

A Look At SEC, CFTC's Record Year For Whistleblower Awards

By **Andrew Feller and Geoff Schweller** (December 13, 2024)

Since they were established with the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010, the whistleblower programs at the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission have emerged as the gold standard for whistleblower award programs.

Through anonymous reporting channels, strong antiretaliation protections and monetary awards, they have incentivized whistleblowers to come forward with high-quality information about securities and commodities fraud, greatly bolstering the two agencies' enforcement efforts.

In late November and early December, respectively, the whistleblower offices of both the SEC[1] and CFTC[2] released their annual reports for the 2024 fiscal year. The reports show that the programs continue to thrive as they brought in record numbers of whistleblower tips and awarded hundreds of millions of dollars to eligible whistleblowers. The reports also lay out the main areas of fraud being reported through the whistleblower programs and highlight both agencies' increased efforts to crack down on companies' attempts to impede whistleblower communications.

While the SEC and CFTC whistleblower programs remain hugely successful, legislative reforms are needed. This need is particularly pressing for the CFTC's program, which is threatened by a funding crisis due in part to its immense growth in recent years.[3]

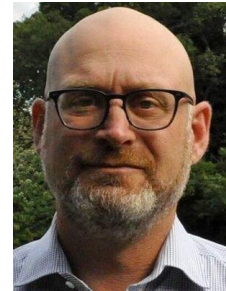
Whistleblower programs are central to enforcement efforts.

Over the years, officials at both the SEC and CFTC have repeatedly praised their agency's whistleblower programs and stressed their importance to enforcement efforts. In this year's SEC report, Creola Kelly, chief of the SEC's Office of the Whistleblower, said, "Whistleblowers play a valuable role in helping to protect the U.S. financial markets by bringing the Commission information about potential securities law violations."

The statistics provided in the annual reports demonstrate just how important these programs are. Most notably, the CFTC reports that "about 42% of the CFTC's enforcement matters involve whistleblowers."

During fiscal year 2024, the CFTC granted 12 whistleblower awards to individuals whose disclosures resulted in the collection of approximately \$162 million in sanctions. Overall, whistleblower disclosures have allowed the CFTC to recover over \$3.2 billion.

While the SEC report does not state the percentages of matters involving whistleblowers, nor the amount of sanctions collected thanks to whistleblowers in fiscal year 2024, the amount awarded to whistleblowers in fiscal year 2024 gives a clue into how much whistleblowers contributed to the SEC's enforcement efforts.



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The SEC awarded over \$255 million to eligible whistleblowers in fiscal year 2024. Because whistleblower awards are based on a percentage — 10% to 30% — of the sanctions collected in the enforcement action aided by the disclosure, the SEC thus collected somewhere between approximately \$855 million and \$2.55 billion in the whistleblower-assisted cases for which they provided awards in fiscal year 2024.

The number of whistleblower tips continues to grow.

The 2024 fiscal year was a record year for both the SEC and CFTC whistleblower programs in terms of whistleblower tips received. The SEC reports that it received a record 24,980 whistleblower disclosures, surpassing last fiscal year's record of 18,354.

There is a significant asterisk, however. The SEC revealed that approximately 14,000 of this year's tips, and approximately 7,000 of last year's, were filed by just two individuals, raising important questions about how the SEC controls against such potentially abusive practices. Even taking this into account, the program has clearly grown significantly in recent years, given that as recently as fiscal year 2020, the program received only 6,911 tips.

The CFTC's program has likewise been steadily growing year after year, reporting that in fiscal year 2024, it received a record 1,744 whistleblower tips. As recently as fiscal year 2019, the CFTC's whistleblower program only received 455 tips. It has now received over 1,000 tips four out of the past five years, and has set new records each of the past three.

These record numbers of whistleblower tips continue a trend of rapid growth for the two programs, and are a sign that whistleblowers are increasingly aware of the programs and are being properly incentivized by the promises of anonymity, protection from retaliation and potential for monetary awards.

The main topics of whistleblower disclosures include emergent areas and standard frauds.

In their reports, the SEC and CFTC detailed the main topics covered by the whistleblower disclosures received in fiscal year 2024. The wide range of frauds being reported by whistleblowers includes emerging areas like cryptocurrency fraud^[4] and more long-standing fraud types like market manipulation.^[5]

According to the SEC, market manipulation (37%), offering fraud (21%), initial coin offerings and crypto-asset securities (8%), and corporate disclosures and financials (8%) were the most common complaint categories.

The CFTC reports that 28% of whistleblower tips it received reported fraud related to cryptocurrency and digital assets "with many scams stemming from online communications (e.g. pump and dump, fraudulent representations of opportunities, and refusal to honor customer requests to withdraw funds)." The report further details that "a smaller percent of whistleblower tips related to registration violations, insider trading, retail sale of metals, spoofing and other types of disruptive trading or market manipulation."

While the agencies' whistleblower programs remain core to all their enforcement efforts, they are clearly central to increased efforts to crack down on fraud within the crypto and digital assets space.

Whistleblower programs remain international in scope.

Given the broad jurisdiction of both the SEC and CFTC, under the agencies' whistleblower programs, whistleblowers from all across the globe may report misconduct occurring overseas. In the past, the SEC detailed the number of tips received from foreign countries, totaling 5,044 tips through fiscal year 2021.[6]

In recent years, the SEC report has not included these details, but this year it notes that in fiscal 2024, the highest number of tips from foreign companies originated in Canada, the U.K., India, Australia and Germany.

According to the CFTC report, the program received whistleblower tips from 64 different reported countries, with the foreign countries with the most tips coming from the U.K., Chile, India, Spain and South Africa.

Commissions increase focus on cracking down on restrictive agreements that impede whistleblowing.

Both the SEC and CFTC have rules that prohibit companies from taking any action that impedes the ability of individuals to blow the whistle on potential violations. Most notably, these rules cover restrictive nondisclosure agreements[7] and other employment agreements.

The SEC report states that "FY 2024 was a blockbuster year for whistleblower protection matters," highlighting the fact that the SEC brought 11 enforcement actions concerning Exchange Act Rule 21F-17 "sending a strong message about the importance of an unobstructed avenue for whistleblowers to communicate with the Commission." According to the report, the SEC "brought more enforcement actions in this area than in any prior fiscal year and more than double the number brought in FY 2023."

The CFTC report highlights a June enforcement action taken against Trafigura Trading LLC, in which the company agreed to pay \$55 million for fraud, manipulation and impeding whistleblower communications with the CFTC.[8] The CFTC notes that "this action was groundbreaking because it was the first time in CFTC history that the Commission charged a company for using agreements intended to prevent whistleblowers from communicating with the CFTC."

The attention paid to these enforcement actions in the annual reports reaffirms that both the SEC and CFTC are increasing their focus on cracking down on restrictive agreements that impede whistleblowing.[9]

Award processing delays and the CFTC funding crisis underscore the need for reforms.

Despite the significant awards issued to whistleblowers in fiscal year 2024, the number of awards being issued has not kept up with the growth in whistleblower tips and whistleblower award applications. Instead, it reflects serious delays in the processing of award applications.

While the processing times are not discussed in the reports, even meritorious whistleblower award claims often sit in limbo for four years or more before they are acted on. Those delays cause real harm to whistleblowers who have often sacrificed their careers to report wrongdoing.

While the whistleblower programs continue to thrive, these award processing delays threaten to undermine their success. Congressional action is thus needed on this issue. Introduced in 2023, the bipartisan SEC Whistleblower Reform Act aims to ensure the prompt payment of whistleblower awards by setting mandatory deadlines for the SEC to issue award determinations.[10]

An even more pressing issue is the funding crisis threatening the CFTC's whistleblower program. In establishing the program, Congress placed a \$100 million cap on the fund that finances the program and its award payments. This fund is entirely financed by sanctions collected thanks to whistleblowers, but due to the cap, only a small percentage of collected sanctions have been placed into the fund.

Thus, due to this arbitrary cap, which is clearly not compatible with the recent growth of the program, a large whistleblower award could deplete the fund, which would essentially shut down the program.

Congress passed an emergency bill in 2021 establishing a separate fund for the operations of the CFTC's program, but this measure expired at the end of fiscal year 2024. Immediate congressional action to pass another emergency measure, as well as the passage of longer-term solutions like those found in the bipartisan CFTC Fund Management Act, is necessary to ensure the survival of the CFTC's whistleblower program.[11]

Conclusion

The fiscal year 2024 annual reports for the SEC and CFTC's whistleblower programs reveal that they continue to thrive and remain the gold standard of whistleblower award programs. In fiscal year 2024, the programs brought in a record number of tips from across the globe covering a wide range of frauds, and whistleblowers remain central to the agencies' enforcement efforts.

However, to ensure that these programs not only survive but continue to thrive, congressional action is needed in the new year.

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[1] <https://www.sec.gov/files/fy24-annual-whistleblower-report.pdf>.

[2] <https://www.whistleblower.gov/sites/whistleblower/files/2024->

11/FY24%20Customer%20Protection%20Fund%20Annual%20Report%20to%20Congress.pdf.

[3] <https://www.jdsupra.com/legalnews/emergency-congressional-action-needed-7082223/>.

[4] <https://kkc.com/frequently-asked-questions/digital-asset-and-crypto-investment-scams/>.

[5] <https://kkc.com/frequently-asked-questions/what-is-market-manipulation/>.

[6] <https://kkc.com/foreign-sec-whistleblower-tips-country/>.

[7] <https://kkc.com/frequently-asked-questions/the-sec-whistleblower-program-and-non-disclosure-agreements-ndas/>.

[8] <https://kkc.com/media/cftc-begins-its-enforcement-of-nda-rule-with-action-against-trafigura/>.

[9] <https://kkc.com/blog/sec-continues-to-elevate-its-enforcement-of-rule-21f-17a/>.

[10] <https://whistleblowersblog.org/corporate-whistleblowers/sec-whistleblowers/former-acting-chair-of-sec-calls-for-sec-whistleblower-reform-bill/>.

[11] <https://whistleblowersblog.org/editorial/cftc-whistleblower-program-doomed-without-congressional-intervention/>.