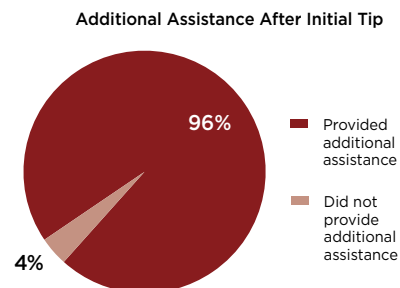
“Protecting
whistleblower
confidentiality is
an integral
component of the
whistleblower
program.”

PROFILES OF AWARD RECIPIENTS

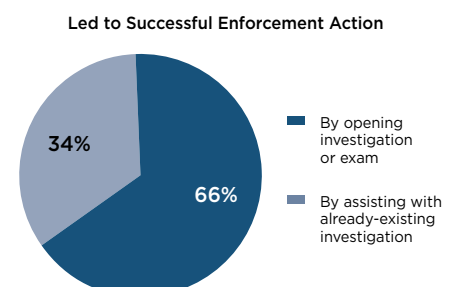
Protecting whistleblower confidentiality is an integral component of the whistleblower program. The Dodd-Frank Act prohibits the Commission and its staff from disclosing any information that reasonably could be expected to reveal the identity of a whistleblower, subject to certain exceptions. Consequently, 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.

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 2017—while still protecting the identity of any particular individual.

Since program inception, the Commission has issued awards of approximately \$160 million to 46 individuals in connection with 37 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 whistleblower 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 whistleblower identified specific financial transactions that evidenced fraud, or provided detailed assessment of the wrongdoing. The misconduct reported by award recipients was often relatively current or ongoing at the time it was reported to the Commission. Additionally, the vast majority of 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.

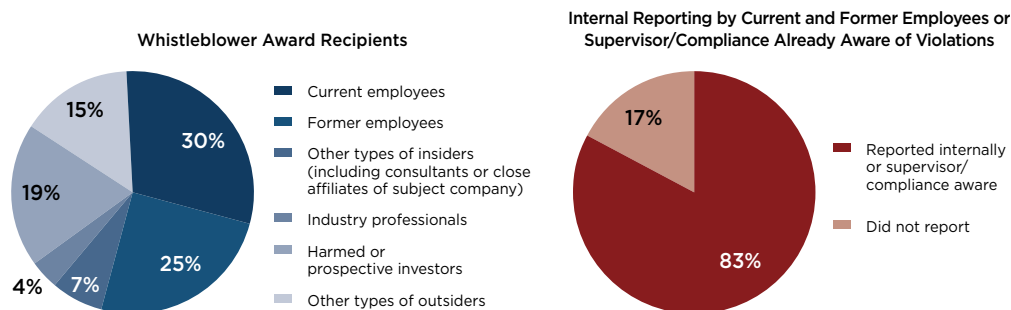


An individual may be eligible to receive an award where her or his information leads to a successful enforcement action—meaning generally that the original information either caused an examination or investigation to open, or the original information significantly contributed to a successful enforcement action where the matter was already under examination or investigation. The majority of the whistleblowers who have received awards under the program provided original information that caused Enforcement staff to open an investigation, and a significant percentage received awards because their original information assisted with an already-existing investigation. In assessing whether information assisted with an already-existing enforcement action, the



Commission will consider factors such as whether the information allowed the agency to bring the action in significantly less time or with fewer resources, and whether it supported additional successful charges, or successful claims against additional individuals or entities.³⁷ When the Commission has found claimants to be ineligible for awards on non-procedural grounds, it is often because the claimants' information did not open an investigation or exam, open a new line of inquiry in an existing investigation, or significantly contribute to an existing investigation.

There is no requirement under the Whistleblower Rules that an individual be an employee or company insider to be eligible for an award. However, about 62 percent 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 the award recipients who were current or former employees of a subject entity, almost 83 percent 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.

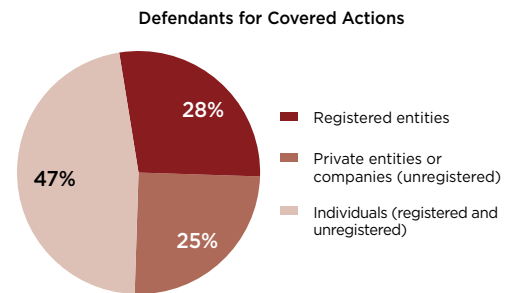


As reflected in the left chart above, whistleblowers may obtain information of possible wrongdoing by a subject company or individual that is not their employer. Although the majority were employees or former employees of the company involved in the wrongdoing, the remaining award recipients obtained their information because they were either investors who had been victims of the fraud, professionals working in the same or a related industry, or other types of outsiders, such as individuals who had a personal relationship with the wrongdoer.

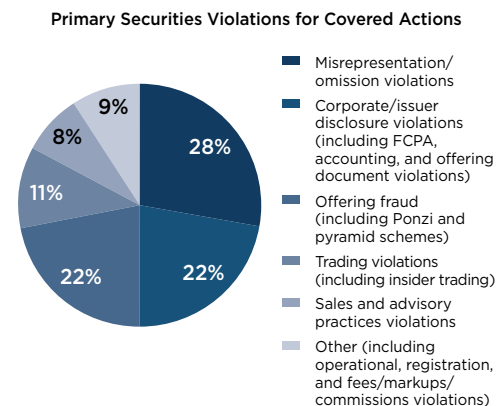
Whistleblowers seeking an award are not required to be represented by counsel unless they choose to file their tips with the Commission anonymously. About 46 percent of the award recipients did not have counsel when they initially submitted their tips to the agency. The other 54 percent were represented by counsel, 19 percent of which filed anonymously. Some of the individuals who were not represented by counsel at the time they submitted their tips subsequently retained counsel during the course of the investigation or during the whistleblower award application process (although retaining counsel is not required to file for a whistleblower award).

³⁷ *Securities Whistleblower Incentives and Protections*, 76 Fed. Reg. 34,300, 34,325 (June 13, 2011).

Whistleblowers help the Commission bring cases against a variety of defendants, many of which are involved in the financial services industry. Twenty-eight percent of the cases in which a whistleblower received an award concerned corporate defendants registered with the Commission, including broker-dealers, investment advisers, or other registered market participants. Whistleblowers also have contributed to enforcement actions against individuals and unregistered entities responsible for securities law violations. Individuals comprised 47 percent of the defendants, and unregistered entities and companies 25 percent of the defendants, in cases resulting in whistleblower awards.



Additionally, whistleblowers have assisted the Commission in bringing enforcement cases involving an array of securities violations. A number of the award recipients reported information to the Commission concerning offering frauds, such as Ponzi or Ponzi-like schemes. Other award recipients provided tips to the Commission relating to false or misleading statements in a company's offering memoranda or marketing materials, false pricing information, accounting, and internal controls violations, among other types of misconduct. The chart above reflects the diversity of securities violations in which award recipients have been involved in reporting.



Under the Whistleblower Rules, individuals are permitted to jointly submit a tip to the Commission. Six of the matters for which whistleblower awards were ordered involved two or more whistleblowers jointly submitting information and materials 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. Six of the award recipients 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 nine 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 the Dodd-Frank Act expanded protections for whistleblowers and broadened prohibitions against retaliation.³⁸ Following the passage of Dodd-Frank, the SEC implemented rules that enabled the SEC to take legal action against employers who have retaliated against whistleblowers. This generally means that employers may not discharge, demote, suspend, harass, or in any way discriminate against an employee in the terms and conditions of employment because the employee reported conduct that the employee reasonably believed violated the federal securities laws. Dodd-Frank also created a private right of action that gives whistleblowers the right to file a retaliation complaint in federal court. To date, the Commission has brought three anti-retaliation enforcement actions, including one in FY 2017.

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.”³⁹ To date, the Commission has brought nine enforcement actions involving violations of Rule 21F-17, including four in FY 2017.

OWB supported the enforcement of whistleblower protections in FY 2017 by reviewing fact patterns of retaliation and attempts to impede free communications with the SEC, and served as subject matter experts to staff as needed on investigations.

Enforcement of Whistleblower Protections

During FY 2017, the Commission found that a company violated Rule 21F-17 through its efforts to determine the existence and identity of a presumed whistleblower. On January 19, 2017, the Commission announced that Seattle-based financial services company HomeStreet, Inc. had agreed, without admitting or denying the Commission’s findings, to settle charges that it conducted improper hedge accounting and later took steps to impede potential whistleblowers.⁴⁰ The SEC’s order found that after the SEC contacted the company in April 2015 seeking documents related to hedge accounting, HomeStreet presumed it was in response to a whistleblower complaint and began taking actions to determine the identity of the whistleblower, including asking certain individuals to affirm that they were not the whistleblower. The company went so far to suggest to a presumed whistleblower that the terms of an indemnification agreement could allow HomeStreet to deny payment for any legal costs incurred as a witness during the SEC’s investigation if this person was an SEC whistleblower. HomeStreet also required former employees to sign severance agreements requiring them to waive potential whistleblower awards or risk losing their severance payments and other post-employment benefits. Without admitting or denying the Commission’s Rule

“OWB supported the enforcement of whistleblower protections in FY 2017 by reviewing fact patterns of retaliation and attempts to impede free communications with the SEC...”

³⁸ 15 U.S.C. § 78u-6(h)(1).

³⁹ 17 C.F.R. § 240.21F-17(a).

⁴⁰ *In the Matter of HomeStreet, Inc. and Darrell Van Amen*, Exchange Act Rel. No. 79844, File No. 3-17801 (Jan. 19, 2017).

21F-17 finding, HomeStreet agreed to make reasonable efforts to contact former company employees who signed the Rule 21F-17-violative severance agreements, and provide them with a link to the Commission's order and a statement that HomeStreet does not prohibit former employees from reporting information to the Commission or from seeking and obtaining a whistleblower award from the Commission. HomeStreet additionally agreed to pay a civil money penalty of \$500,000 to the Commission.

The Commission also brought two actions against companies for using language in separation and severance agreements that specifically targeted the Commission's whistleblower rules and incentives. In the first action, brought on December 19, 2016, the Commission announced that Virginia-based technology company NeuStar, Inc. had agreed to settle charges involving severance agreements that impeded at least one former employee from communicating information to the SEC.⁴¹ The Commission's order found that NeuStar, Inc. had violated Exchange Act Rule 21F-17 by routinely entering into severance agreements that forbade former employees from engaging in communications that disparaged the company with the SEC, among other regulators. Former employees could be compelled to forfeit all but \$100 of their severance pay for breaching the clause. NeuStar used these severance agreements with at least 246 departing employees from August 12, 2011 to May 21, 2015. NeuStar voluntarily revised its severance agreements promptly after the SEC began investigating. The company agreed to make reasonable efforts to inform those who signed the severance agreements that NeuStar does not prohibit former employees from communicating any concerns about potential violations of law or regulation to the SEC. Without admitting or denying the SEC's Rule 21F-17 findings, NeuStar also agreed to pay a civil money penalty of \$180,000 to the Commission.

The second action was brought against BlackRock, Inc. for using impermissible language in its separation agreements. The Commission's order found that BlackRock violated Rule 21F-17 because over 1,000 departing BlackRock employees had signed separation agreements containing violative language stating that they "waive any right to recovery of incentives for reporting of misconduct, including, without limitation, under the Dodd-Frank Wall Street Reform and Consumer Protection Act" in exchange for receiving monetary separation payments from the firm. BlackRock added the waiver provision in October 2011 after the SEC adopted Rule 21F-17, and the firm continued using it in its separation agreements until March 2016. Without admitting or denying the Commission's Rule 21F-17 finding, BlackRock agreed to pay a \$340,000 penalty to settle the charges.⁴²

Finally, in FY 2017, the SEC brought an action against a company for violation of both Rule 21F-17 and the whistleblower anti-retaliation provisions of Section 21F(h). On December 20, 2016, the Commission announced an action against SandRidge Energy, Inc. This Oklahoma-based oil and gas company agreed to settle charges that it violated Section 21F(h) of the Exchange Act when it terminated a whistleblower in retaliation for expressing concerns internally about how the company calculated its oil and gas reserves.⁴³ The SEC's order also found that from August 2011 through April 2015, SandRidge had entered into separation agreements that did not permit employees to

41 *In the Matter of NeuStar, Inc.*, Exchange Act Rel. No. 79593, File No. 3-17736 (Dec. 19, 2016).

42 *In the Matter of BlackRock, Inc.*, Exchange Act Rel. No. 79804, File No. 3-17786 (Jan. 17, 2017).

43 *In the Matter of SandRidge Energy, Inc.*, Exchange Act Rel. No. 79607, File No. 3-17739 (Dec. 20, 2016).

voluntarily cooperate with any governmental agency in connection with any complaint or investigation of the company. The order found that SandRidge had conducted multiple reviews of its separation agreements after Rule 21F-17 became effective in August 2011, yet continued to regularly use restrictive language prohibiting outgoing employees from participating in any government investigation or disclosing information potentially harmful or embarrassing to the company. More than 500 former employees signed agreements with the restrictive language. Without admitting or denying the SEC's Rule 21F-17 and retaliation findings, SandRidge agreed to pay a penalty of \$1.4 million.

Protection for Internal Reporting

When the Commission issued the Whistleblower Rules in 2011, it stated that the Dodd-Frank employment retaliation protections apply not only when individuals report potential securities law violations directly to the SEC but also when they, among other things, report internally to their employer, like the whistleblower in the SandRidge Energy matter.⁴⁴ In August 2015, the Commission released interpretive guidance clarifying the interaction of the anti-retaliation provisions and the award provisions of the Whistleblower Rules with respect to the protection of internal reporting under the Dodd-Frank Act. As explained in the interpretive guidance, individuals can report possible securities law violations internally, through their companies' respective reporting structures, and still be protected if they then suffer adverse employment consequences—even if they have not reported such information to the SEC in the manner required to qualify for an award under the Whistleblower Rules.⁴⁵

The Commission has filed several *amicus curiae* briefs in support of whistleblowers in private retaliation lawsuits in district and appellate courts urging the courts to defer to the Commission's rule that individuals are entitled to employment retaliation protection if they report information of a possible securities violation internally at a publicly-traded company, regardless of whether they have separately reported the information to the SEC.⁴⁶ As the SEC has explained in these *amicus* filings, ensuring that employees are protected from employment retaliation whenever they report possible securities law violations, whether internally or to the SEC, is critical to the SEC's enforcement efforts. Put simply, if individuals are not assured they will be protected from retaliation if they report internally, they will be less likely to report internally, which could undermine the important role that internal compliance programs play in helping the Commission prevent, detect, and stop securities law violations.

44 17 C.F.R. § 240.21F-2(b)(1). The anti-retaliation protections apply whether or not the individual satisfies the requirements to qualify for an award. *Id.* § 240.21F-2(b)(1)(ii).

45 The SEC's interpretive guidance may be found on OWB's webpage, www.sec.gov/whistleblower/retaliation, and also has been published in the Federal Register at 80 Fed. Reg. 47,829 (Aug. 10, 2015).

46 See *Danon v. Vanguard Grp., Inc.*, 686 F. App'x 101 (3d Cir. 2017) (*amicus* filed Oct. 26, 2016); *Duke v. Prestige Cruises Int'l, Inc.*, No. 16-15426 (11th Cir., *amicus* filed Jan. 31, 2017); *Deykes v. Cooper-Standard Auto., Inc.*, No. 16-2740 (6th Cir. July 17, 2017) (*amicus* filed Feb. 22, 2017); *Verfueth v. Orion Energy Sys., Inc.*, No. 16-3502 (7th Cir., *amicus* filed May 5, 2017); see also, e.g., *Somers v. Digital Realty Trust, Inc.*, 850 F.3d 1045 (9th Cir. 2017) (*amicus* filed May 25, 2016); *Verble v. Morgan Stanley Smith Barney LLC*, 676 F. App'x 421 (6th Cir. 2017) (*amicus* filed Feb. 1, 2016); *Beacom v. Oracle Am., Inc.*, 825 F.3d 376 (8th Cir. 2016) (*amicus* filed Aug. 19, 2015); *Berman v. Neo@Ogilvy LLC*, 801 F.3d 145 (2d Cir. 2015) (*amicus* filed Feb. 6, 2015); *Safarian v. Am. DG Energy, Inc.*, 622 F. App'x 149 (3d Cir. 2015) (*amicus* filed Dec. 11, 2014); *Liu Meng-Lin v. Siemens AG*, 763 F.3d 175 (2d Cir. 2014) (*amicus* filed Feb. 20, 2014); *Sandford Wadler v. Bio-rad Labs., Inc.*, 141 F. Supp. 3d 1005 (N.D. Cal. 2015) (*amicus* filed Dec. 13, 2016); *Stroh v. Saturna Capital Corp.*, 16-cv-00283-TSZ (W.D. Wash. Aug. 4, 2016) (*amicus* filed May 20, 2016); *Davies v. Broadcom Corp.*, 130 F. Supp. 3d 1343 (C.D. Cal. 2015) (*amicus* filed Sept. 8, 2015); *Wiggins v. ING U.S., Inc.*, 2015 WL 3771646 (D. Conn. June 17, 2015) (*amicus* filed June 16, 2015).

The federal courts of appeals are divided over whether the Dodd-Frank anti-retaliation protections apply to employees who report potential violations of the securities laws internally without also reporting directly to the Commission. Most recently, in *Somers v. Digital Realty Trust, Inc.*, the United States Court of Appeals for the Ninth Circuit agreed with the United States Court of Appeals for the Second Circuit's decision in *Berman v. Neo@Ogilvy LLC* by finding that Congress did not intend to limit protections to those who disclose information to the SEC.⁴⁷ Rather, the anti-retaliation provision also protects those who were fired or otherwise retaliated against after making internal disclosures of alleged unlawful activity under the Sarbanes-Oxley Act and other laws, rules, and regulations. The Ninth Circuit agreed with the Second Circuit that even if the statute were ambiguous, the SEC's regulation resolved any ambiguity, and was entitled to deference. The United States Court of Appeals for the Fifth Circuit in *Asadi v. G.E. Energy (USA), L.L.C.*,⁴⁸ however, found to the contrary.

On June 26, 2017, on the basis of the circuit split, the United States Supreme Court granted certiorari in *Digital Realty Trust, Inc. v. Somers* to address the scope of Dodd-Frank's anti-retaliation protections.⁴⁹ On October 17, 2017, the United States Solicitor General, acting on behalf of the Department of Justice and joined by the Commission, filed an *amicus curiae* brief in the Supreme Court in support of the whistleblower-respondent. The United States' *amicus curiae* brief in support of the whistleblower in *Digital Realty* continues the Commission's advocacy efforts and urges the Supreme Court to recognize that Dodd-Frank's statutory language, its legislative history, and the Commission's rules require that individuals who internally report potential securities violations at a publicly-traded company are entitled to employment retaliation protection, regardless of whether they have separately reported that information to the Commission.

⁴⁷ 850 F.3d 1045 (9th Cir. 2017) (agreeing with *Berman*, 801 F.3d 145, 155 (2d Cir. 2015)).

⁴⁸ 720 F.3d 620, 621 (5th Cir. 2013).

⁴⁹ 137 S. Ct. 2300 (U.S. June 26, 2016) (No. 16-1276).

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.⁵⁰ Whistleblowers who use the online portal to submit a complaint receive a computer-generated confirmation of receipt with a TCR submission number. For those who submit a hard-copy Form TCR by mail or fax, OWB sends an acknowledgement letter, which includes a TCR submission number, or a deficiency letter explaining that the information was not properly submitted under the Whistleblower Rules. All whistleblower tips related to potential securities law violations received by the Commission are entered into the TCR System and are evaluated by the Commission's Office of Market Intelligence within the Division of Enforcement.

Increase in Whistleblower Tips

Across the history of the whistleblower program, the Commission's receipt of whistleblower tips has reflected an upward trajectory. Since August 2011, the Commission has received over 22,000 whistleblower tips, and in FY 2017 alone, received more than 4,400 tips. The table below shows the number of whistleblower tips received by the Commission on a yearly basis since the inception of the whistleblower program⁵¹:

FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017
334	3,001	3,238	3,620	3,923	4,218	4,484

As reflected in this table, from FY 2012, the first year for which we have full-year data, to FY 2017, the number of whistleblower tips received by the Commission has grown by almost 50 percent.

“Across the history of the whistleblower program, the Commission's receipt of whistleblower tips has reflected an upward trajectory.”

⁵⁰ 17 C.F.R. § 240.21F-9(a).

⁵¹ The Commission also receives tips from individuals who do not wish, or are not eligible, to be considered for an award under the whistleblower program. The data in this report is limited to those TCRs that include the required whistleblower declaration and does not reflect all tips or complaints received by the Commission during the fiscal year.

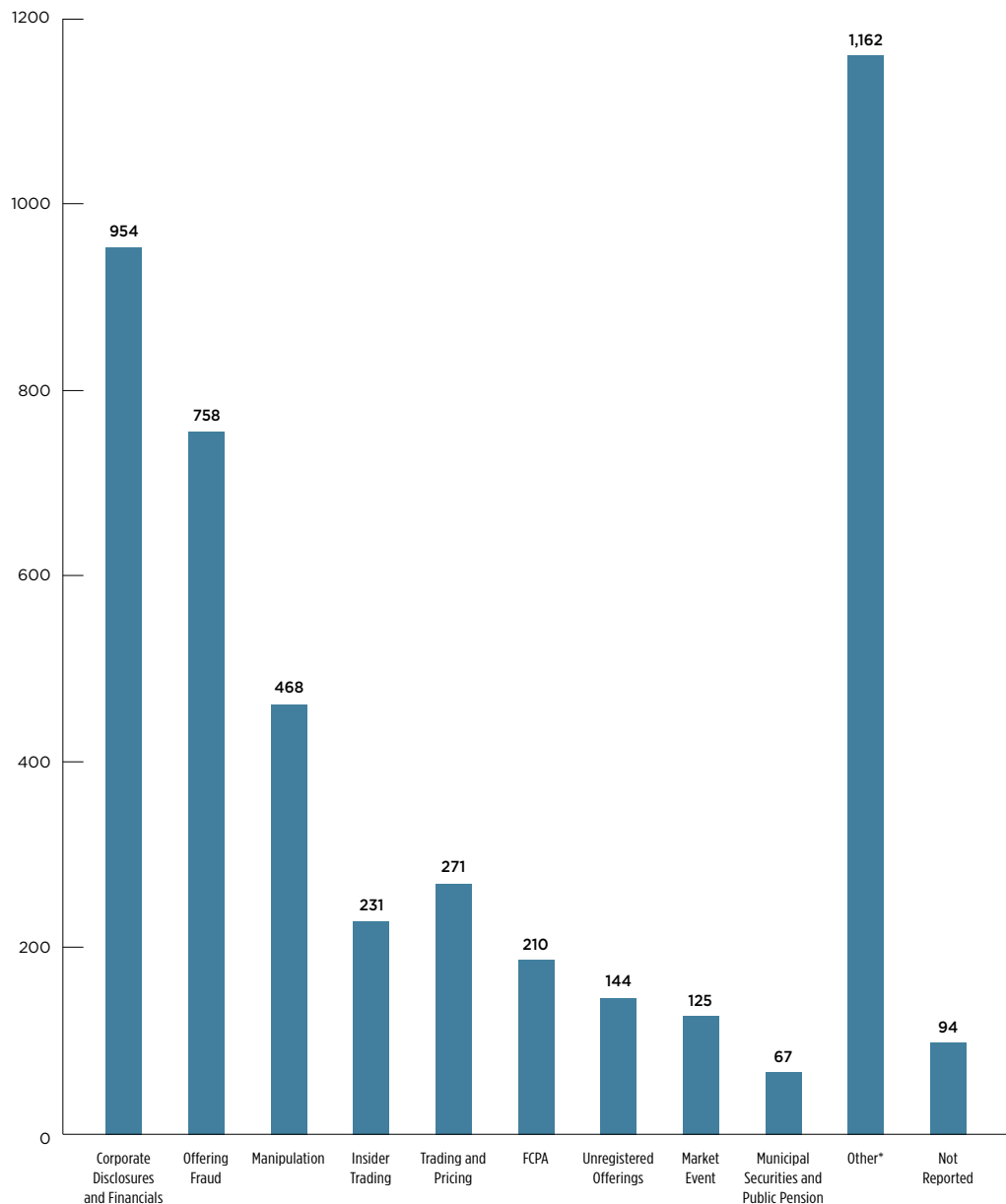
Because the Whistleblower Rules became effective on August 12, 2011, only seven weeks of whistleblower data was available for FY 2011.

For FY 2016 and 2017, the Commission received an unusually high number of whistleblower tips from two individuals. The data for FY 2016 and 2017 excludes tips received from these two individuals—both in this section of the report and in the appendices to this report.

Whistleblower Allegation Type

Whether submitting their tips on Form TCR or through the online portal, whistleblowers are asked to identify the nature of their complaint allegations. For FY 2017, the most common complaint categories reported by whistleblowers were 19 percent Corporate Disclosures and Financials, 18 percent Offering Fraud, and 12 percent Manipulation.⁵²

The following graph reflects the number of whistleblower tips received in FY 2017 by allegation type⁵³:



⁵² This breakdown reflects the categories selected by whistleblowers and, thus, the data represents the whistleblower's own characterization of the violation type.

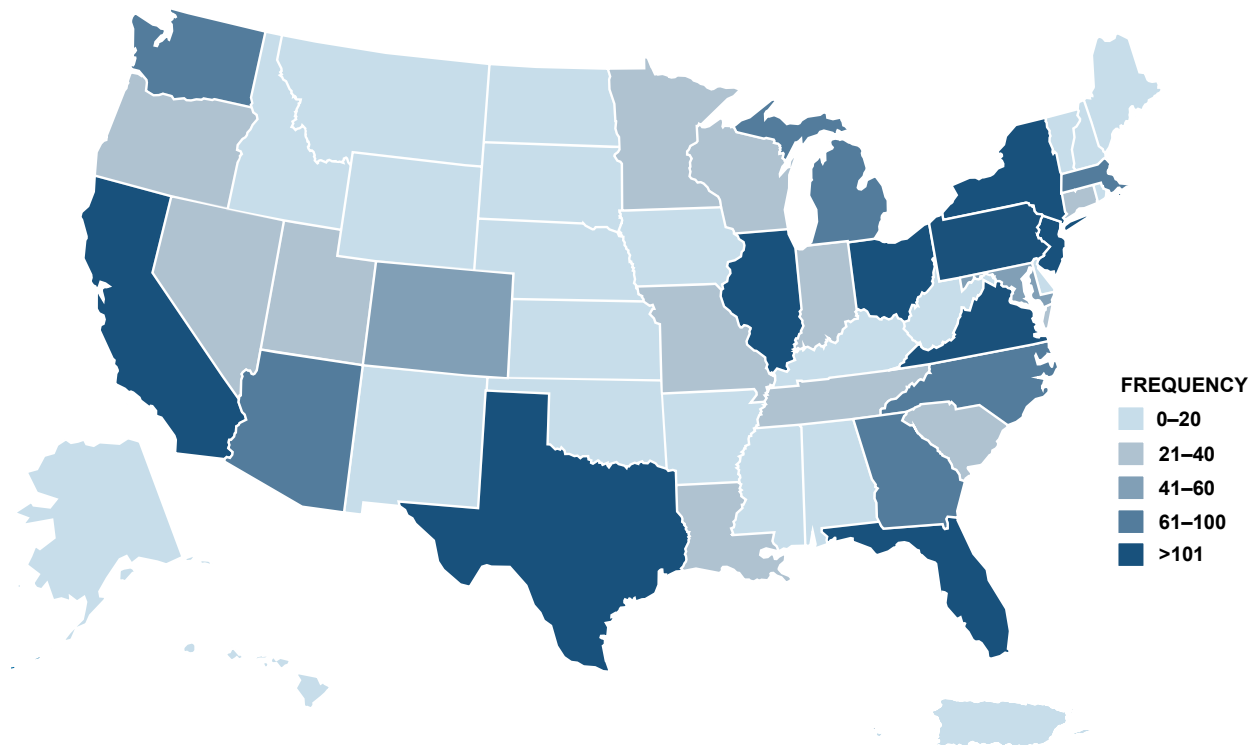
⁵³ The category of "Other" indicates that the submitter identified the whistleblower TCR as not fitting into any allegation category that is listed on the questionnaire.

The type of securities violations reported by whistleblowers has remained generally consistent over the last six years. Since the beginning of the program, Corporate Disclosures and Financials, Offering Fraud, and Manipulation have consistently ranked as the three highest allegation types reported by whistleblowers. Appendix A to this report provides a comparison among the number of whistleblower tips by allegation type that the Commission received during FY 2014 through 2017.

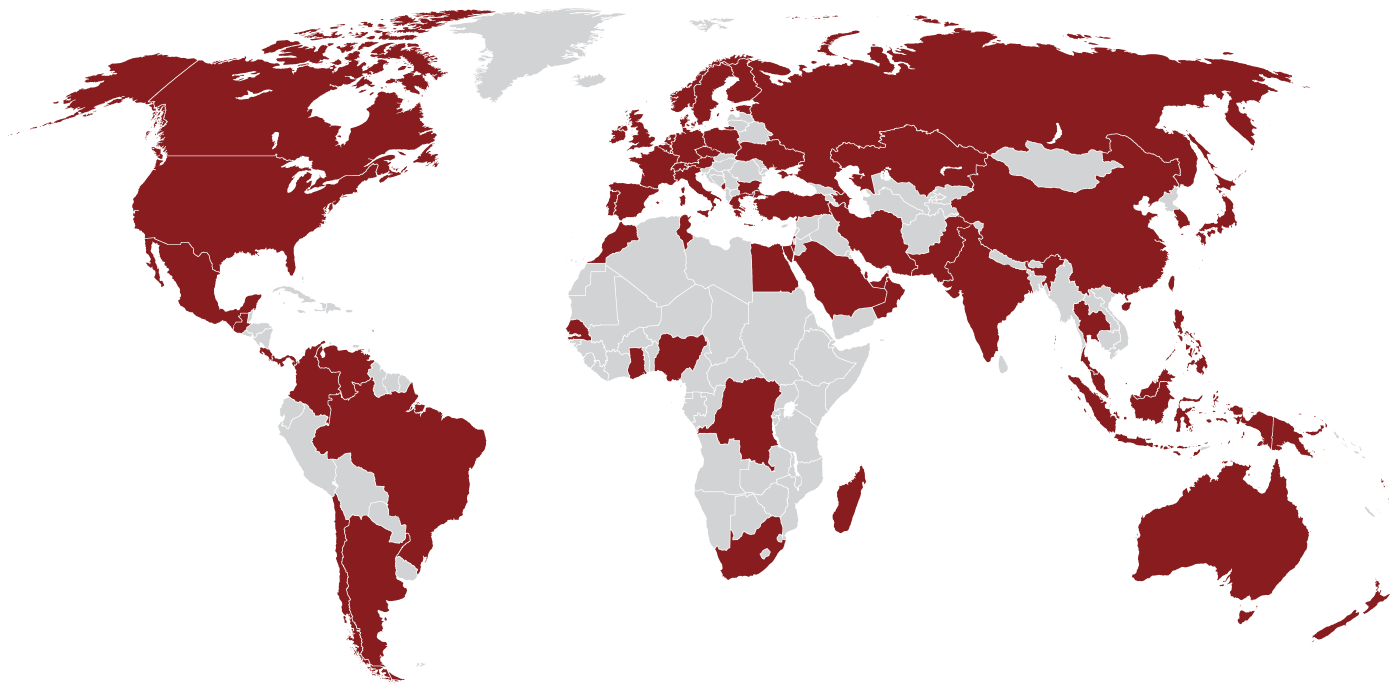
Geographic Origin of Whistleblower Tips

Through OWB's extensive outreach efforts to publicize and promote the Commission's whistleblower program, the Commission continues to receive whistleblower submissions from individuals throughout the United States, as well as internationally.

During FY 2017, California, New York, Texas, Florida, and New Jersey yielded the highest number of whistleblower tips.



Since the beginning of the whistleblower program, the Commission has received whistleblower tips from individuals in 114 countries outside the United States. In FY 2017 alone, the Commission received whistleblower submissions from individuals in 72 foreign countries. After the United States, OWB received the highest number of whistleblower tips in FY 2017 from individuals in the United Kingdom, Canada, and Australia. The map below reflects all countries in which whistleblower tips originated during FY 2017.



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 2017.

PROCESSING OF WHISTLEBLOWER TIPS

The Office of Market Intelligence (OMI), within the Commission's Division of Enforcement, evaluates incoming whistleblower TCRs and assigns specific, credible, and timely TCRs to members of the Commission staff for further investigation or analysis.

TCR Evaluation

OMI reviews every TCR submitted by a whistleblower to the Commission that alleges a possible securities law violation. During the evaluation process, OMI staff 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 warrants further review, OMI staff assigns the complaint to one of the Commission's eleven regional offices, a specialty unit, or to an Enforcement group in the Home Office. Complaints that relate to an existing investigation are forwarded to the staff working on the matter.

The Commission may use information from whistleblower tips and complaints 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 active investigation. Tips may also prompt the Commission to commence an examination of a regulated entity, which may lead to an enforcement action or to the entity correcting the problem or clarifying an issue.

As noted previously, OWB actively tracks whistleblower tips that are referred to Enforcement staff for investigation. OWB currently is tracking over 700 matters in which a whistleblower's tip has caused a Matter Under Inquiry or investigation to be opened or which have been forwarded to Enforcement staff for review and consideration in connection with an ongoing investigation. However, not all of these matters will result in an enforcement action, or an enforcement action where the required threshold of over \$1 million in monetary sanctions will be ordered.

In general, the more specific, credible, and timely a whistleblower tip, the more likely it is that the tip will be forwarded to investigative staff for further follow-up 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, or which do not relate to the federal securities laws, are less likely to be forwarded to or investigated by Enforcement staff.

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

“ In general, the more specific, credible, and timely a whistleblower tip, the more likely it is that the tip will be forwarded to investigative staff for further follow-up or investigation.”

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.

Assistance by OWB

OWB supports the tip allocation and investigative processes in several ways. When whistleblowers submit tips on a Form TCR in hard-copy by mail or fax, OWB enters the information into the TCR System so it can be evaluated by OMI. Tips submitted by whistleblowers through the Commission's online portal are automatically forwarded to OMI for evaluation. During the evaluation process, OWB may assist by contacting the whistleblower to obtain additional information to help in the triage process.

After submitting an initial tip, a whistleblower is free to, and often does, submit additional information or materials to buttress his or her earlier allegations. Ideally, additional information is sent to OWB in hard-copy by mail or fax and includes the original TCR submission number. OWB then uploads the additional information into the TCR System and sends an acknowledgement letter to the whistleblower confirming receipt of the information or materials. Additional information can also be submitted via the portal, but reference should be made to the original TCR submission number.

SECURITIES AND EXCHANGE COMMISSION INVESTOR PROTECTION FUND

Section 922 of the Dodd-Frank Act established the Investor Protection Fund to provide funding for the Commission’s whistleblower award program, including the payment of awards in related actions.⁵⁴ 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.⁵⁵ The suggestion program is intended for the receipt of suggestions from Commission employees for improvements in work efficiency, effectiveness, productivity, and the use of resources at the Commission, as well as allegations by Commission employees of waste, abuse, misconduct, or mismanagement within the Commission, and is operated outside of OWB.⁵⁶

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 2017.

	FY 2017
Balance of Fund at beginning of fiscal year	\$ 368,116,007.44
Amounts deposited into or credited to Fund during fiscal year	\$ 0.00 ⁵⁷
Amount of earnings on investments during fiscal year	\$ 2,734,295.64
Amount paid from Fund during fiscal year to whistleblowers	\$ (49,041,304.95)
Amount disbursed to Office of the Inspector General during fiscal year	\$ (129,324.76)
Balance of Fund at end of the fiscal year	\$ 321,679,673.37

In addition, Section 21F(g)(5) of the Exchange Act requires 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.

⁵⁴ Section 21F(g)(2)(A) of the Exchange Act, 15 U.S.C. § 78u-6(g)(2)(A).

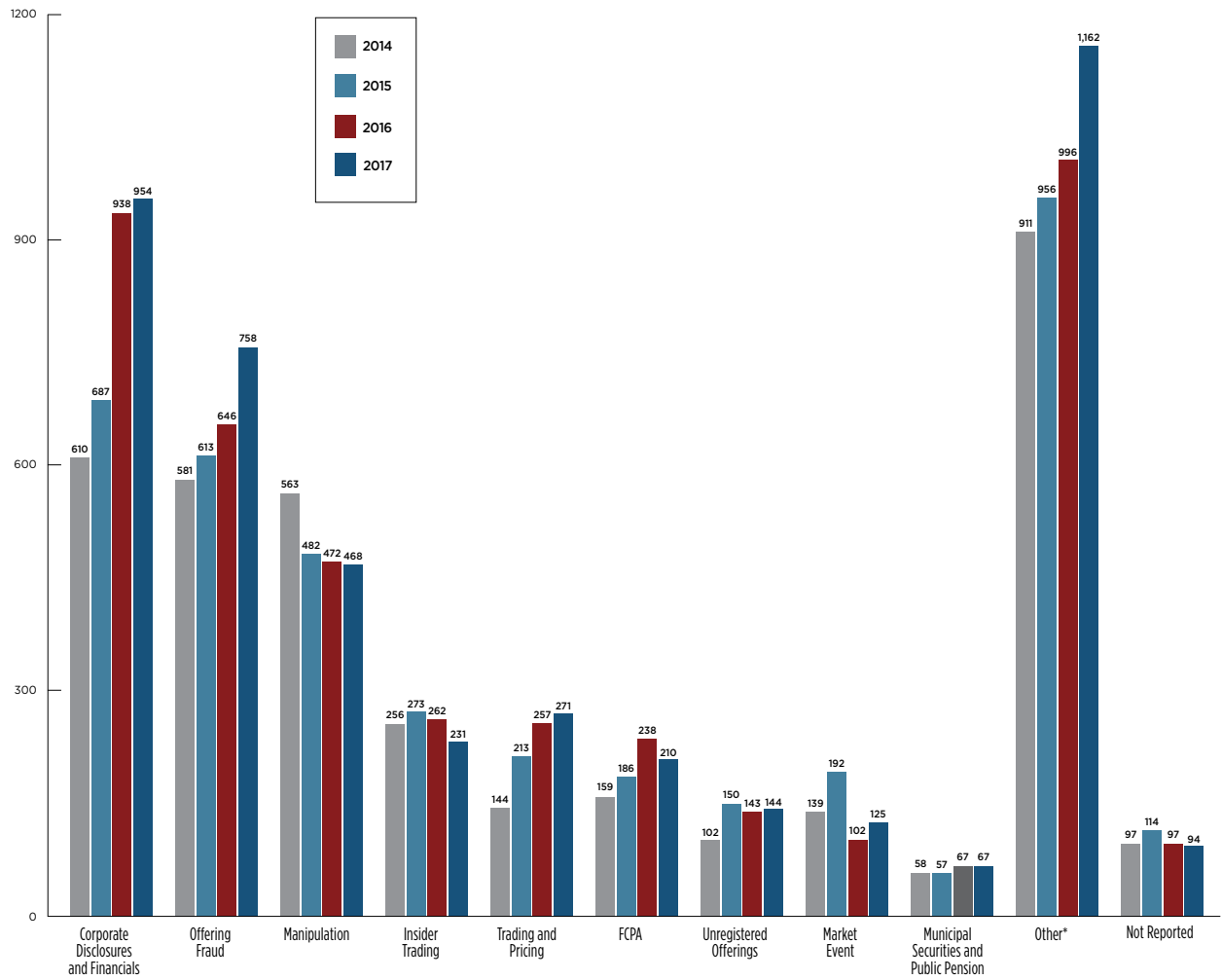
⁵⁵ Section 21F(g)(2)(B) of the Exchange Act, 15 U.S.C. § 78u-6(g)(2)(B), provides that the Fund shall be available to the Commission for “funding the activities of the Inspector General of the Commission under section 4(i).” The Commission’s Office of General Counsel has interpreted this section to refer 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).

⁵⁶ Section 4D(a) of the Exchange Act, *id.* § 78d-4(a).

⁵⁷ Pursuant to Section 21F(g)(3) of the Exchange Act, no monetary sanctions are deposited into or credited to the Fund if the balance of the Fund exceeds certain thresholds at the time the monetary sanctions are collected. *Id.* § 78u-6(g)(3).

APPENDIX A

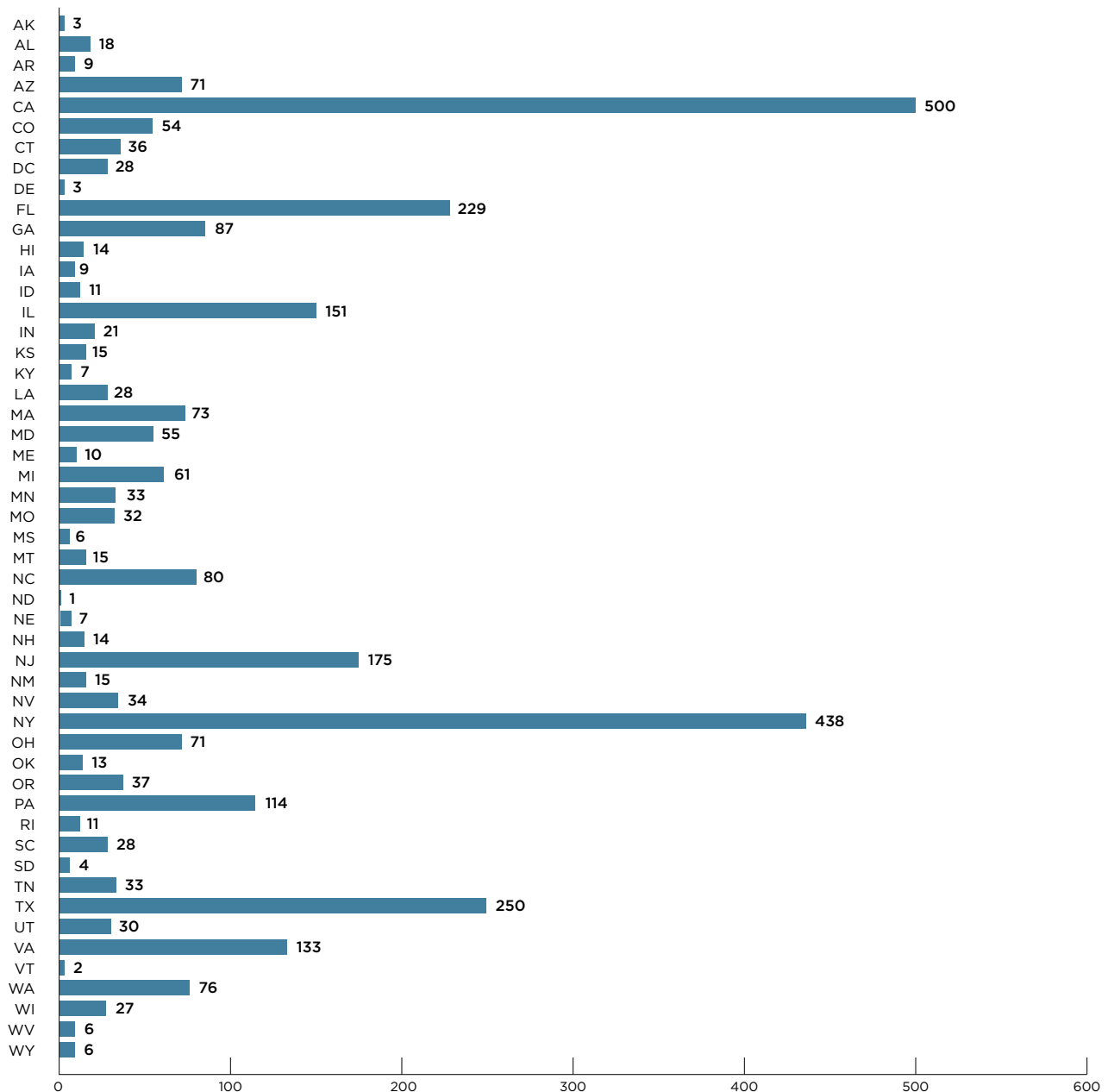
WHISTLEBLOWER TIPS BY ALLEGATION TYPE COMPARISON OF FISCAL YEARS 2014-2017



*The category of "Other" indicates that the submitter identified the whistleblower TCR as not fitting into any allegation category that is listed on the questionnaire.

APPENDIX B

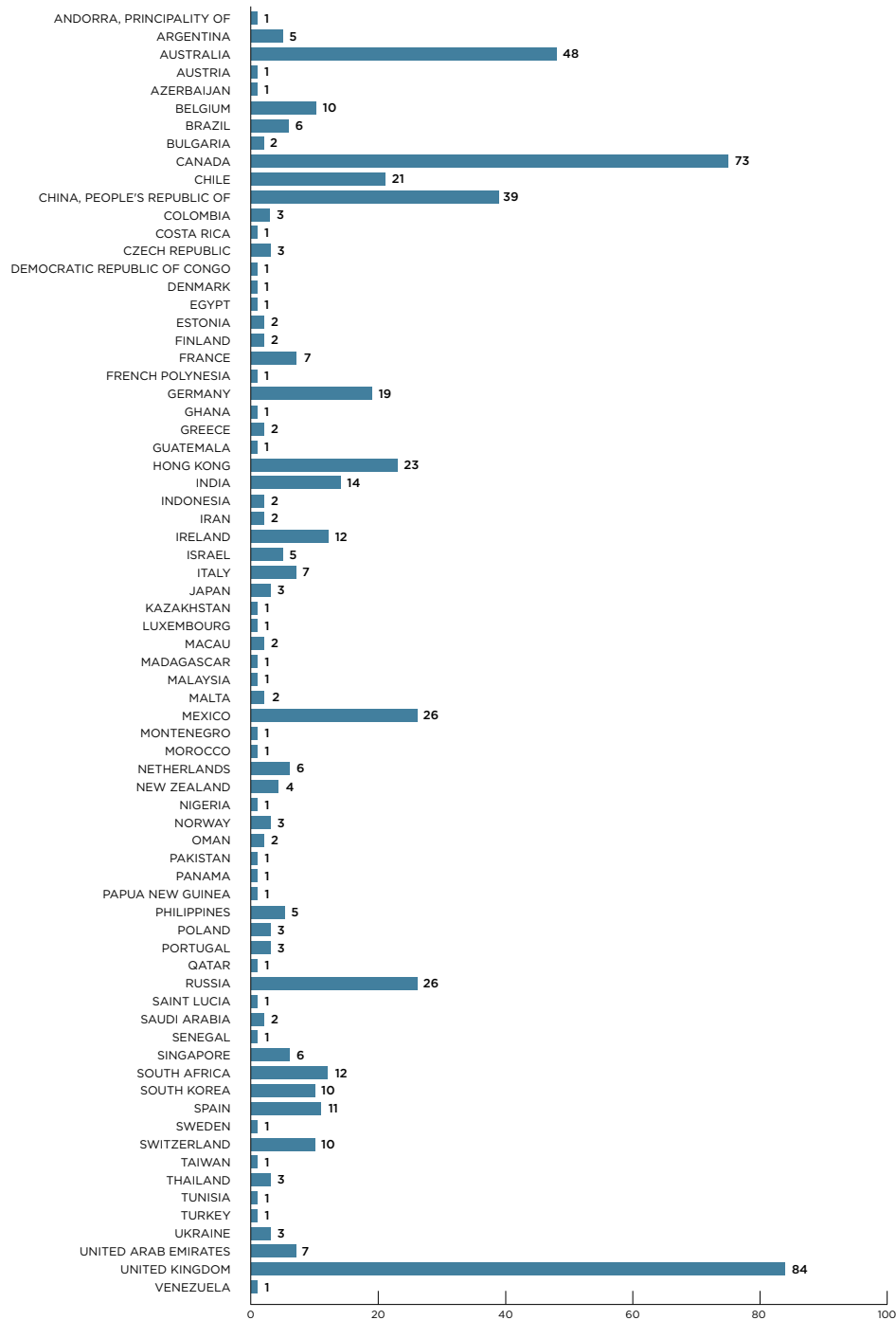
WHISTLEBLOWER TIPS RECEIVED BY GEOGRAPHIC LOCATION UNITED STATES AND ITS TERRITORIES, FISCAL YEAR 2017*



*Multiple individuals may jointly submit a TCR under the Commission's whistleblower program. Appendix B reflects the number of individuals submitting WB TCRs to the Commission within the United States, or one of its territories, and not the total number of domestic WB TCRs received by the Commission during FY 2017. For example, a WB TCR that is jointly submitted by two individuals—one in New York and one in New Jersey—would be reflected in Appendix B as a submission from both New York and New Jersey. The total number of individuals submitting WB TCRs in the United States or a U.S. territory during FY 2017 exceeded 3,100 and constituted about 68 percent of the individuals participating in the Commission's whistleblower program for this period. Additionally, over 900 individuals, constituting approximately 20 percent of the total number of persons participating in the Commission's whistleblower program in FY 2017, submitted WB TCRs without any foreign or domestic geographical categorization or submitted them anonymously through counsel.

APPENDIX C

WHISTLEBLOWER TIPS RECEIVED BY GEOGRAPHIC LOCATION INTERNATIONAL, FISCAL YEAR 2017*



*As with domestic WB TCRs, multiple individuals from abroad may jointly submit a TCR under the Commission's whistleblower program. Appendix C reflects the number of individuals submitting WB TCRs to the Commission from abroad, and not the total number of foreign WB TCRs received during FY 2017. The number of individuals submitting WB TCRs from abroad during FY 2017 exceeded 550, and constituted approximately 12 percent of the individuals participating in the Commission's whistleblower program.

OFFICE OF THE WHISTLEBLOWER

Washington, DC