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THE SEC WHISTLEBLOWER PRACTICE GUIDE

Navigating the U.S. Securities and Exchange Commission Whistleblower Program

and the Rules and Procedures That Can Lead to Financial Rewards

for Reporting Securities Violations

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INTRODUCTION AND BACKGROUND

The goal of this Practitioner's Guide is to explain the rules and procedures of the U.S. Securities and Exchange Commission ("SEC" or "the Commission") Whistleblower Program to assist whistleblowers and their counsel in submitting their tips in a form and manner that will protect the public and earn financial awards for their role in helping to regulate and enforce commodities laws. The Practice Guide contains an up-to-date explanation of the expanding protections for employees who seek to blow the whistle on securities violations and for those who experience retaliation for their courage in speaking up to protect investors. This 2023 edition also features an appendix that provides the dates, amounts, and summaries of other available information for every whistleblower award the SEC has issued to date.

A. What is the SEC?

The SEC is an independent agency with regulatory authority over the issuance and trading of securities pursuant to the Securities Act of 1933 ("Securities Act"), the Securities Exchange Act of 1934 ("Exchange Act"), the Investment Company Act of 1940, the Investment Advisers Act of 1940, and the Sarbanes-Oxley Act of 2002, among other statutes. The SEC's mandate is to protect investors, prevent market manipulation, and provide a trustworthy environment in which to raise capital. The Commission pursues these goals mainly by ensuring the equal and transparent dissemination of material information about the financial results and business operations of publicly traded companies. The SEC enforces the statutory requirements to file truthful registration statements and annual and quarterly reports, among other documents, and issues regulations delineating what public companies must include in these reports. The SEC's authority is not limited to publicly traded companies as it also regulates broker-dealers of securities and institutional investors and can use its expansive authority to prosecute securities fraud to take action against privately-held companies.

In FY2022, the SEC was very active, filing 706 enforcement actions and imposing over $6.4 billion in monetary sanctions.[1] The SEC's enforcement efforts resulted in, among other notable examples, $1.235 billion in penalties levied against seventeen financial institutions, including JP Morgan, Citi, and other household names, for systematic violations of the Commission's record-keeping requirements. In addition to monetary penalties, these institutions agreed to a host of undertakings designed to remediate past violations and to prevent future ones. Like for many other regulators, the cryptocurrency industry was a priority for the SEC, which doubled the number of staff tasked to matters regarding digital assets, and its enforcement actions against the cryptocurrency industry, such as charges stemming from BlockFi's cryptocurrency lending platform, consistently made headlines throughout the year. Notably, 14 percent, or 1,718, of the tips the SEC received from whistleblowers in FY2022 related to cryptocurrency industry.[2]

In FY2023, the SEC continued its fast pace of activity, filing 784 enforcement actions and obtained orders for $4.949 billion in financial remedies, including $1.58 billion in penalties.[2.1] The SEC expanded its efforts to enforce its record-keeping requirements, securing a $400 million settlement with twenty-five advisory firms, broker-dealers, and credit rating agencies including Wells Fargo and HSBC.[2.2] Digital assets and cryptocurrencies remained a top priority for the SEC, and the Commission took enforcement actions regarding frauds perpetrated by, among others, Terraform Labs and its founder Do Kwon and FTX, its founder Sam Bankman-Fried, and other FTX executives.[2.3] The SEC also took actions

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against firms such as Gemini, Kraken, and Nexo for offering unregistered securities through cryptocurrency asset lending and staking programs, the latter two of which agreed to cease their unregistered offerings and to pay $30 million and $22.5 million, respectively, in civil penalities.[2,4] Once again, 14 percent of all tips submitted to the SEC, or 2,510 of 18,354 tips, related to the cryptocurrency industry.[2,5] The SEC also took several actions to enforce the Foreign Corrupt Practices Act, securing a $62 million settlement with Koninklijke Philips N.V. over bribery in Chinese hospitals and a $100 million settlement against Albemarle Corporation over bribery schemes in Vietnam, India, and Indonesia.[2,6]

B. Background of the Dodd-Frank Act

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank"), which created the SEC Whistleblower Program, was one of a series of significant federal financial reforms that began with passage of the Sarbanes-Oxley Act ("SOX") in 2002.[3] Public outrage over the greed and corruption at Enron, MCI, and other companies prompted Congress's near-unanimous passage of SOX, which provided a comprehensive set of rules and regulations designed to prevent accounting fraud by publicly traded companies. SOX also contained a whistleblower provision to protect employees from retaliation by their employers for reporting fraud or violations of securities laws.[4]

In late 2008, six years after the enactment of SOX, the housing and financial markets collapsed, revealing rampant, dangerous financial risk-taking and misconduct, particularly with respect to securities backed by subprime mortgages. That financial crisis was still unfolding when Bernard Madoff's "Ponzi" scandal hit the news and educated large numbers of Americans about shortcomings in the government's ability to detect and prevent large-scale fraud on investors. The market collapse prompted a massive infusion of government "bailout" funds, with legislation that included protections for whistleblowers who reported fraud, gross mismanagement, or waste of those funds. In 2009, Congress also amended the U.S. False Claims Act, making it easier for whistleblowers to assist the U.S. government in recovering money lost to fraud.[5]

The Dodd-Frank Act, passed in 2010, was perhaps the most significant, comprehensive response to the 2008 crisis. The law initiated a massive financial regulatory overhaul. The goal of lawmakers was to restore confidence in U.S. financial markets through a wide range of oversight and enforcement measures designed to detect and mitigate risk and prevent future market collapses.

C. Creation of the SEC Whistleblower Program

As part of Dodd-Frank, Congress directed the SEC and the Commodity Futures Trading Commission ("CFTC") to establish whistleblower reward programs. Dodd-Frank's whistleblower reward provisions provide monetary incentives to individuals who submit helpful information to the SEC or CFTC. Under both programs, an individual who provides the agency with original information leading to an enforcement action that results in over $1 million in monetary sanctions is eligible to receive an award of 10% to 30% of the amount collected. The statute also provides whistleblowers with protections to help ensure that insiders can provide information to either agency without fear of reprisal.

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At its inception, the SEC Whistleblower Program ("the Whistleblower Program") received an enthusiastic welcome from employee-rights advocates and "good-government" groups but generated a great deal of concern among large corporations and their law firms. After asking for public comment on its proposed rules for the Whistleblower Program in November 2010, the SEC received some 240 comment letters and 1,300 form letters from a broad array of stakeholders.[6] Consumer advocates and the whistleblower community argued that the Whistleblower Program was necessary to prevent the sort of fraud that had damaged the economy in the prior decade, largely at the expense of the nation's working people. The whistleblower community noted that employees were in the best position to identify corporate misconduct but that many were afraid to come forward because the very real risk of derailing their careers far outweighed the benefits of speaking up, which would be few in the absence of the significant financial incentives mandated by the Dodd-Frank Act.

The corporate defense bar and their clients, on the other hand, derisively called—and continue to call—the Whistleblower Program a "bounty-hunter program." Their contention is that the Whistleblower Program serves only to create a perverse incentive for employees to hunt for potential corporate fraud or illegalities; disclose nothing to the employer; and then report their information to the government when the violations would warrant payment of a large enough "bounty" to justify the risk to their careers. Many corporations noted that they had gone to great lengths to create internal reporting mechanisms, as SOX required public companies to do. They contended that the Whistleblower Program was a radical new step that would disincentivize would-be whistleblowers from using internal channels to enable management to correct problems before they became major liabilities.

"Whistleblowers provide a critical public service and duty to our nation, taking personal and professional risks in doing so."

– Gary Gensler, SEC Chair

The final rules that the SEC Commissioners adopted by a 3-2 vote on May 25, 2011, reflected the Commission's effort to address these competing concerns, as it explained in an adopting release accompanying the rules ("2011 Adopting Release").[7] The business lobby and defense bar remained dissatisfied, as was evident in statements issued by the U.S. Chamber of Commerce and others in response to issuance of the Whistleblower Program. Over time, however, it has been apparent the Commission and its staff designed and implemented a workable and very effective program that both rewards and protects whistleblowers while strongly incentivizing corporations to bolster their compliance programs and improve their corporate governance standards.

D. Successes of the SEC Whistleblower Program

Since its inception, the SEC Whistleblower Program ("the Whistleblower Program") has steadily gained momentum and influence. Between its first award in 2012 and November 15, 2023, the SEC Office of the Whistleblower has issued approximately $1.9 billion in 397 awards whose information led to successful enforcement actions for violations of securities laws.[8] The SEC issued the vast majority—in term of number of awards and total dollar amounts—within the past few years. FY 2023 saw record-setting totals of nearly $600 million awarded to 68 individuals, breaking the previous FY2021 record of $564 million awarded to 108 individuals.[9] In FY2022, which ended September 30, 2022, the SEC awarded another $229 million to 103 individuals, marking the third-highest year in terms of dollar amounts and number of awards.[10]

Since 2012, the SEC has issued at least 158 awards that exceeded $1 million, at least 34 of which exceeded $10 million.[11] The highest award to date was over $114 million to a single whistleblower. The highest award to date was nearly $279 million to a single whistleblower,

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in connection with an SEC action and two related actions by another enforcement agency.[12] This year also featured the SEC's fourth largest award, totaling $104 million awarded to seven whistleblowers.[12.1]

The true measure of the success of the Whistleblower Program is the powerful role that it has played in incentivizing whistleblowers to report information regarding securities violations that the SEC otherwise might never have discovered. As of September 30, 2022, SEC whistleblower tips had led to enforcement actions resulting in the collection of $6.3 billion in monetary sanctions. Of this amount, more than $4.0 billion was disgorgement of ill-gotten gains with interest, helping to make investors whole for harm they suffered because of conduct that violated U.S. securities laws.[13]

The SEC has recovered more than $6.3 billion through an effective program that rewards and protects whistleblowers.

In addition to providing monetary incentives to individuals who submit helpful information to the SEC, the Dodd-Frank Act established whistleblower protections designed to ensure that individuals who experience retaliation for providing information to the SEC have legal remedies. Individuals may pursue their claims in court for retaliation. Additionally, the SEC may take direct action against employers for retaliating against whistleblowers, something the Commission has done repeatedly since the Whistleblower Program was established.

The SEC also has sought to prevent companies from using employer-imposed agreements to impede their employees from providing information to the Commission. From April 1, 2015, through September 30, 2022, the Commission brought and settled 16 enforcement actions[14] against employers for using a variety of such agreements that might hinder or dissuade employees and former employees from reporting information to the SEC about securities violations, including provisions that: (1) prohibit communication specifically with the SEC or with government agencies generally, (2) require notification to the employer's legal department prior to speaking with the SEC, or (3) require an employee to waive the right to receive a whistleblower award from the SEC. The Commission's leadership on this front has prompted other federal agencies to institute similar policies prohibiting the use of agreements to silence employees on matters within their regulatory reach. For instance, in May 2017, the CFTC implemented similar rules prohibiting actions and agreements designed to impede whistleblower.[15]

Taken together, the Commission's actions and initiatives to support whistleblowers have had a profound impact on the ability and willingness of employees to raise concerns about perceived securities violations, both to their employers and to the SEC. As a result, employees and former employees can participate confidently in the SEC Whistleblower Program and earn monetary awards and can do so even after their employers have forced them to sign agreements intended to deter them from speaking to the SEC.

As it grows, the SEC Whistleblower Program is also evolving. On September 23, 2020, the SEC adopted final rules ("2020 Final Rules"), the first revisions to the rules since the inception of the Whistleblower Program. The Final Rules became effective on December 7, 2020.[16] They include amendments to how the SEC calculates a whistleblower's award, most significantly creating a presumption—subject to some exceptions—that an individual is entitled to the 30% statutory maximum award if the award will be $5 million or less.[17] The Final Rules also alter or provide additional guidance on the definitions of several terms, including who qualifies as a "whistleblower," what qualifies as an "action" that a whistleblower may recover an award from, and when the SEC may add to a whistleblower's award based on recovery in a "related action."[18] The amendments also have changed the manner in which a whistleblower must provide "original information" to the SEC when submitting a tip.[19] On August 26, 2022, the SEC adopted new final rules ("2022 Final

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Rules") expanding a whistleblower's eligibility for an award from the SEC when she has already received an award from another program and permitting the size of the sanctions collected to be considered only as a reason to increase the whistleblower's award.[20] The changes created by the 2020 and 2022 amendments are discussed in further detail within the relevant sections below.

The SEC's leadership and staff have grown to rely on the help of whistleblowers during the years that the Whistleblower Program has been in existence. Whistleblowers have helped the SEC to detect well-hidden frauds early on and to take quick and effective action to protect the investing public while conserving limited agency resources. This has greatly benefited investors in the U.S. capital markets, who include tens of millions of working families with their savings and retirement funds invested in a wide range of stocks, bonds, and mutual funds. While sometimes cast as incentivizing disloyalty and greed among employees, the Whistleblower Program has encouraged corporations and financial firms to strengthen their internal compliance programs, giving management the opportunity to address potential misconduct before it becomes a larger problem—or one that merits a government enforcement action. The Whistleblower Program is in a strong position to continue growing, aiding the SEC's enforcement efforts while continuing to reward and protect whistleblowers.

The SEC Whistleblower Program has accepted tips from individuals throughout the United States and in at least 133 foreign countries.

NUTS AND BOLTS OF THE SEC WHISTLEBLOWER PROGRAM

The Dodd-Frank Act added a new provision to the Securities Exchange Act of 1934, Section 21F, that created the SEC Whistleblower Program. Under the Whistleblower Program rules, the SEC is required to pay awards to eligible whistleblowers who voluntarily provide the Commission with original information that leads to a successful enforcement action in which the SEC recovers monetary sanctions in an amount over $1,000,000. Sanctions can include disgorgement, penalties, fines and interest. A whistleblower who meets these and certain other criteria is entitled to an award of 10% to 30% of the amount recovered by the SEC or by other authorities in "related actions." Whistleblower awards can be substantial, as SEC sanctions against companies have run into the tens and even hundreds of millions of dollars in recent years, with at least one judgment for the SEC topping $1 billion in disgorgement and penalties against a real estate company and its owner for running a Ponzi scheme.[21]

A. Whistleblower Status

The Whistleblower Program rules define a "whistleblower" as an individual who, "alone or jointly with others," provides the SEC with "information in writing that relates to a possible violation of the federal securities laws (including any law, rule, or regulation subject to the jurisdiction of the Commission) that has occurred, is ongoing, or is about to occur." Rule 21F-2(a).

The Whistleblower Program rules make clear that a corporation or other such entity is not eligible for whistleblower status. Rule 21F-2(a)(2). In an award determination in November 2017, the SEC cited this corporate ineligibility rule as one reason justifying the denial of

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awards to two experts whose incorporated entity had provided information to the SEC in the form of an expert report.[22]

The SEC Whistleblower Program has accepted tips from individuals throughout the United States and in approximately 133 foreign countries.[23] The SEC issues awards to foreign nationals where otherwise appropriate, even when the whistleblower resides overseas, submits the tip from overseas, and/or and when the misconduct occurs entirely overseas.

In 2014, in issuing one of the earliest awards to a foreign whistleblower,[24] the SEC acknowledged well-established limits on the extraterritorial application of U.S. law, as set forth by the Supreme Court in *Morrison v. Nat'l Aust. Bank Ltd.*, 561 U.S. 247, 266 (2010). The SEC noted, however, that the Court in *Morrison* pointed out that the application of U.S. law in cases having certain foreign aspects could nonetheless be a domestic rather than an extraterritorial application in circumstances where the application targeted conduct or situations that were a "focus of congressional concern" and had a "sufficient U.S. territorial nexus." Based on this analysis, the SEC ruled that whistleblower awards are appropriate where a whistleblower's information leads to a successful enforcement action brought in the United States by a U.S. regulatory agency which is enforcing U.S. securities laws. In short, international whistleblowers are eligible for awards for providing information that leads to a successful SEC enforcement action.[25]

The Dodd-Frank Act and Rule 21F-8(c) specifically exclude from participation in the SEC Whistleblower Program employees of the SEC, the U.S. Department of Justice ("DOJ"), certain regulatory agencies and self-regulatory organizations, any law enforcement organization, and foreign governments. In an award determination issued in July 2017, however, the SEC made clear that not all government employees are excluded, even where their agencies may have certain law-enforcement functions, when it awarded nearly $2.5 million to an employee of an unnamed "domestic government agency" who worked in a section of the agency unrelated to law enforcement.[26]

1. "Voluntarily Provide"

To qualify for an award under Section 21F(b)(1) of the Securities Exchange Act,[27] a whistleblower must "voluntarily provide" the SEC with information concerning a securities violation. The SEC will view such information as provided voluntarily only if the whistleblower provides it to the Commission before he or she has received a request, inquiry, or demand for the same: 1) from the SEC; 2) in connection with an investigation, inspection, or examination by the Public Company Accounting Oversight Board or a self-regulatory organization; or 3) related to an investigation by Congress, another federal agency or authority, or a state attorney general or securities regulator. Rule 21F-4(a)(1), (2).

The Whistleblower Program rules address a concern among whistleblower advocates that someone might lose eligibility because the SEC or another regulator directed an inquiry or request to an employer but not to the whistleblower individually. Given that such requests or demands are often drafted such that they arguably apply to a large swath of employees and to broad categories of information, a narrow reading of "voluntary" would have barred many corporate employees from participation in the Whistleblower Program. The rules as adopted make clear that a whistleblower is deemed to have submitted information "voluntarily" as long as an official inquiry is not directed to the whistleblower individually. Rule 21F-4(a).

If an individual is obligated to report information to the SEC because of a pre-existing duty to the Commission or to one of the other entities described above, whether by contract

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or by court or administrative order, the information will not be considered voluntary, and the individual will not be entitled to an award. Rule 21F-4(a)(3). This disqualification is not triggered by an employee's contractual obligation to his employer or a third party or by the employee's receipt of a request for the same or related information from his employer as part of an internal investigation.[28] This means that an employer cannot remove the incentives that are key to the Whistleblower Program's effectiveness by requiring all employees to sign agreements that they will report any perceived securities violations to the SEC.

Notwithstanding the rule that whistleblowers provide information to the SEC "voluntarily" only if they do so before receiving requests for the same from the SEC or certain other agencies, the SEC has surprised many observers by waiving this restriction under certain circumstances.

On July 31, 2014, the SEC awarded $400,000 to a whistleblower who had not come forward "voluntarily" as required by the rules because a self-regulatory organization had earlier requested the same information directly from the whistleblower.[29] As the SEC's order granting the award pointed out, the whistleblower had gone out of his way to raise the issues internally first and had made every effort to have the company address them before turning to the SEC after the company refused. The SEC further found that the whistleblower initially believed that a third party had relayed all of the whistleblower's information to the self-regulatory organization. Under these "materially significant extenuating circumstances," the SEC found a waiver of the "voluntary" requirement of Rule 21F-4(a) to be "in the public interest and consistent with the protection of investors."[30] The SEC made a similar decision to waive the voluntariness requirement in issuing a $3,000,000 award in June 2019, upon determining that doing so was "appropriate in the public interest and consistent with the protection of investors."[31]

Employees in certain roles can participate in the SEC's whistleblower reward program only under certain circumstances.

The SEC's decision to waive the "voluntary" requirement in these cases is noteworthy because it reflects the Commission's willingness to use its full authority under the Exchange Act to reward individuals who show courage and determination in helping the Enforcement Division undertake a more prompt and effective investigation of serious securities violations than would otherwise have been possible. As authority for its decision to waive the "voluntary" requirement, the SEC relied on Section 36(a) of the Exchange Act, 15 U.S.C. § 77mm, which allows the Commission to "conditionally or unconditionally exempt any person … or transaction" from a provision, rule, or regulation of the securities laws "to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors."[32] The SEC's application of the same exemptive authority to the issuance of whistleblower awards that it has applied in the regulation of issuers and financial advisors has strengthened the Whistleblower Program. It reassures would-be whistleblowers that the SEC and its staff are willing, where appropriate, to reach as far as the law allows to reward individuals who assist in enforcing the nation's securities laws.

2. "Original Information"

In order to qualify as "original information" that will support a claim for an award, the whistleblower's tip must consist of information that is: 1) derived from the individual's "independent knowledge" or "independent analysis"; 2) not already known to the SEC from any other source (unless the whistleblower is the "original source" of the information, such as where he or she had first reported the information to the DOJ or Department of Labor ("DOL"), which then passed the information on to the SEC); and 3) not "exclusively derived" from allegations made in certain judicial or administrative hearings, government

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reports, audits, or investigations or derived from the media, unless the whistleblower is "a source of the information." Rule 21F-4(b)(1).

a. Independent Knowledge and Independent Analysis

Rule 21F-4(b)(2) defines "independent knowledge" simply as "factual information … this is not derived from publicly available sources." The whistleblower may have observed the facts firsthand but may also have acquired the knowledge through her "experiences" or communications. This means that the whistleblower can have "independent knowledge" of facts despite having learned those from someone else such as a supervisor, co-worker, or customer, as long as that third person is not a company attorney, compliance officer, or other representative who would usually be ineligible for a reward under Rule 21F-4(b)(4) as discussed below.

Rejecting the argument that allowing tips based on third-party information would encourage frivolous claims for awards, the SEC noted when issuing the final rules that excluding such tips could deprive the Commission of highly probative information that could aid significantly in an enforcement action.[33] The SEC pointed out that Congress had recently amended the False Claims Act to remove a similar requirement that a *qui tam* relator possess "direct" (or firsthand) knowledge of the facts.[34]

"Independent analysis" refers to a whistleblower's "examination and evaluation," conducted by her alone or with others, of information that might be publicly available where the whistleblower's analysis reveals additional information that is not generally known or available to the public. This might include, for example, an expert analysis of data that could significantly advance an investigation.[35]

In conjunction with the SEC's 2020 Final Rules and Adopting Release, the Commission published interpretive guidance offering a restrictive reading of what constitutes viable "independent analysis."[36] Under this guidance, a whistleblower's conclusion must derive "from multiple sources, including sources that, although publicly available, are not readily identified and accessed by a member of the public without specialized knowledge, unusual effort, or substantial cost," and those sources must "collectively raise a strong inference of a potential securities law violation that is not reasonably inferable by the Commission from any of the sources individually."[37] There is no bright-line test for when an individual tip rises to the level of "independent analysis" under the statute—the SEC retains discretion to decide each case based on its facts.[38] While the guidance states that "technical expertise is not a requirement" for a whistleblower to submit "independent analysis," the analysis must be "highly-probative" and should "bridge the gap between the publicly available information itself and the possibility of securities violations," something that will be most feasible for experts to do.[39] The guidance also emphasized that for both "independent knowledge" and "independent analysis," the SEC must not know about the information from any other source, and the tip must lead to a successful enforcement action before the whistleblower is entitled to an award.[40] The knowledge or analysis cannot derive exclusively from "the news media," which has been interpreted broadly to include publicly available websites.[41]

In justifying this restrictive interpretation, the Commission contended that both Congress and the SEC had expressed a desire to "substantially restrict any role for publicly available information in potential whistleblower awards."[42] The SEC asserted that Congress did not intend for the SEC to pay for publicly available information but rather to reward "detailed and sophisticated" work such as that done by the whistleblower who exposed the Madoff fraud.[43] In sum, the SEC's interpretive guidance strongly suggests that the Commission

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will not reward whistleblowers who loosely invoke the "independent analysis" prong of original information in seeking an award and will closely scrutinize applications seeking such awards for consistency with the criteria described above.

Until recently, awards for tips based on independent analysis alone were rare. On January 15, 2016, the SEC issued a whistleblower award to a "company outsider" whose information was derived not from independent knowledge of the facts but rather from his or her "independent analysis."[44] According to subsequent media reports,[45] the tip originated from the whistleblower's review of publicly available information regarding practices of the New York Stock Exchange that favored high-frequency traders over other market participants. This tip resulted in a $5 million fine against the exchange.

However, awards based on independent analyses have become more common recently. On September 1, 2020, the SEC issued a joint award to two whistleblowers who were unaffiliated with the company and whose tip was based largely on independent analysis of the company's public filings.[46] In Fiscal Year 2021, the SEC awarded eight individuals based on independent analyses.[47] In Fiscal Year 2022, the SEC awarded at least one individual based on independent analyses.[48]

b. Exclusions from Independent Knowledge & Analysis: Attorneys, Compliance Personnel, Auditors and Officers

Consistent with its goal of promoting enforcement of securities laws while also encouraging corporate efforts to maintain effective corporate-governance and internal-compliance programs, the SEC has designated information in the possession of certain categories of individuals as not being derived from independent knowledge or analysis, making these individuals presumptively ineligible for participation in the whistleblower reward program. Two of these exclusions apply specifically to attorneys, both in-house and retained, and to non-attorneys who possess attorney-client- privileged information. The rules exclude:

- Information obtained through a communication subject to attorney-client privilege, unless disclosure would be permitted under either SEC rules governing the conduct of attorneys practicing before the Commission, or state ethics rules governing attorneys, Rule 21F-4(b)(4)(i); and
- Information obtained in connection with the whistleblower's (or her firm's) legal representation of a client, unless disclosure would be permitted by the rules described above. Rule 21F-4(b)(4)(ii).

The SEC rules that govern the professional conduct of attorneys practicing before the SEC on behalf of an issuer of publicly traded securities are found at 17 CFR Part 205 ("SEC Part 205").[49] Section 205.3(d)(2) permits attorneys practicing before the Commission to disclose client confidences when reporting suspected securities violations to the SEC under certain circumstances, including where necessary to prevent a material violation that would significantly harm investors or to prevent the issuer from committing perjury or a fraud on the SEC during an investigation. Lawyers who are considering providing the SEC with information about securities violations need to be particularly careful, however, as they may run afoul of state rules of professional responsibility even when SEC Part 205 would allow disclosure and thus allow participation in the SEC Whistleblower Program. State bar rules vary widely in their restrictions on attorney disclosures of client confidences, with some following the American Bar Association's Model Rule of Professional Conduct 1.6 and other states imposing either more or less restrictive rules. For this reason, attorneys thinking of

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participating in the Whistleblower Program should make sure to carefully review and adhere to the rules of professional conduct that apply to them and their actions.

At least one state bar association and one court have gone as far as to bar attorneys altogether from participating in whistleblower reward programs on the grounds that attorneys who disclose client confidences for financial gain are in fundamental conflict with the interests of their clients. The Professional Ethics Committee of the New York County Lawyers Association issued a bar opinion stating that New York's rules of professional conduct prohibit attorneys from collecting SEC awards and, presumably, other "bounties," based on the confidential information of a client.[50] In another case, one branch of the New York Supreme Court ruled that an attorney could not maintain a *qui tam* lawsuit under the False Claims Act against his former employer, as the action would potentially result in the attorney's earning a whistleblower reward for his disclosure of client confidences that he obtained as in-house counsel.[51]

In addition to lawyers, the SEC Whistleblower Program rules make certain other individuals presumptively ineligible to receive awards because of their roles, formal or otherwise, in the internal compliance functions that the SEC believes are critical to the overall goal of increased adherence to securities laws. The SEC deems a person to lack "independent knowledge or analysis" where the person obtains the information through his or her role as:

- An officer, director, trustee, or partner to whom another employee reports the information, or who learns the information, in connection with the entity's processes for identifying and addressing unlawful conduct, Rule 21F-4(b)(4)(iii)(A);
- An employee or contractor whose principal duties are in compliance or internal audit, Rule 21F-4(b)(4)(iii)(B);
- An employee of a firm retained to investigate possible violations of the law, Rule 21F-4(b)(4)(iii)(C); or
- An employee of a public accounting firm performing an engagement required by federal securities laws who, through the engagement, obtains information about a violation by the engagement client, Rule 21F-4(b)(4)(iii) (D).

The SEC Whistleblower Program rules balance strict enforcement with the need for strong corporate compliance programs.

Persons who learn information secondhand from these categories of persons will also not be considered to be providing "original information" if they report the information to the SEC. Rule 21F-4(b)(4)(vi).[52]

The four non-attorney exclusions described above—those for upper-level management, compliance personnel, and auditors serving in the roles set forth in Rule 21F-4(b)(4)(iii)—do not apply in all circumstances. The wording of the rules suggests that these persons might have "independent knowledge" provided they obtain their information outside their roles in compliance, investigation, or audit. In addition, these exclusions do not apply, and the person submitting the information can be eligible for an award, where at least one of the following conditions is present:

- The would-be whistleblower "reasonably believes" that disclosure to the SEC is needed to prevent "substantial injury" to the entity or investors, Rule 21F-4(b)(4)(v)(A);
- The would-be whistleblower "reasonably believes" that the entity is acting in a way that would impede an investigation of the violations, Rule 21F-4(b)(4)(v)(B); or

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- At least 120 days have passed since the whistleblower reported her information internally to the audit committee, chief legal officer, or other appropriate official of the entity or since he or she obtained the information under circumstances indicating that those officials were already aware of the information, Rule 21F-4(b)(4)(v)(C).

The SEC first applied this 120-day exception on August 29, 2014, when it issued a whistleblower award of more than $300,000, or approximately 20% of the more than $1,500,000 it recovered from the wrongdoers, to an employee who performed audit and compliance functions.[53] In that case, the whistleblower reported the securities violations internally, gave the company at least 120 days to take action, and then reported the same information to the SEC when the company did not act to address the violations. This entitled the whistleblower to claim an award under the 120-day exception set forth in Rule 21F-4(b)(4)(v)(C).

On March 2, 2015, the SEC again applied the 120-day exception, this time issuing an award to a former corporate officer who received the information about a violation of U.S. securities laws from another employee who had reported the misconduct through the company's corporate compliance channels. The officer first reported the misconduct through internal compliance channels and then reported to the SEC when 120 days had passed and the company failed to take action. The SEC issued an award between $475,000 and $575,000 for the information the officer provided.[54] The SEC applied the exception a third time on March 30, 2020, awarding $450,000 to a whistleblower with internal compliance responsibilities who reported to the SEC at least 120 days after reporting violations internally to a supervisor.[55] On July 15, 2021, the SEC applied this exception for a fourth time, awarding $1.2 million to a compliance employee who first received information of the violations from a subordinate, reported it to a supervisor, and then waited 120 days to report it to the SEC.[56] Recently, on August 27, 2021, the SEC awarded jointly awarded three whistleblowers who held compliance roles at the respondent and who reported to the SEC more than 120 days after the violations had been reported internally, and on July 12, 2023, the SEC awarded $9 million to a single compliance employee who reported to the SEC more than 120 days after reporting the violations internally.[57]

The SEC applied the "substantial injury" exception for the first time in April 2015 when it awarded a compliance professional between $1.4 and $1.6 million.[58] Although the whistleblower's compliance role would have presumptively excluded him from eligibility for an award, the SEC determined that he reported the information to the SEC because he reasonably believed that disclosure was necessary to prevent a substantial injury to the company or its investors, and he was therefore eligible for an award. As then-SEC Director of Enforcement Andrew J. Ceresney explained, "[t]his compliance officer reported misconduct after responsible management at the entity became aware of potentially impending harm to investors and failed to take steps to prevent it."[59]

Whistleblowers and their counsel should keep in mind that a whistleblower's belief that "substantial injury" is imminent could be misplaced. For this reason, they should strongly consider waiting 120 days to submit their tips to the SEC in such situations, at least unless they can also qualify for the third exception—i.e., that the whistleblower has reason to believe that the entity is acting in a way that would impede an investigation of the violations.

The SEC issued its first award under this third exception in December 2020.[60] The SEC noted that the whistleblower "aggressively attempted to remedy the misconduct and suffered a unique hardship," having had reason to believe that the company would impede the SEC investigation.[61]

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The SEC's payment of awards to employees who submit information gained through their respective roles in a company's compliance functions shows that the door is open for the submission of tips from categories of employees who hold trusted roles in corporations but who are often the best-positioned to learn about their employers' securities violations. The award recipients mentioned above did exactly what Congress intended the Whistleblower Program to encourage: reporting the violations internally, thereby giving management the opportunity to address the issue, and turning to the SEC only when the companies failed to act or when the whistleblower reasonably believed it necessary in order to prevent substantial injury. By paying these individuals awards for their tips, the SEC ensured that more employees and officers who have roles in compliance and audit functions would come forward if they believe they fit into one of the three exceptions to the rule that would otherwise exclude them from the Whistleblower Program.

These cases also demonstrate how the Whistleblower Program rules strike a reasonable balance between the public's need for strict enforcement and the interests of corporations (and their shareholders) in maintaining effective legal, compliance, and audit functions, which can serve to protect investors and avoid the need for SEC enforcement action. While generally excluding information from employees who staff compliance and audit functions will mean that the SEC will never hear from some would-be whistleblowers who have credible knowledge of securities violations, the rules ensure that even these individuals can report their information to the SEC and become eligible for an award in certain exceptional situations. Where the wrongful conduct is seriously endangering investors, where the entity is destroying evidence, or where upper management has known about the problem for four months or more, the SEC will accept the non-attorney whistleblower's original information despite her role as a professional with compliance-related responsibilities.

In deciding where to draw the line between those who can earn an award for blowing the whistle on securities violations and those who cannot, the SEC rejected proposals at the inception of the Whistleblower Program that would have excluded many more, perhaps even most, of those individuals who would most likely be able to provide the Commission with high-quality tips. As originally proposed, the rules excluded from "independent knowledge" and "independent analysis" any information obtained not just by officers, directors, trustees, and partners but also by anyone with "supervisory" or "governance" responsibilities who was given the information with the expectation that they would do something about it.[62] The proposed rules also required such persons to wait a "reasonable time" (as opposed to 120 days) before reporting to the SEC.

These proposals drew intense criticism from whistleblower advocates, who correctly noted that excluding all "supervisory" personnel would eviscerate the Whistleblower Program. The whistleblower bar also criticized the rule as being so vague as to ensure that few supervisors would risk their positions to report to the SEC. At the same time, the Commission's proposed exclusion of some employees with governance responsibilities emboldened big-business interests to call for extending the ban to all variety of positions in operations, finance, technology, credit, risk, product management, and many other functions. In the end, the SEC struck a fair balance, adopting narrow exclusions for core, compliance-related personnel and processes while rejecting pressure to deny eligibility to far more employees than Congress could possibly have intended or anticipated.[63] The balance between these exclusions and exceptions has led to successful enforcement actions without harming legitimate corporate interests.

Whistleblowers cannot earn awards for information provided to other agencies if the SEC never learns of or uses the information in taking enforcement action.

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c. Information "Not Already Known" and the "Original Source" Exception

For purposes of determining an individual's entitlement to a whistleblower award, information that is already known to the SEC cannot qualify as "original information" unless the whistleblower is the "original source" of the information.

The "original source" exception applies to information the whistleblower may have already reported to the DOJ or certain other agencies. The purpose of the exception is to avoid penalizing a whistleblower who sought to alert law enforcement authorities to unlawful practices but did not notify the SEC first.

This "original source" exception is particularly important for the many employees who file SOX complaints with the DOL after facing retaliation for reporting securities violations to their employers, but who have not filed tips with the SEC. Under an arrangement between the SEC and DOL, the Occupational Safety and Health Administration ("OSHA") cross-files with the SEC every charge of unlawful retaliation it receives under Section 806 of SOX.[64] These SOX charges often contain detailed information about securities violations that the employee reported to the employer, and that information will become "known" to the SEC upon the SEC's receipt of the charge from DOL. Without the "original source" exception, the employee's information thus could not qualify as "original information" for purposes of a whistleblower award under Rule 21F-4(b)(1) if the employee later submitted the information to the to the SEC. This could undermine a whistleblower's right to an award because SEC staff may initiate investigations based on the SOX charges they receive from OSHA. By allowing the whistleblower to submit a Tip, Complaint or Referral form ("TCR") containing information "already known" to the SEC and still have her information qualify as "original information," the "original source" doctrine allows SOX complainants to participate in the SEC Whistleblower Program.

If a SOX complainant is contacted by the SEC for follow-up on the information contained in a charge filed with OSHA, he or she should perfect the SEC tip by then submitting a Form TCR with the SEC reiterating the relevant facts from the charge and supplementing them with any additional information in her possession regarding the underlying securities violations. The whistleblower must do so within 120 days of filing the SOX charge with OSHA for the SEC to deem the tip to have been filed at the time the whistleblower submitted the SOX charge to OSHA. Rule 21F-4(b)(7).[65]

On April 5, 2018, the SEC made its first whistleblower award pursuant to this 120-day safe harbor provision, awarding over $2.2 million to a former company insider who had first reported the violations to another government agency.[66] In that case, the Commission determined that the whistleblower had voluntarily reported the wrongdoing to an agency covered by Rule 21F-4(b)(7). That agency then referred the information to the SEC, which opened an investigation into the matter. The whistleblower also submitted a TCR to the SEC's Office of the Whistleblower within the 120-day safe harbor period, including in that tip the same information the whistleblower had provided to the Rule 21F-4(b)(7) agency, thereby satisfying the requirements of the safe harbor provision. In announcing the award, Jane Norberg, then-Chief of the SEC's Office of the Whistleblower, explained, "Whistleblowers, especially non-lawyers, may not always know where to report, or may report to multiple agencies. This award shows that whistleblowers can still receive an award if they first report to another agency, as long as they also report their information to the SEC within the 120-day safe harbor period and their information otherwise meets the eligibility criteria for an award."[67] The SEC not only considers such whistleblowers eligible for an award but also accepts the date of their reporting to the other agency as the date

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of their reporting to the SEC, placing them ahead in time of any other whistleblowers who may have submitted a TCR during the 120-day period.

The whistleblower cannot earn an award, however, for information provided to other agencies where the SEC never learns of or uses the information in taking enforcement action. In denying the award application of one individual who had provided information to other federal agencies, the Commission found that those other agencies "did not share, directly or indirectly, any information provided by Claimant with Commission staff" and, thus, that "any information provided by Claimant to those federal agencies could not have had any impact on the Covered Actions."[68]

B. Rules Designed to Incentivize Internal Reporting

The SEC rules repeatedly make clear that the main purpose of the Whistleblower Program is to encourage individuals to provide high-quality tips to the Commission. The SEC noted in the 2011 Adopting Release:

> …the broad objective of the whistleblower program is to enhance the Commission's law enforcement operations by increasing the financial incentives for reporting and lowering the costs and barriers to potential whistleblowers, so that they are more inclined to provide the Commission with timely, useful information that the Commission might not otherwise have received.[69]

With this purpose in mind, the SEC when developing the Whistleblower Program rules rejected the business lobby's near-unanimous insistence that it require all whistleblowers to submit their complaints internally before filing them with the SEC and earning an award.[70] "[W]hile internal compliance programs are valuable," the Commission observed, "they are not substitutes for strong law enforcement."[71] The Adopting Release recognized that whistleblowers might reasonably fear retaliation for raising their concerns and also noted that law enforcement interests may be better served when the Commission can launch an investigation before the alleged wrongdoers learn about it.[72] For these and related reasons, the SEC leaves it to each whistleblower to decide whether to report first internally or to the SEC.[73]

At the same time, the Commission included several provisions in the rules that are expressly designed to incentivize whistleblowers to utilize internal compliance programs. These include:

- Affording whistleblower status to the individual as of the date he or she reports the information internally as long as the whistleblower provides the same information to the SEC within 120 days. This allows an employee to report internally while preserving his "place in line" for an award from the SEC for 120 days, even if another whistleblower provides the same or related information to the Commission in the interim. Rule 21F-4(c)(3); Rule 21F-4(b)(7).

- Giving a whistleblower full credit for information provided by his employer to the SEC where the employee reports the information internally and the employer then investigates and "self-reports" that information (and even additional information that the whistleblower may not have had) to the SEC and where the information supplied by the employer "leads" to a successful enforcement action. Rule 21F-4(c)(3). In order to benefit from this provision of the Whistleblower Program rules, the whistleblower

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must also report his information to the SEC within 120 days of reporting it internally, using the procedures set forth in Rule 21F-9.

- Treating a whistleblower's participation in an internal compliance and reporting system as a positive factor in determining the amount of an award within the range of 10% to 30%. Rule 21 F-6(a)(4). Conversely, a whistleblower's interference with internal compliance and reporting systems, including an internal investigation, may decrease the amount of the award. Rule 21 F-6(b)(3).

These rules provide flexibility to the whistleblower, whom the SEC believes to be in the best position to determine the effectiveness or ineffectiveness of the particular internal-compliance system that he or she can decide whether to use, in choosing how to report violations. The rules enhance the SEC's law enforcement operations by encouraging people who may otherwise be deterred to report violations. This group includes those who will be persuaded by the new financial incentives to use the internal compliance programs that come with such reporting as well as those who will report directly to the SEC and who may not have reported any violations at all if required to go to the company first.[74]

The SEC also points out that the rules' incentives to employees to report internally are likely to encourage companies to create and maintain effective internal compliance programs, as whistleblowers are more likely to participate in such a program.[75]

Maintaining an effective internal compliance program is in the best interests of a company because the SEC, upon receiving reports of a violation, will often notify the company and give it an opportunity to investigate the issue. In deciding whether to give a company that opportunity, the SEC will consider the company's "existing culture related to corporate governance" and, in particular, the effectiveness of the company's internal compliance programs.[76]

Whistleblower advocates, including the authors, have observed that very few employees, current or former, report their concerns to the SEC without having first reported them internally. This observation is consistent with data collected from whistleblowers by the SEC Office of the Whistleblower, which reported that more than 75% of award recipients in FY 2021 who were current or former employees of the subject entity had first reported their concerns internally.[77]

The size of an award is based on the proceeds the SEC and other agencies collect from the company in related actions.

C. Information that Leads to a Successful Enforcement Action

The Whistleblower Program rules establish the standard for determining when a whistleblower's information has led to a successful investigation resulting in monetary sanctions exceeding $1,000,000. When information concerns conduct not already under investigation or examination by the SEC, it will be considered to have led to successful enforcement if:

- It is "sufficiently specific, credible, and timely" to cause the staff to commence an examination, to open an investigation, to reopen an investigation that the Commission had closed, or to inquire concerning different conduct as part of a current examination or investigation; and

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- The Commission brings a successful judicial or administrative action based in whole or in part on the conduct identified in the original information. Rule 21F-4(c)(1).

The standard is somewhat higher for information that focuses on conduct already under investigation or examination although some 44% of whistleblowers who have earned awards from the SEC did so on the basis of such information.[78] The information will be deemed to have led to successful enforcement if it "significantly contributes" to the success of the action, even if the tip related to the subject of an ongoing SEC investigation. Rule F-4(c)(2). In determining whether information "significantly contributed" to the success of an investigation and resulting enforcement action, the Commission will consider whether the information allowed the SEC to bring a successful action in significantly less time or with significantly fewer resources, bring additional successful claims, or take action against additional parties.[79] The SEC has denied a number of claims for awards on the grounds that the tip neither led to nor contributed to a successful enforcement action.[80]

The SEC has provided additional guidance as to what actions might constitute a "significant contribution" to an ongoing investigation within the meaning of Rule 21F-4(c)(2). On May 13, 2016, the SEC announced that it was awarding more than $3.5 million to a whistleblower even though the whistleblower's reports to the SEC had not prompted the SEC to start an investigation.[81] An SEC investigation was already underway as a result of media coverage of potential securities violations when the whistleblower submitted the tip to the SEC and later assisted SEC staff in their investigation.

The SEC cannot use information protected by attorney-client privilege in an investigation or enforcement action.

On these facts, the SEC's Claims Review Staff preliminarily decided that the whistleblower was not entitled to an award because his or her information had not caused the SEC to open an investigation or to expand the investigation to focus on additional conduct. The whistleblower contested the preliminary determination, arguing that his or her information had in fact "significantly contributed" to the covered action's success within the meaning of Rule 21F-4(c)(2), and the SEC enforcement staff supported the whistleblower's position. The Commission ultimately agreed, finding that the whistleblower's information had "significantly contributed" by focusing the staff's attention on certain evidence and "meaningfully increasing Enforcement staff's leverage during the settlement negotiations." In determining the percentage to award the whistleblower, the SEC noted that it had also considered the "unique hardship" the whistleblower had suffered in the form of being unable to find a job since reporting the misconduct.

On May 24, 2019, the SEC made its first whistleblower award under Rule 21F-4(c)(3), which allows whistleblowers who internally report to receive credit for a company's self-report of those same allegations to the SEC so long as the whistleblower also externally reported the matter to the SEC within 120 days of making her internal report.[82] The Commission awarded the whistleblower $4.5 million because their internal reporting subsequently led to a successful enforcement action and a related action by another agency.

The whistleblower sent an anonymous tip to the company and submitted the same information to the SEC within 120 days. The company self-disclosed the tip as well as the results of an internal investigation it initiated in response to the tip. The Commission found that the whistleblower's original information led to the successful enforcement under the standards set forth in Rule 21F-4(c)(3) although the whistleblower never communicated with the Commission's staff.

In the SEC's 2020 guidance interpreting what qualifies as "independent analysis," the Commission adopted a new, more demanding standard. The Commission now will consider a whistleblower's analysis to have led to a successful enforcement action only if the "analysis—

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as distinct from the publicly available information on which the analysis was based—either (1) was a principal motivating factor in the staff's decision to open its investigation, or (2) made a substantial and important contribution to the success of an existing investigation."[83] According to the SEC, this determination hinges on whether the analysis "is of such high quality that it either causes the staff to open an investigation, or significantly contributes to the successful enforcement action."[84] In addition, the Commission has cautioned that in instances where the SEC's staff "looks to other information as well in determining to open an investigation, the Commission will find that the independent analysis 'led to' the success of the enforcement action only if the Commission determines that the whistleblower's analysis was a 'principal motivating factor' in the staff's decision to open the investigation."[85] For this reason, "even an otherwise compelling analysis may not satisfy the 'leads to' requirement depending on the nature of other information already in the staff's possession."[86]

For a whistleblower's information to have "led to" a successful enforcement action, the relevant SEC staff had to have been aware of the information when they investigated and took enforcement action. The SEC has repeatedly denied claims for awards after determining that SEC staff were not aware of the whistleblower's information and thus the information could not have led to the success of the covered action. In one determination in April 2016, for example, the SEC found that its Office of Market Intelligence, which screens tips as they come into the SEC, had designated one claimant's tips for "no further action" and had never forwarded them to Enforcement staff, and that Enforcement staff had not had any contact with the claimant until after settlement of the enforcement action.[87]

In a March 2018 order awarding three whistleblowers a combined $83 million, the SEC denied the claims of four additional whistleblowers on the grounds that the information they provided had not "led to" the Commission's successful enforcement action as required under the Whistleblower Program rules.[88] Whistleblowers and their counsel seeking an understanding of the "led to" requirement can benefit from reviewing this award determination, as it describes in detail some of the ways in which information that appears potentially relevant can fall short of "leading to" a successful enforcement action. In the case of these four unsuccessful claimants, the SEC found that their information was variously submitted too late in the investigation, duplicative of information submitted by others, too vague or too general in content, focused on misconduct different from the conduct that was the focus of investigation, or not used or even received by the SEC, whose investigation resulted in the enforcement action.[89]

In March 2019, the SEC denied an award to a claimant who had provided potentially relevant information to an SEC regional office some time before two other whistleblowers contacted other SEC enforcement staff with information that led the SEC enforcement staff to commence an investigation leading to a successful enforcement action.[90] The two later whistleblowers received large awards, but the SEC found that the first whistleblower's information had not "led to" the enforcement action because the regional office forwarded the first whistleblower's information to the investigating SEC staff only after they had commenced an investigation and the investigating staff stated that the first whistleblower's information had not "advanced the investigation in any way." The SEC rejected the first whistleblower's argument that the regional staff "should have" forwarded his or her information earlier.

Whistleblowers often have difficulty knowing whether their information "led to" the successful enforcement action for which they are applying for an award, but they and their counsel need to be aware that the SEC will not grant them an award unless the record demonstrates that their information either caused the Commission to initiate an investigation or "significantly contributed" to the action as required by Rule 21F-4(c).

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The SEC has repeatedly and successfully enforced the rule disallowing awards for information provided to the Commission prior to July 21, 2010, the date of enactment of the Dodd-Frank Act, even if an enforcement action followed. In *Stryker v. SEC*, the U.S. Court of Appeals for the Second Circuit affirmed the SEC's denial of an application for such an award.[91] Even though the SEC collected sanctions of more than $20 million in the action after the Whistleblower Program went into effect, the claimant had submitted the information prior to enactment of the Act and received no award.

D. Monetary Sanctions Totaling More than $1 Million

In determining whether the recovery in an enforcement action exceeds the $1,000,000 threshold, the word "action" generally means a single judicial or administrative proceeding. Rule 21 F-4(d). In certain circumstances, however, actions can be aggregated. The SEC adopted this broad interpretation of the term "action" in accordance with congressional intent to increase the incentives for individuals to report securities violations. Actions may include cases from two or more administrative or judicial proceedings that arise out of a common nucleus of operative facts, and any follow-on proceedings arising out of the same nucleus of operative facts may be aggregated as well. Rule 21 F-4(d)(1). Factors that may be taken into account when determining whether two or more proceedings arise from the same nucleus of operative facts include parties, factual allegations, alleged violations of federal securities laws, or transactions and occurrences.[92]

The 2020 Final Rules and Adopting Release expanded upon the definition of "action" to also include non-prosecution and deferred prosecution agreements by the DOJ and any similar agreements entered into by the SEC to address securities law violations.[93] The Commission noted that these agreements are key tools of enforcement for both the DOJ and the SEC and that they include "monetary sanctions" as defined by Rule 21F-4(e).[94] The SEC further noted that "Congress did not intend for meritorious whistleblowers to be denied awards simply because of the procedural vehicle that the Commission (or the other authority) has selected to pursue an enforcement matter."[95] However, the 2020 Final Rules also narrowed the definition of "monetary sanctions" from "any money, including penalties, disgorgement, and interest, ordered to be paid and any money deposited into a disgorgement fund" to an ordered payment "which is either: (i) Expressly designated as a penalty, disgorgement, or interest; or (ii) Otherwise ordered as relief for the violations that are the subject of the covered action or related action; or … Any money deposited into a disgorgement fund …"[96] While the SEC made this change seeking to clarify that, for instance, orders for asset freezes would not count as "monetary sanctions" in accordance with its established practice, some commenters worried that this change would unfairly limit the types of recovery from which awards could be calculated.[97]

Rule 21F-3(b) provides that, where the SEC has brought a successful enforcement action resulting in sanctions exceeding $1 million, the SEC will also issue awards based on amounts collected by other entities in "related actions." Those are judicial or administrative actions that yield monetary sanctions, are based on the same original information the whistleblower voluntarily provided to the SEC, and are brought by the U.S. Attorney General, a state Attorney General in a criminal case, an "appropriate regulatory authority," or a self-regulatory organization. Rule 21F-3(b)(1). The SEC has demonstrated that it will interpret this list liberally to include a potentially broader group of "other governmental authorities" than those described in the rule[98] and has issued at least one award based in part on the proceeds collected from a related criminal action.[99] The largest single award issues by the

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SEC to date consisted of $279 million across an SEC enforcement action and two related actions by another enforcement agency.[100]

In determining whether to add to the whistleblower's award based on the monetary sanctions collected by another entity, the SEC will consider a number of factors to avoid "double recovery" for the whistleblower.[101] First, if the second entity has a separate monetary award program, the SEC must decide whether its own Whistleblower Program or the other entity's program has a "more direct and relevant connection to the action."[102] The action by the other entity will only be deemed a "related action" for purposes of the SEC's award if the SEC Whistleblower Program has the more direct connection to the action. In this circumstance, under the 2020 Final Rules, the SEC would have made an award for the related action only if the whistleblower had not already received an award from the other entity and waives her right to receive such an additional award, a change widely viewed by whistleblower advocates as unfriendly to whistleblowers.[103] However, on August 26, 2022, the SEC adopted new rules permitting the Commission to make an additional award to such a whistleblower if the regulator that brought the related action would not provide as large an award as the whistleblower would have received under the SEC Whistleblower Program.[104]

When determining a whistleblower's eligibility for an award and the amount of such award, the SEC considers the amount of proceeds it collects or will collect, not the amount of the sanctions ordered in the case. This can significantly impact the availability or size of an award because the SEC does not always collect the sanctions it levies—and sometimes collects more than expected. For example, in the five-year period ending in September 2018, the SEC collected just 55% of the amount defendants were ordered to pay as a result of enforcement actions.[105] For example, the first whistleblower to receive an award under the Whistleblower Program in 2012 received an additional $150,000 nearly 20 months after receiving the initial $200,000 reward after the SEC was able to collect additional sanctions the Commission levied in the case.[106] The SEC also has determined claimants to be eligible for awards based on proceeds yet to be collected in several award determinations.[107]

E. SEC Procedures for Submitting a Tip

The Whistleblower Program rules describe a straightforward set of procedures for submitting original information about possible securities violations to the SEC Office of the Whistleblower. They specify the form, time, and methods of making a submission, including how to submit a tip anonymously while remaining eligible for an award. While there are limited circumstances in which the SEC may waive these requirements, it is important for whistleblowers to follow the rules closely to ensure their eligibility for an award.

1. The TCR Form

An individual must file a Tip, Complaint or Referral ("TCR") either directly through the SEC's website or by mailing or faxing a Form TCR to the SEC. Rule 21F-9(a).[108] The rules require the individual to declare under penalty of perjury that the information provided in the Form TCR is true and correct to the best of his or her knowledge and belief. Rule 21F-9(b).[109] The Commission now encourages individuals to submit information to the SEC via the online portal, which the SEC modified in January 2018 to better process and handle the submission of much larger attachments to a whistleblower's electronic Form TCR.[110]

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The 2020 Final Rules and Adopting Release stressed that a whistleblower must submit a tip both in writing and using the Form TCR. First, it added the words "in writing" to the definition of "whistleblower," meaning that an individual who gives information to the SEC only orally is not protected from retaliation and cannot receive a whistleblower award. Rule 21F-2(a).[111] Second, the 2020 Final Rules clarified that while a whistleblower can initially submit information to the SEC in any form, to be eligible for an award he or she must submit the information through the online portal or the Form TCR via fax or mail within 30 days of making initial contact. Rule 21F-9(e).[112] The SEC will waive this requirement only if the whistleblower complies with the specified procedures within 30 days of receiving actual or constructive notice about the requirements and if the SEC can "readily" and "unambiguously" determine that the whistleblower would otherwise be eligible for an award.[113] However, the SEC can exercise its discretionary authority under Section 36(a) of the Exchange Act to waive the Form TCR requirements entirely if it finds that doing so is in the public interest.[114]

2. Submitting an Anonymous Tip

Given the risks of retaliation and reputational harm, whistleblowers may worry that their employers will learn their identities if they submit tips to the SEC. To encourage whistleblowers to come forward, the Whistleblower Program rules allow whistleblowers to submit tips anonymously through an attorney. Rule 21F-9(c). To submit an anonymous whistleblower tip, the attorney must maintain in the attorney's files a copy of a completed Form TCR containing the whistleblower's identifying information and signature. The attorney then must submit an anonymous Form TCR—without the whistleblower's identifying information or signature—and affix the attorney's own signature to certify that he or she has: (i) verified the whistleblower's identity, (ii) reviewed a version of the Form TCR signed by the whistleblower and that the information therein is true and correct, and (iii) obtained the whistleblower's non-waivable consent for the attorney to provide to the SEC the version of the Form TCR signed by the whistleblower if Commission staff have reason to believe the whistleblower has willfully provided false information. The SEC Form TCR and instructions, available on the Commission's website, explain these requirements.[115]

The SEC protects against the disclosure of whistleblowers' identities "to the fullest extent possible" regardless of whether they submit their information anonymously, but the Commission acknowledges that there are limits to its ability to shield a whistleblower's identity under certain circumstances. For example, the SEC explains on its website that "in an administrative or court proceeding, we may be required to produce documents or other information which would reveal your identity."[116]

While the SEC cannot guarantee that no one will uncover a whistleblower's identity during an investigation and enforcement action, the risk of involuntary public disclosure remains very small. A few whistleblowers have self-identified to the media. Others may choose to disclose to their employers that they have blown the whistle to the SEC to secure maximum protection against retaliation or to discourage further retaliation if it has already occurred. Whistleblowers' submissions, and occasionally their identities, may become known through other legal proceedings, including criminal proceedings in which a whistleblower is called testify. In one case, a court ordered the SEC to hand over an anonymously filed Form TCR—without disclosing the whistleblower's name—to counsel defending a corporation in an SEC enforcement action.[117]

Whistleblower advocates, including the authors of this Practice Guide, have observed that SEC staff will go to great lengths to protect a whistleblower's identity at every stage of the process, from receiving the tip and investigating it to announcing whistleblower

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awards. Indeed, the SEC has instituted policies that prevent agency staff from sharing any identifying information even with other law enforcement agencies without the whistleblower's permission. In the improbable event that the SEC is forced to disclose a whistleblower's identity during a legal proceeding, whistleblowers can expect the SEC (and the court) to take steps to prevent the disclosure from becoming public.

F. Determining the Amount of an Award

The amount of a successful whistleblower's award is within the sole discretion of the Commission as long as the award falls within the 10% to 30% range that Congress established in the Dodd-Frank Act. Rule 21F-5. The total award cannot exceed 30% of the sanctions ordered even where the Commission distributes the award to more than one whistleblower.[118] The Whistleblower Program rules list factors that the SEC may consider when calculating the final award within the 10% to 30% range. Factors that might increase an award include the whistleblower's reporting the perceived violations through an entity's internal-compliance program, the significance of information provided by the whistleblower, the degree of assistance provided by the whistleblower to SEC investigators, and the SEC's programmatic or enforcement interest in the securities violations at issue. Rule 21F-6(a)(1)-(4). Factors that might decrease an award include the level of culpability of the whistleblower in the wrongdoing, unreasonable delay on the part of the whistleblower in reporting the violations to the SEC, or the whistleblower's interference with internal compliance and reporting systems. Rule 21F-6(b)(1)-(3). These factors are discussed in various places throughout this Practice Guide.

The 2020 Final Rules and Adopting Release created a new presumption that the whistleblower is entitled to the maximum "30 percent of the monetary sanctions collected in any covered and related action(s)" if that award will be $5 million or less. Rule 21F-6(c).[119] The presumption is designed to encourage whistleblowing by increasing transparency and efficiency in the award process and ensuring the highest award for smaller cases.[120] A whistleblower will not receive the maximum award if they trigger any of the negative factors listed in Rules 21F-6(b)(1) (culpability), 21F-16 (highly culpable conduct), or 21F-6(b)(3) (interference with internal compliance and reporting systems).[121] The SEC has discretion to award the maximum if the whistleblower unreasonably delayed reporting under Rule 21F-6(b)(2), but only if awarding the maximum amount is "consistent with the public interest, the promotion of investor protection, and the objectives of the whistleblower program."[122] The SEC also retains discretion to grant an award below the 30% maximum if the claimant's assistance was limited as assessed under Rule 21F-6(a) or if awarding the maximum "would be inconsistent with the public interest, investor protection or the objectives of the whistleblower program."[123] The SEC has already found that a claimant's limited assistance overcame the presumption in favor of a maximum award in at least one case where the award was less than $5 million.[124] Where there are multiple whistleblowers and one alone would be eligible for the presumptive maximum, the SEC must award 30% to the group as a whole but has discretion as to how to divide it among the individuals.[125]

In the 2020 Final Rules and Adopting Release, the SEC voted not to pass one of the more controversial proposed amendments, which would have allowed the SEC to reduce an award based on the total dollar amount if that amount was more than reasonably necessary to incentivize a similar whistleblower—but never reducing an award to less than 10% of the total sanctions or less than $30 million on that basis.[126] The proposal received numerous comments in opposition that argued the rule would discourage whistleblowers

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from coming forward and that it would arbitrarily penalize whistleblowers.[127] Rather than adopt the proposed rule, the SEC modified the introductory language of Rule 21F-6 to make explicit that the SEC can consider the total dollar amount of an award as well as the percent of monetary sanctions collected.[128] The Commission justified the change as simply a clarification of the discretion that it already had to consider the dollar amount of an award although it had stated explicitly in its 2018 proposal that it did not have such discretion.[129] In its 2022 Final Rules, the SEC added a provision to Rule 21F-6 prohibiting the Commission from considering the dollar amount of the award as a reason to decrease the size of the award.[130] However, the SEC can still consider the dollar amount of the award for limited purpose of increasing the award amount.

While some whistleblower advocates feared that the 2020 Final Rules would lower awards and deter whistleblowers from making reports,[131] the 2022 Final Rules have put those concerns to bed. At the high end, the 2022 Final Rules eliminated the potential for awards to be adjusted downward simply because of their size, and at the low end, the presumption that the SEC will award the maximum 30% will likely apply and provide a potential boost in determining the amounts of most awards. As of July 2020, 74% of all whistleblower awards had been under $5 million—although it is not clear how many of those could have exceeded $5 million if the statutory maximum were granted.[132] In FY 2022, the Commission ordered the awarding of the 30% maximum pursuant to this presumption for awards below $5 million in more than 90% of the awards issued, demonstrating the Commission's commitment to using this presumption to encourage whistleblowers to come forward to report even those securities violations that may not lead to massive sanctions.[133] And regardless of the rule changes in the past few years, the frequency and size of awards has been steadily increasing.[134]

1. SEC Enforcement Interests

The SEC's publicly available descriptions of its law-enforcement interests may provide guidance to practitioners who are assessing the Commission's likely response to a potential whistleblower tip. Key to the SEC's response will be, *inter alia,* whether the conduct at issue involves an industry-wide practice, Rule 21F-6(a)(3)(iii); the type, severity, duration, and isolated or ongoing nature of the violations, *id.*; the danger to investors "and others," Rule 21F-6(a)(3)(iv); and the number of entities and individuals who have suffered harm. *Id.*

Individuals who are thinking about submitting tips regarding suspected securities violations can learn a great deal about the SEC's regulatory enforcement priorities, which change from time to time, on the Commission's website. This well-organized resource reports on all SEC enforcement actions;[135] the work of SEC divisions, offices, and specialized units;[136] and congressional testimony and speeches of SEC Commissioners and high-level staff.[137] The site also provides periodic recaps of recent enforcement actions and enforcement perspectives for the future.[138] Users can also access the Commission's system of company filings, known as EDGAR, and a search engine that can locate all information available from the SEC across various databases.[139]

2. Unreasonable Delay in Reporting

The SEC places significant emphasis on a whistleblower's timely reporting of suspected securities violations, and an "unreasonable reporting delay" is a negative factor that the SEC considers in determining whistleblower award amounts. Rule 21F-6(b)(2). In determining

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whether a delay was "unreasonable" and should reduce an award, the SEC may consider factors such as whether the whistleblower took reasonable steps to report or prevent the violations, whether the whistleblower only reported the violations after learning about a related investigation or action, and whether the whistleblower had a legitimate reason to delay reporting. *Id.*

Delayed reporting has likely cost more than one whistleblower millions of dollars in award money. On September 22, 2014, the SEC announced what was then its largest award to date—$30 million to an overseas whistleblower whose information allowed the SEC to stop an ongoing fraud that would otherwise have gone undetected.[140] In its order determining the award, the SEC explained that it had adjusted the whistleblower's award downward because the whistleblower delayed reporting a serious fraud for a period long enough to allow additional investors to be harmed. The whistleblower's explanation for the delay was that the whistleblower was unsure whether the SEC would act on the information provided. The SEC found that the whistleblower's explanation for the delay did not excuse it, and the Commission reduced the award percentage significantly. Noting that no previous award had involved such an unreasonable delay, the SEC stated in its order that it would have reduced the award even further had it not been for the fact that some of the delay had occurred before the inception of the SEC Whistleblower Program. This suggests that the SEC awarded the whistleblower somewhat more than the statutory minimum of 10% of collected proceeds, but well below the 30% maximum.

In another case in November 2015, the SEC awarded a whistleblower $325,000 but explained that the reward would have been greater had the whistleblower not waited until he left his job to report to the Commission.[141] The SEC noted in its order that the delay in this case occurred entirely after the SEC Whistleblower Program went into effect and was thus "unreasonable in light of the incentives and protections now afforded to whistleblowers under the Commission's whistleblower program."[142] In an April 2018 award determination, the SEC decreased a whistleblower's award because the individual had delayed unreasonably in reporting the information for a period of ten months.[143]

Even where the SEC finds that a whistleblower delayed reporting unreasonably, the Commission also considers mitigating circumstances surrounding the delay in lessening the blow to the whistleblower's award. In a December 2017 award determination, for instance, the SEC awarded a whistleblower more than $4.1 million, but also noted that the award might have been larger if the whistleblower had not delayed his or her reporting to the SEC.[144] However, the SEC did not weigh the delay as severely as might have done due to two mitigating factors: (1) much of the reporting delay occurred before the SEC's Whistleblower Program was established in 2010; and (2) the whistleblower was a foreign national working outside the United States and, therefore, might have been protected by U.S. anti-retaliation prohibitions, giving the whistleblower greater reason to fear retaliation for reporting the matter than a domestic whistleblower might have.

Even more surprising, the SEC awarded over $27 million to a whistleblower on April 16, 2020, and did not reduce the award at all despite finding that the individual had unreasonably delayed reporting.[145] The Commission determined that the positive factors—including that whistleblower uncovered hidden conduct occurring overseas, provided substantial assistance to the SEC, furthered a significant law enforcement interest, and repeatedly raised concerns internally—outweighed the delay in reporting.

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3. Culpability of the Whistleblower

The Whistleblower Program rules balance policy concerns about rewarding persons who are culpable for wrongdoing with the understanding that, at times, those who have participated in the wrongdoing may have the best access to information that the Commission needs in order to investigate and take action. To incentivize these whistleblowers to come forward with information about securities violations, the rules do not exclude culpable whistleblowers from awards altogether, but the rules prevent such award claimants from recovering from their own misconduct. This means that in determining whether the whistleblower has met the $1,000,000 threshold and in calculating an award, the SEC will exclude any monetary sanctions that the whistleblower is ordered to pay individually or that an entity is ordered to pay based substantially on the conduct of the whistleblower. Rule 21F-16. The SEC also considers the whistleblower's culpability as a negative factor in setting the amount of any award earned. Rule 21F-6(b)(1)-(3). The Whistleblower Program rules thus allow culpable whistleblowers, who may be uniquely situated to provide information regarding securities violations, to come forward and earn awards while not creating incentives that would encourage them to engage in securities violations.

The SEC has issued awards to whistleblowers who took part in the offending misconduct but has also offset or reduced such awards by penalizing whistleblowers for their culpability when setting award amounts. The following are some representative examples:

- On April 5, 2016, the SEC announced an award of $275,000 to a claimant for submitting information that had led to a successful enforcement action and also to a related criminal action but noted that the SEC would offset the whistleblower's award by the (undisclosed) portion of a final judgment entered earlier against the whistleblower that remained unpaid.[146]

- On August 30, 2016, the SEC issued a very sizable award—totaling more than $22.4 million—even though the whistleblower had apparently played some role in the fraud at issue.[147] In justifying this sizable award to this culpable whistleblower, the SEC explained in an accompanying footnote that "[s]everal other factors mitigating the Claimant's culpability were considered" in determining the award percentage. The SEC noted in particular that the whistleblower had not benefitted financially from the misconduct. The anonymous whistleblower's counsel later announced that the $22.4 million award represented 28% of the total $80 million settlement between the SEC and Monsanto Company stemming from Monsanto's failure to publicly disclose millions of dollars in rebates to Roundup weed-killer retailers.[148]

- In a February 2017 determination, the SEC limited a whistleblower award to 20% of the amount collected so far and to be collected in the future. Although the SEC did not disclose the amount of the award, it noted in the determination order that it had "reduced the award from what it might otherwise have been because of both the Claimant's culpability in connection with the securities law violations at issue in the Covered Action and the Claimant's unreasonable delay in reporting the wrongdoing to the Commission."[149]

- In a September 14, 2018, determination generating an award of $1.5 million, the SEC "severely reduced" the award after considering various award criteria.[150] Specifically, the SEC alleged that the claimant had unreasonably delayed by waiting longer than one year to report to the Commission and then did so only after learning about an ongoing SEC investigation. The SEC also noted that investors were being harmed during the delay and that the size of the total monetary sanctions had increased

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accordingly. In addition, the SEC took into account the whistleblower's culpability in the wrongful conduct and warned that "[w]histleblowers with similar conduct should expect to receive a severely reduced award—indeed, even one as low as the minimum statutory threshold—in future cases." This SEC award determination makes clear that the Commission has little patience for dilatory whistleblowers and even less for those who are culpable and delay reporting for potentially opportunistic reasons while investors suffer further harm.

- On March 26, 2019, the SEC awarded more than $13 million to a whistleblower, but the whistleblower's unreasonable delay in reporting and the fact that the whistleblower "passively financially benefited from the underlying misconduct" merited a reduction in the size of the award.[151]
- On December 18, 2020, the SEC reversed a preliminary denial of an award and awarded more than $1.2 million to a whistleblower, though it reduced this award because the whistleblower "actively participat[ed] in and financially benefit[ed] from the fraudulent scheme" and "unreasonably delayed reporting to the Commission even as Claimant became more fully aware of the scheme's illegality."[152]
- On November 23, 2021, the SEC made a $400,000 to an investor who reported wrongdoing.[153] While the investor herself was harmed, did not know about "certain fraudulent aspects of the scheme," and tried to remediate the harm, the SEC reduced the investor's award due to the investor's culpability.
- On April 21, 2022, the SEC made a $580,000 award to a whistleblower who was involved in the underlying violations, financially benefited from the violations, and delayed reporting to the SEC by two years "while investors continued to be harmed."[154]

The SEC has issued awards totaling approximately $1.45 billion to at least 354 individuals.

G. Whistleblower Awards and Whistleblower Program Trends

As of November 15, the SEC Office of the Whistleblower has issued approximately $1.9 billion in 397 awards. Awards have ranged from less than $50,000 to $279 million.[155] Appendix A to this SEC Whistleblower Practice Guide lists all the awards the Commission has issued pursuant to the Whistleblower Program. The awards table, organized chronologically from most recent to oldest, highlights important information about individual award determinations, including various "firsts" in the SEC's handling of award applications.

As the SEC orders listed in Appendix A show, the SEC discloses limited information when issuing awards to protect the identity of every whistleblower, regardless of whether the whistleblower filed a tip anonymously. The SEC's guarded approach to disclosing such information minimizes the chances that a whistleblower's identity will become public, which is a critical concern of would-be whistleblowers on whom the success of the Whistleblower Program depends. However, unlike court and agency decisions that normally allow the public to fully understand the bases for government action, the SEC's orders determining claims for whistleblower awards do not cite the underlying enforcement action, do not disclose the name of the respondent, and disclose little about the nature of the entity or the details of the misconduct involved. For this reason, practitioners must read the SEC orders carefully to glean guidance for preparing tips, assisting the SEC in any ensuing investigations, and claiming awards.

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The awards listed in Appendix A reflect a very active, successful whistleblower reward program. Even in heavily redacted orders, the Commission has made clear that the Whistleblower Program is honoring its commitment to reward individuals who come forward with helpful information about securities violations, sometimes at great risk to their careers. Awards to date demonstrate that the SEC is willing to:

- set award amounts relatively high within the allowable range, at an average that is likely greater than 25% of sanctions imposed;
- pay awards both to whistleblowers whose information causes the SEC to commence investigations leading to enforcement actions and to whistleblowers whose information "significantly contributes" to investigations already underway;
- pay whistleblowers in installments and increase the awards paid as the government collects additional sanctions and penalties from respondents;
- use the Commission's authority to waive Whistleblower Program requirements where needed to serve the interests of investors and to act fairly towards whistleblowers;
- apply appropriate exceptions to the presumptive exemptions that prohibit compliance and audit personnel, as well as corporate officers who receive information as part of a company's internal-reporting mechanism, from participating in the Whistleblower Program;
- protect whistleblowers' identities from public disclosure by ensuring that orders determining whistleblower award claims and related press releases disclose little information about the underlying enforcement actions;
- allow whistleblowers to challenge the amounts of their awards, give fair consideration to the arguments the whistleblowers raise, and reverse or revise preliminary determinations in whistleblowers' favor when appropriate;
- pay awards to individuals who report only internally when the company ultimately self-discloses the information; and
- reward individuals who voluntarily come forward with information containing "independent analysis" as well as "independent knowledge."

Based on these results and the trends of the Whistleblower Program, whistleblowers and their counsel can expect the SEC to issue many more awards, including very large ones, based on enforcement actions aided by whistleblower tips.

> "Whistleblowers play an instrumental role in helping the SEC detect and prosecute wrongdoing and in protecting investors and the capital markets."
>
> – Office of the Whistleblower Chief, Nicole Creola Kelly

H. Claiming a Whistleblower Award

The SEC posts a Notice of Covered Action ("NOCA") on its website for each Commission enforcement action in which a final judgment or order, by itself or together with prior judgments or orders in the same action, results in monetary sanctions exceeding $1 million.[156] The posting of a notice on the SEC website means only that an order was entered with monetary sanctions exceeding $1 million. The notice does not necessarily mean that a whistleblower tip led to the investigation or enforcement action or that the SEC will pay an award to a whistleblower in connection with the case.

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Once a Notice of Covered Action is posted, anyone claiming entitlement to a whistleblower award in connection with the action has 90 days to apply for an award. Each NOCA names the defendants or respondents in the SEC enforcement action, provides links to relevant documents such as administrative or court complaints and settlement orders, and clearly lists the date of the notice and the 90-day deadline for the submission of claims for awards. This deadline is critical, and missing it will preclude a whistleblower from seeking an award.

For whistleblowers seeking to earn awards based on deferred prosecution, non-prosecution, or similar agreements under the newly expanded definition of "action," the SEC will not post a NOCA. Rather, the 90-day window will begin on the day the first press release or similar public notice of the action is posted or, if no public notice is granted, the date of the last signature necessary for the agreement. Rule 21F-11(b)(1)(ii).

A whistleblower must apply for an award by submitting a completed Form WB-APP to the Office of the Whistleblower by midnight on the claim due date. Whistleblowers and their counsel need to be vigilant in monitoring the list of Notices of Covered Actions, which the SEC updates monthly near the end of each calendar month, and in submitting timely claims for award using the WB-APP form that is available on the SEC website.[157]

The SEC has consistently denied claims where the claimant has failed to meet the 90-day deadline for submitting a WB-APP form. On July 23, 2014, for example, the SEC denied a whistleblower's claims for awards in connection to two covered actions that the whistleblower had submitted more than three months after the 90-day claims window.[158] The SEC found the claimant's explanation that the claimant was unaware of the Notices of Covered Actions on the SEC's website fell short of the "extraordinary circumstances" needed under Rule 21F-8(a) to justify the SEC's waiver of the filing deadline.

In another case in 2017, the claimant went even further in arguing for waiver of the deadline, insisting that the SEC not only should have posted the Notice of Covered Action on its website but also should have notified him or her personally with specific instructions about how to apply for an award.[159] Not surprisingly, the SEC rejected this argument, noting the even-handedness and reasonableness of the notice mechanism provided under the rules. The SEC's repeated denial of award applications submitted after the 90-day deadline has not deterred untimely filers in challenging the Commission's denial of their claims, but the SEC has so far refused arguments put forth by claimants to justify missing the deadline.[160]

More recently, on January 30, 2023, while awarding one claimant a $1 million award, the SEC refused to waive the WB-APP 90-day window for another claimant.[161] That claimant argued that this deadline should be waived because she did not know she could submit claims regarding other entities on which she did not provide direct testimony but which were caught up in the same investigation in which the claimant participated. The SEC noted that the showing of "extraordinary circumstances" is extremely demanding and that circumstances like attorney misconduct or serious illness are examples which would meet this high standard. Unfamiliarity with the Whistleblower Program is not an excuse for meeting the deadline. The order cited to several previous denial orders which illustrated the showing required for the SEC to exercise its discretion.

Although whistleblowers must meet a strict deadline for filing their claims for awards, there is no such deadline by which the Commission must process those claims. Concerns about a growing backlog in the SEC's processing of award applications began to be raised within the first several years of the Whistleblower Program, and the backlog has continued to increase. The Wall Street Journal reported in April 2018 that the one-year backlog that

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had slowed the process in its early years had grown to more than two years by the end of 2017.[162] Although this has understandably been a source of frustration for whistleblowers, the Office of the Whistleblower has consistently acknowledged the problem, explained the factors contributing to it over the years, and, in the view of the authors, done its best to expedite processing of a fast-growing number of award applications without a commensurate increase in staffing.[163] Some of the 2020 amendments were designed to expedite award processes, including the presumption that whistleblowers with potential awards under $5 million will receive the maximum, clarification on the SEC's ability to bar whistleblowers who have submitted false information or repeated frivolous applications in the past, and a new Rule 21F-18 creating summary disposition procedure for common types of denials like untimely award applications.[164] Efforts to streamline claims processing continue, as evidenced by the implementation in January 2022 of a modernized claims tracking system and the increased rate at which the SEC is processing claims.[165]

Thus far, no whistleblower has been successful in overturning a denial of their award application by the SEC Office of the Whistleblower. A group of whistleblowers recently brought their challenge to the SEC's denial of their award applications before the U.S. Court of Appeals for the Second Circuit.[166] The Second Circuit affirmed the SEC's decision. The court found for one whistleblower that, although he may have provided useful information to the SEC, it did not lead to an award because the SEC did not use the information.[167] For two more whistleblowers, the court affirmed the SEC's denial of an award upon finding that the SEC already had the information they provided by the time they submitted a Form TCR.[168] The Ninth Circuit has subsequently denied three whistleblowers' appeals on similar grounds, substantially relying upon the declaration of the SEC's lead attorney stating that the whistleblowers' tip had no bearing on the investigation.[168.1]

PROTECTIONS FOR WHISTLEBLOWERS AGAINST RETALIATION

Firings, demotions, and other acts of retaliation against employees who blow the whistle on employer misconduct are all too common. A 2021 survey of more than 3,320 employees working in the for-profit sector found that 79% of responding employees who had reported misconduct said that they had suffered some form of retribution as a result of their actions.[169] Individuals who contact lawyers in search of legal representation before the SEC Whistleblower Program frequently fall into this category, and in many cases they are still reeling from a termination of employment when they first meet with a lawyer. Some contact a lawyer for the purpose of challenging the retaliation they experienced and learn only during the initial consultation that the conduct that they reported to their company could form the basis for an SEC tip and award.

Certain protections for whistleblowers against retaliation are built into the rules governing the SEC Whistleblower Program. The most impactful protection may be the ability of whistleblowers to submit their tips anonymously and the SEC's commitment to shielding the whistleblower's identity from disclosure throughout the investigation, enforcement action, and awards process, as discussed above.

The Dodd-Frank Act and the SEC Whistleblower Program have significantly expanded whistleblower protections for employees in other ways as well. The Dodd-Frank Act amended the employee-protection provisions of the Sarbanes-Oxley Act ("SOX") to make them more favorable to employees; created a new, independent cause of action that a whistleblowing employee can bring directly in federal court; and, as implemented by the

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SEC's rules for the Whistleblower Program, allows the Commission to use its enforcement powers to hold employers accountable for retaliation against whistleblowers.[170] The SEC has brought successful enforcement actions against companies that retaliated against employees who reported securities violations to the Commission.[171]

Attorneys who represent employee-whistleblowers before the SEC should familiarize themselves with applicable anti-retaliation laws because their clients may have suffered or might yet suffer retaliation for reporting misconduct internally and/or to the SEC. Practitioners should remember that the primary goal of a whistleblower who has suffered career-derailing retaliation may be to obtain prompt and just compensation for the financial, reputational, and emotional harm they have suffered. For many whistleblowers, obtaining such remedies is more pressing than submitting a tip to the SEC and potentially earning an award they may not receive for several years. Plaintiff-side attorneys may be able to negotiate a favorable resolution of a whistleblower client's employment claims while avoiding the reputational harm that often flows from litigating against a current or previous employer—and consistent with Whistleblower Program rules, they can do so without relinquishing the whistleblower's right to receive an award from the SEC.

In addition to focusing on the enforcement of employee protections, the SEC has taken aim at employer-imposed agreements that might impede the flow of information from employees to the Commission. The agreements at issue, often signed by the employee as a condition of employment or to receive severance payments, might require employees: to certify that they have not shared confidential information with any third party, to alert the employer to any inquiries from government agencies, or to waive their right to the monetary awards that Dodd-Frank directed the SEC to provide to whistleblowers. The SEC has shown, consistent with Rule 21F-17, that it will penalize employers for using such agreements to impede whistleblowers from participating in the Whistleblower Program.

> "We must ensure that whistleblowers are empowered to come forward when they see misbehavior . . . and that those who report wrongdoing are protected from retaliation."
>
> – Gary Gensler, SEC Chair

A. Employee Protections Under SOX

Section 806 of SOX, 18 U.S.C. § 1514A(a)(1), provides a cause of action to employees of publicly traded companies and certain of their subsidiaries and contractors whose employers retaliated against them because they provided information about, or participated in an investigation relating to, what they:

> reasonably believe[d] constitute[d] a violation of section 1341 [mail fraud], 1343 [wire fraud], 1344 [bank fraud], or 1348 [securities fraud], any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.[172]

The information must have been provided to or the investigation must be conducted by: (1) a federal regulatory or law enforcement agency; (2) a member of Congress or any committee of Congress; (3) a person with supervisory authority over the employee; or (4) a person working for the employer who has the authority to investigate, discover, or terminate the misconduct.[173]

The law also protects those who file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed, or about to be filed, relating to an alleged violation of federal securities and fraud laws.[174] In order to prevail in a claim of retaliation brought under SOX, the complainant must show that his protected activity was a contributing factor

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in the adverse personnel action. Available remedies include reinstatement, back pay, compensatory damages, and attorneys' fees and costs sustained because of the discharge or other retaliation.

Section 21 F(c) of the Dodd-Frank Act contains the amendments to SOX Section 806.[175] These provisions strengthen the anti-retaliation provisions of SOX by increasing the statute of limitations for SOX claims from 90 days to 180 days and providing for jury trials in SOX cases brought in federal court. The amendments also invalidated mandatory, pre-dispute arbitration agreements to the extent those agreements purport to apply to SOX retaliation claims. This is important because arbitration of employment claims often favors the employer.[176]

Dodd-Frank and the Supreme Court also widened the range of employers whose employees are protected by SOX. Section 929A of the Dodd-Frank Act expanded SOX 806's coverage to include subsidiary entities whose financial information is included in a publicly traded parent's consolidated financial statements.[177] In a 2014 decision, the Supreme Court held that SOX Section 806 protects the employees of contractors and of subcontractors of publicly traded companies—not just the employees of the covered public company—although the precise boundaries of employer coverage remain unclear.[178]

Dodd-Frank's anti-retaliation provision only protects employes who have reported to the SEC.

An employee seeking relief from retaliation under SOX must file the claim with OSHA, part of the DOL, which investigates the claim and issues a determination. After an OSHA investigation concludes and the DOL issues findings, SOX claims are further adjudicated by Administrative Law Judges ("ALJs"). If the DOL has not issued a final decision within 180 days of an individual filing a SOX charge, the claimant may remove the matter from the DOL and file suit in federal district court.[179]

B. Employee Protections Under Dodd-Frank

The new cause of action created by the Dodd-Frank Act is set forth in Section 21F(h)(1)(A), which allows "whistleblowers" to sue in federal court if their employers retaliate against them because they:

- provide information about their employer to the SEC in accordance with the Whistleblower Program;
- initiate, testify, or assist in any investigation related to the Whistleblower Program; or
- make disclosures "required or protected" under the Sarbanes-Oxley Act, the Securities Exchange Act of 1934, or any other law, rule, or regulation under the jurisdiction of the SEC.

A Dodd-Frank retaliation claim may be filed directly in federal court within three years "after the date when facts material to the right of action are known or reasonably should have been known to the employee" (but subject to a maximum of six years).[180] A whistleblower's remedies include reinstatement, double back pay with interest, and attorneys' fees and costs.[181] Punitive damages are not recoverable under the statute.[182]

The SEC initially interpreted Dodd-Frank to cover employees who report violations internally to their employers as well as those who report to the SEC.[183] On February 21, 2018, however, the Supreme Court ruled unanimously in the *Digital Realty* case that the statutory definition of the word "whistleblower" limited the anti-retaliation protections of the

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Dodd-Frank anti-retaliation provision to those who have reported to the SEC.[184] The SEC codified that decision in its 2020 Final Rules and Adopting Release by adding a provision explicitly stating that Dodd-Frank's retaliation protection only applies to employer conduct which occurred after the employee qualified as a "whistleblower" under the rules.[185] Where the whistleblower first reports a violation internally and then to the SEC, Dodd-Frank only prohibits retaliation that occurs after the employee files the written report with the SEC.[186] In its 2020 Final Rules, the SEC amended Rule 21F-2, the regulatory anti-retaliation provision, to conform with *Digital Realty*.[187]

Thus far, legislative attempts to reverse *Digital Realty* and return to the SEC's initial interpretation of Section 922 have foundered. In July 2019, the U.S. House of Representatives passed H.R. 2515, known as the Whistleblower Protection Reform Act of 2019, which effectively would have reversed *Digital Realty* such that Dodd-Frank's anti-retaliation provision would protect whistleblowers who only reported their concerns internally. The Senate never brought the 2019 bill to the floor for a vote.[188] More recently, Senators Chuck Grassley and Elizabeth Warren introduced the SEC Whistleblower Reform Act of 2022, which would have implemented the same changes to Dodd-Frank as the 2019 House legislation, but the bill was never brought up for a vote.[189]

While widely viewed as a victory for the management bar, this change may frustrate one of the primary policy goals that businesses pursued during the development of the SEC Whistleblower Program. While the SEC was initially crafting rules to implement the Whistleblower Program in 2010, some corporate interests sought rules that would strongly encourage or even require whistleblowers to first utilize internal compliance reporting programs before reporting to the SEC.[190] Because *Digital Realty* and the 2020 Whistleblower Program rules amendments limit the double backpay and longer statute of limitations available under Dodd-Frank to employees who report to the SEC, workers may be incentivized to report to the Commission before—or in lieu of—reporting internally and facing the heightened prospect of retaliation. This could lessen the effectiveness of internal compliance programs and degrade their ability to help management identify and address securities violations without facing full-blown SEC investigations and potential sanctions. The SEC addressed this concern by stating that whistleblowers will still be incentivized to comply with internal reporting procedures by the fact that the SEC can adjust a whistleblower's award up or down depending on their compliance with employer procedures.[191] Still, for some whistleblowers this incentive to report internally will not be sufficient to risk losing the additional protections of Dodd-Frank's anti-retaliation provisions.

C. Extraterritorial Application of Whistleblower Protections

It is not uncommon for whistleblowers to discover securities violations while working overseas for their corporate employers, i.e., in places falling outside of the federal government's territorial jurisdiction. While whistleblowers abroad may be eligible for SEC awards, anti-retaliation protections generally do not extend beyond U.S. borders.[192] In 2017, the U.S. Department of Labor's Administrative Review Board ("ARB") held that SOX 806 extended to whistleblowers who worked overseas so long as the misconduct of the employer affected the United States "in some significant way."[193] Just over two years later, however, an ARB containing several new appointees effectively reversed that decision and held that SOX does not apply extraterritorially.[194] The ARB did, however, appear to leave the door open to claims brought by employees based in the United States who experienced

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retaliation during a temporary assignment overseas. More recently, in December 2022, the D.C. Circuit held that SOX does not have an extraterritorial application.[195]

Dodd-Frank Act is also unlikely to provide anti-retaliation protections for employees working overseas. Although non-U.S. employees working for non-U.S. companies can be eligible for rewards under the SEC's Whistleblower Program, such employees do not enjoy the same anti-retaliation protections as U.S.-based employees. In 2014, the Second Circuit held that Dodd-Frank's anti-retaliation provisions do not apply to non-U.S. employees working for non-U.S. companies, even when those companies are listed on a U.S. stock exchange.[196] In the case, Liu Meng-Lin v. Siemens AG, a non-U.S. employee of a Chinese company was subjected to retaliation for reporting violations of the Foreign Corrupt Practices Act to the company's compliance department and the SEC. The Court of Appeals held that the anti-retaliation provisions of the Dodd-Frank Act do not apply to non-U.S. employees of non-U.S. companies where all events related to the employee's disclosures occurred outside the U.S.[197] Other courts which have addressed the extraterritorial application of Dodd-Frank have held the same, even if the whistleblower was employed abroad by a U.S. company, though it is possible that a stronger link to domestic misconduct or employment could give rise to a claim.[198]

Employees can participate in the SEC Whistleblower Program without regard to restrictive agreements that employers have forced them to sign.

The SEC has made clear that regardless of the scope of whistleblower anti-retaliation protections, the Commission will issue whistleblower awards to individuals working and living outside the U.S. "[T]he whistleblower award provisions have a different Congressional focus than the anti-retaliation provisions," the SEC explained in its first order paying an award to a foreign whistleblower, "which are generally focused on preventing retaliatory employment actions and protecting the employment relationship."[199] Despite this, the SEC has taken action against companies that impede foreign whistleblowers from providing information to the Commission, which is a separate question from whether a company retaliated against a whistleblower.[200]

D. Enforcement of Anti-Retaliation Provisions by the SEC

Both SOX and the Dodd-Frank Act allow individuals who have suffered unlawful retaliation to bring legal claims against employers, but the SEC Whistleblower Program rules allow the SEC also to sanction employers for violations of the Dodd-Frank anti-retaliation provisions through the Commission's own enforcement actions. Rule 21F-2(b)(2).

The SEC first invoked this authority in 2014, when it announced its first enforcement action against a company based in part on the company's retaliation against a whistleblower. In that case, the SEC charged a hedge fund advisory firm with engaging in principal transactions that created an undisclosed conflict of interest and also charged the firm with retaliating against an employee who had reported the matter to the SEC and suffered retaliation as a result. The company agreed to settle the SEC enforcement action for $2.2 million although the SEC's order implementing the settlement left unclear what portion of the settlement was based on the retaliation allegations.[201] The whistleblower later received an award of $600,000 for the information he provided to the SEC.[202]

Since 2014, the Commission has imposed sanctions for retaliation several times, including in two "stand-alone" enforcement actions in which the SEC did not impose any separate sanction for substantive securities law violations. The first such stand-alone retaliation

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enforcement action occurred in 2016, when a casino-gaming company agreed to pay $500,000 "for firing an employee with several years of positive performance reviews because he reported to senior management and the SEC that the company's financial statements might be distorted."[203] The SEC found that the employee had been "removed from significant work assignments within weeks of raising concerns about the company's cost accounting model" and was terminated just three months later. On April 12, 2022, the SEC issued another stand-alone retaliation penalty. In that case, the Commission announced a cease-and-desist order and civil penalty of approximately $100,000 against a co-founder of a technology company who cut off an employee's computer system access to impede her whistleblowing and later terminated that employee.[204]

These SEC actions have sent a strong signal to employers that the SEC will use its enforcement authority to protect whistleblowers. Notably, the anti-retaliation rules protect whistleblowing employees who have a "reasonable belief" that the information they are reporting reveals possible securities law violations, even if the belief is ultimately incorrect or if the SEC decides not to take action targeting the possible violations. Rule 21F-2(b). The terms "reasonable belief" and "possible violation" were included in Rule 21F-2(b) as an attempt to deter frivolous claims while still protecting those with information regarding a plausible violation.[205] The same rule makes clear that the anti-retaliation protections apply regardless of whether a whistleblower qualifies for an award.[206]

E. Employer-Imposed Agreements That Impede Whistleblowers

Another critical protection for employees who seek to blow the whistle on securities violations is SEC Rule 21F-17(a), which states:

> No 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.

This groundbreaking rule applies to all confidentiality and non-disclosure agreements that employers require of current employees. It also applies to separation, severance or settlement agreements that employers require employees to sign when exiting a company, as these almost invariably include confidentiality provisions and non-disparagement provisions. The rule has no parallel in the Internal Revenue Service's whistleblower program or under the False Claims Act, although courts have refused to enforce confidentiality agreements in the context of the False Claims Act.[207] The CFTC adopted rules amendments analogous to the SEC's prohibition of impediments to whistleblowers on May 22, 2017.[208]

During the first few years of the SEC Whistleblower Program, lawyers representing whistleblowers observed a troubling trend among employers seeking to circumvent Rule 21F-17(a). Employees increasingly found themselves presented with agreements that required them to certify that they had not shared and would not share confidential information with any third party except "as required by law;" to waive their right to an SEC award; to assign any award received to the government; and/or to keep the employer informed of any contact with or inquiries from government agencies. While not expressly prohibiting contact with the SEC, such terms have the purpose of interfering with—and

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undoubtedly deterring—an employee's ability and willingness to communicate with the Commission regarding potential violations of securities laws.

Attorneys representing whistleblowers before the SEC started bringing employers' widespread use of restrictive agreements to the SEC's attention as early as mid-2013.[209] The SEC began addressing these concerns soon thereafter. As detailed below, since that time, the SEC has taken a series of enforcement actions that have prompted companies nationwide to rewrite their employee agreements to bring them into compliance with Rule 21F-17(a).

In early 2015 the SEC sent letters to numerous companies requesting their current and past nondisclosure agreements to determine whether the companies had restricted their employees' ability to share information with law enforcement agencies. These investigations culminated in an enforcement action against KBR, Inc. On April 1, 2015, the SEC announced that it had entered into a settlement with KBR related to the company's confidentiality agreements. The provision at issue appeared in an agreement that KBR required employees to sign when participating in the company's internal investigations:

> I understand that in order to protect the integrity of this review I am prohibited from discussing any particulars regarding this interview and the subject matter discussed during the interview, without the prior authorization of the Law Department. I understand that the unauthorized disclosure of information may be grounds for disciplinary action up to and including termination of employment.[210]

Without admitting to any rule violation, KBR agreed to pay a $130,000 fine and change its confidentiality agreement language going forward. The new language would read:

> Nothing in this Confidentiality Statement prohibits me from reporting possible violations of federal law or regulation to any governmental agency or entity, including but not limited to the Department of Justice, the Securities and Exchange Commission, the Congress, and any agency Inspector General, or making other disclosures that are protected under the whistleblower provisions of federal law or regulation. I do not need the prior authorization of the Law Department to make any such reports or disclosures and I am not required to notify the company that I have made such reports or disclosures.[211]

Following the KBR action, the SEC reiterated its commitment to targeting similar employer agreements that might impede whistleblowers. The Commission also broadened its focus to beyond nondisclosure and confidentiality agreements to other types of provisions that could dissuade employees from providing information to the SEC. Shortly after the KBR action, in her April 2015 speech on "The SEC as the Whistleblower's Advocate," then-SEC Chair Mary Jo White noted that "a number of other concerns have come to our attention, including that some companies may be trying to require their employees to sign agreements mandating that they forgo any whistleblower award or represent, as a precondition to obtaining a severance payment, that they have not made a prior report of misconduct to the SEC. You can imagine our Enforcement Division's view of those and similar provisions under our rules."[212]

Seeing the SEC take aggressive and rapid-fire aim at company agreements that required an employee to waive her right to receive an SEC award was a welcome development for whistleblowers. As a letter from the authors' firm to SEC Commissioners in 2013 observed, the attempt to require employees to waive their right to an SEC award was among the

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most common and insidious impediments that employers had contrived to discourage employees from communicating with the Commission.[213] In the SEC Whistleblower Program, it is the government, and not the employer that pays an award to the employee. The whistleblower's right to an award is a statutory right independent of any legal dispute the employee settled with the employer, meaning that the only benefit an employer receives from such an agreement is to disincentivize an employee's whistleblowing to the SEC. While courts likely would find such agreements void, these provisions could still deter individuals from reporting to the SEC if they believe they will receive no award and will face a breach-of-contract lawsuit and accompanying career harm.

Since the KBR action and Chair White's April 2015 speech, the SEC has taken sixteen additional enforcement actions against companies for utilizing employment and severance agreements that impose restrictions that might dissuade or prevent whistleblowers from reporting potential securities violations to the Commission.[214] On January 19, 2017, the SEC announced the settlement of charges that a financial service company, HomeStreet, Inc., had engaged in misconduct by impeding whistleblowers who reported to the SEC.[215] The Commission found that, in response to an SEC inquiry, HomeStreet management officials had attempted to investigate and uncover the identity of the whistleblower, including by interrogating employees as to whether they or their colleagues were the "whistleblower." Additionally, HomeStreet's severance agreements forced employees to waive their ability to collect an SEC whistleblower award. This matter demonstrates that companies can impede – and be held liable for impeding – whistleblowers through means other than restrictive confidentiality agreements.

In a recent such action, on June 22, 2022, the SEC announced a cease and desist order against The Brinks Company, along with a $400,000 civil penalty. The order noted that Brinks forced employees to sign a confidentiality agreement that, without any exemptions for whistleblowing activity, imposed $75,000 in liquidated damages if an employee disclosed confidential information without approval.[216] In 2023, the SEC announced enforcement actions against Activision and D. E. Shaw & Co. for violating Rule 21F-17. On February 3, 2023, Activision agreed to a cease and desist order and to pay $35 million to settle charges that, in addition to failing to maintain controls regarding disclosures pertaining to its workforce and workplace misconduct, it regularly executed separation agreements requiring employees to notify Activision if they received a request for information from the SEC.[216.1] On September 29, 2023, the SEC announced that that D. E. Shaw & Co. agreed to cease and desist from violating Rule 21F-17 and to pay a $10 million civil penalty. D. E. Shaw & Co. required employees to sign employment agreements prohibiting them from sharing confidential information with any third parties, without an exception for the SEC and other regulators, and it required its departing employees, as a condition for receiving deferred compensation and other benefits, to sign releases affirming that they had not filed any complaints with any government agency.[216.2]

While the SEC has focused primarily on employer agreements as impediments to whistleblowing, Rule 21F-17 applies to any potential whistleblower, not just employees. For example, on November 17, 2021, the Southern District of New York awarded summary judgment to the SEC against defendants who conditioned the return of investors' money on the signing of agreements prohibiting them from reporting possible violations of securities laws to any law enforcement agency.[217] As detailed above, while investors are typically outsiders with less intimate knowledge of a company's conduct than an employee has, they, too, are eligible to receive whistleblower awards under the Whistleblower Program for providing information that leads to a successful SEC enforcement action.

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These SEC actions have not only forced companies nationwide to reform their agreements, but they have rendered such restrictive provisions effectively unenforceable in court. The removal of such onerous restrictions is especially welcome for employees who are abruptly fired or otherwise retaliated against for reporting their concerns, as it allows them to obtain just compensation through resolution of their retaliation claims and still participate in the SEC Whistleblower Program without fear that an employer will be able to claw back any amounts it may have paid them.[218]

BEST PRACTICES FOR SEC WHISTLEBLOWERS AND COUNSEL

To maximize the likelihood of the SEC taking an enforcement action based on a whistleblower's tip, initial submission should be detailed, supported by available evidence, and focused on violations that fit within the SEC's law-enforcement priorities. Such a tip is more likely to garner attention from the SEC's Enforcement staff, whose first step upon opening an investigation is often to meet with a whistleblower. After an initial meeting, the whistleblower's responsibility is to assist the SEC as needed in the ensuing investigation. While the SEC's practice is not to advise whistleblowers of the status of an ongoing investigation, whistleblowers and their counsel should not assume that silence means an investigation is closed or that the Commission will not take an enforcement action. Rather, whistleblowers should monitor the SEC's website for Notices of Covered Actions and be prepared to claim an award if the Commission takes an enforcement action resulting in a qualifying sanction.

The lists below provide practical advice for practitioners who seek to assist their clients in making a compelling case for enforcement action by the SEC. These considerations, which should also be helpful to whistleblowers who participate in the Whistleblower Program without counsel, are based on the Whistleblower Program rules discussed above, the SEC's handling of whistleblower tips to date, and the authors' firsthand experience in representing clients in submitting SEC whistleblower tips, participating in investigations, and claiming awards.

A. Preparing and Submitting a Tip

The following is a list of considerations for whistleblower counsel in composing and filing a tip:

- Determine whether the client has original information about violations of securities laws or the Foreign Corrupt Practices Act.
- Assess the seriousness of the alleged violations by reviewing past SEC regulatory and enforcement actions, which are available on the SEC's website and searchable by topic, violation, company, and other parameters.
- Where needed, assess the potential tip with the help of an expert in the appropriate specialty, such as securities trading or public accounting. Do the work necessary to find experts in whatever subspecialty is needed, such as broker-dealer compliance, revenue recognition, loan loss reserves, alternative trading platforms, or the intricacies of accounting standards applicable to the particular industry or sector whose activities are in question.

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- Determine whether and to what extent your client's information might advance the SEC's enforcement agenda, which changes over time. The SEC's website contains a great deal of information about Commission priorities, including enforcement actions, press releases, and task-force reports. Speeches by SEC commissioners and leading officials can also shed light on the types of information that may be of greatest interest to the SEC.

- Make sure that your client will be providing information "voluntarily," prior to receiving a request for the same from the SEC or another agency or self-regulatory organization. If such a request has already been made, consider whether your client might still be eligible for an award based on a waiver of the voluntariness requirement and/or whether the request was not directed specifically to the client.

- Prepare the client's submission to the SEC with an emphasis on facts about which the client has "independent knowledge" as defined in the Whistleblower Program's rules above. Review the client's position, job duties, and how the client came into possession of the relevant information to determine whether the individual falls within one of the groups who are presumptively excluded from the Whistleblower Program for lack of "independent knowledge." This includes attorneys, compliance and audit personnel, and officers or directors who received the information in connection with corporate-governance responsibilities.

- If the client falls into one of the excluded categories, determine whether the client may be exempt from the exclusion because he reported his concerns internally and has waited 120 days, as in the case of the compliance employee discussed above, or because he has reason to believe investors may suffer imminent harm or because the company is taking action that is likely to impede an investigation.

- If a client is still employed, consider whether to advise the client to report internally if he has not done so. Bear in mind that doing so might subject the client to retaliation but might also entitle the client to a larger award, both because the whistleblower can benefit from additional, related information the company "self- reports" to the SEC and because SEC staff will consider the internal reporting as a factor in determining the size of an award. And as discussed above, your client may have legal protections against retaliation for internal reporting under SOX even if not directly under the anti-retaliation provisions of the Dodd-Frank Act.

- Remember that your client, through you, may file a whistleblower tip anonymously by following the procedures set forth in the rules for anonymous submissions. Such a submission qualifies the individual as a "whistleblower" entitled to the protections of Dodd-Frank's anti-retaliation provisions. Additionally, anonymous reporting can provide a whistleblower with greater confidence that his identity will not become known to future employers and thus pose future risk to his career.

- Use the SEC whistleblower portal and/or SEC-supplied forms and carefully follow the rules that apply to submitting tips and claiming awards, as failing to do so may render a whistleblower ineligible for an award.[219] The importance of following the rules cannot be over-emphasized.

- Remember that the SEC receives thousands of tips per year—whistleblowers submitted 12,210 tips in FY 2021, 12,322 tips in FY 2022, and 18,354 tips in FY 2023[220]—and thus it is important to make sure your client's TCR is as compelling as possible, presenting the most comprehensive evidence and arguments for the SEC taking enforcement

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action that their information and appropriate inferences can support. If the lawyers and accountants who review tips in the Office of the Whistleblower and the Office of Market Intelligence cannot understand your client's submission on a first read, it likely will not gain traction. It is important that a first read of a whistleblower tip provide SEC staff with a sound understanding of the alleged violations and, to the extent possible, how to investigate and prove them. Present your facts and analysis clearly and include with the Form TCR any relevant documents your client can provide. Whistleblowers should describe in detail the particular practices and transactions that they believe to have violated U.S. securities laws, identify the individuals and entities that participated in or directed the violations, and provide a well-organized presentation of whatever supporting evidence the whistleblower possesses.

- In addition to firsthand knowledge and independent analyses, include any useful analysis or explanation that you, your client, or an expert you retain can apply to other facts, even publicly available ones, in a way that will assist SEC lawyers in an investigation. Do not include attorney-client privileged communications in your client's submission to the SEC. The Commission will not consider the information, as it cannot use it in an investigation or enforcement action, and its receipt of such communications will delay or even discourage the SEC's consideration of the submission. Potentially privileged information generally includes documents authored by, received by, or prepared at the request of counsel for the entities or individuals that may be the subjects of an SEC investigation. It also can include conversations with counsel, the contents of which the whistleblower might disclose in a written submission or in discussions with SEC staff. Determinations about the application of attorney-client information to specific information can be complicated. For whistleblowers submitting information to the SEC without counsel, the best practice is to avoid the submission of any information about which the whistleblower has any doubt as to whether the information to be submitted might be governed by attorney-client privilege. If you believe that your client possesses information that the SEC might be concerned is privileged or otherwise impermissible to disclose, note in the submission that the client possesses additional information or supporting documentation that, in an abundance of caution, the client has not provided. The Office of the Whistleblower and/or Enforcement staff assigned to the investigation may establish an SEC "filter" team to screen documents to prevent staff involved in the investigation from viewing potentially privileged materials.

- not needlessly delay in submitting a whistleblower tip. The statute of limitations for securities violations is generally five years, but beyond the risk of submitting a tip that the SEC is time-barred from pursuing, an unreasonable delay in submitting a tip can negatively affect the size of the whistleblower's reward. Promptly submitting a tip also reduces the chances of a competing whistleblower submitting the same information first.

- Provide the SEC with as much documentation of your allegations as possible. While being mindful of any privilege issues, including documentation that supports the allegations made in the tip allows the SEC to judge the reliability of the information in the tip and helps the agency build a case against the company. Whistleblowers can further assist the SEC by providing a "roadmap" for the agency to follow in seeking additional information from the respondent to the investigation and related individuals and entities.

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B. Participating in an Investigation and Claiming an Award

Submitting a tip is only the first step in what is often a lengthy process that, ideally, includes an investigation, enforcement action, and award. Tipsters and their counsel should be mindful of the following:

- Check the email address you provided the SEC! Do not make the mistake that one claimant made when he or she failed to respond to an email from SEC staff seeking to follow up on the claimant's tip. The SEC's follow-up email was directed to the email address the claimant had provided on the Form TCR. The whistleblower's failure to check his or her inbox led SEC staff to close the tip with no further action and was in part responsible for the SEC's later denial of an award to the claimant, whose tip had not "led to" a successful enforcement action. In so ruling, the SEC rejected the claimant's argument that he or she "would have" provided critical information had the SEC tried harder to make contact.[221]

- It is unwise, to say the least, to accuse the SEC and its staff of corruption, dishonesty, or intentional delay in their handling of your whistleblower tip or in making a preliminary determination regarding your application for an award. SEC staff are hardworking, dedicated, and fair-minded in their dealings with whistleblowers. The advocacy of Enforcement staff for the whistleblower, moreover, is critical to the whistleblower's ability to earn an award, and the Commission will reject wild allegations of malfeasance as lacking credibility.[222]

- Remember that the primary purpose of the SEC Whistleblower Program is to assist the Commission in enforcing the nation's securities laws and that the financial incentives the Whistleblower Program provides are designed to further that purpose. The whistleblower's role is to submit information he or she believes will be helpful to the SEC in bringing a successful enforcement action, ideally one that qualifies as a covered action and entitles the whistleblower to an award. The role of the SEC is to investigate the information if warranted, to take action if appropriate, and to impose sanctions in an amount that the facts, the law, and the SEC's enforcement priorities warrant. The whistleblower's role is primarily that of an informant. As such, the whistleblower has no right to decide what action, if any, the SEC should take based on his or her tip.

- Notwithstanding the previous point, a whistleblower certainly can suggest avenues and topics for investigation, theories of recovery, and documents or information that the SEC may want to consider. But a whistleblower must be careful to remember his role, manage his expectations, and show respect for the SEC staff's decisions as to strategy and tactics over the course of what is often a long process.

- Keep detailed records of all contact with the SEC and with related agencies that are investigating. If the SEC takes enforcement action resulting in more than $1 million in sanctions, you will bolster a claim for an award by referencing these saved emails, phone records, recollections informed by contemporaneous notes, and other documents of the whistleblower's role in assisting the SEC in achieving a favorable outcome.

- Monitor the monthly postings of notice of covered actions carefully. The SEC has made clear that "[a] potential claimant's responsibility includes the obligation to regularly monitor the Commission's web page for Notice of Covered Action postings and to properly calculate the deadline for filing an award claim."[223] Whistleblowers should

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also monitor media reports about potential deferred prosecution, non-prosecution, and settlement agreements in light of Rule 21F-11(b)(1), making it a whistleblower's responsibility to monitor SEC press releases and media reports to determine whether a qualifying agreement has been announced publicly (thereby triggering the 90-day period of time to file an application for an award).

- If after filing a WB-APP to claim an award, you receive a preliminary determination denying an award or awarding less than 30%, timely request the record upon which the SEC relied in making its determination. With this information, consider carefully and address the legal and factual bases for the SEC Claims Review Staff's determination. Do not simply parrot the original award application or reiterate generally the whistleblower's entitlement to an award. Doing so all but ensures that the preliminary determination will become the final order with no favorable adjustment for the whistleblower.
- Above all, be patient. A whistleblower tip is not a lawsuit with a predictable course and timelines. Even after a successful enforcement action, the process of claiming and receiving an award may take years given the number of tips and applications the Commission receives. The SEC has taken significant steps toward clearing its backlog, as evidenced by the frequency and size of awards in recent years, but the process is ultimately a marathon, not a sprint.

CONCLUSION

The SEC places great value on the information it receives from whistleblowers as there are many fraudulent schemes the Commission would never have investigated – or at least would have delayed investigating – without that information. Because of whistleblowers, the SEC can take action to stop fraud before investors and the public suffer further harm, and the Whistleblower Program serves to fairly compensate those individuals who put their careers on the line to help combat illegal activity. While the SEC's Whistleblower Program is complicated and navigating it can be difficult, we are hopeful that this guide had provided a meaningful overview of the key aspects of the Whistleblower Program. As always, anyone who believes they may have information to provide the SEC should consult with an attorney to better evaluate the viability of their potential tip, to determine the best manner in which to present that information to the Commission, and to seek guidance regarding the claims process.

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Lisa J. Banks and **Michael A. Filoromo** are partners with Katz Banks Kumin, a whistleblower and employment law firm based in Washington, D.C. They specialize in the representation of whistleblowers in tips submitted to the Securities and Exchange Commission's Office of the Whistleblower, in qui tam lawsuits filed under the False Claims Act, in tips filed with the Commodity Futures Trading Commission, and in tips submitted to the Internal Revenue Service's whistleblower program. They also represent employees in whistleblower-retaliation cases filed under the Sarbanes-Oxley Act, the Dodd-Frank Act and other federal and state laws.

Katz Banks Kumin's website at **www.katzbanks.com** features detailed information about how employees who have blown the whistle on unlawful conduct can fight back against unlawful retaliation and also earn financial rewards where available. Articles in the website's Whistleblower Law section explain both the law and practicalities of whistleblowing as they play out in a wide range of industries and professions. Whistleblower topics include the SEC Whistleblower Program, Corporate and Accounting Fraud, Qui Tam Lawsuits under the False Claims Act, IRS Whistleblowers, Compliance Officer Whistleblowers, Consumer Finance Whistleblowing, the Pharmaceutical Industry, Food Safety, the Nuclear Industry, and Consumer Product Safety Whistleblowers, to name just a few. http://www.katzbanks.com/practice-areas/whistleblower-law/ and http://www.katzbanks.com/practice-areas/sec-whistleblower-law.

The Katz Banks Kumin website also hosts an informative SEC Whistleblower Law Blog and also a more general Whistleblower Law Blog that can help keep whistleblowers and other conscientious employees up to date on new developments in whistleblower law and related news separate from broader whistleblower news and developments. http://www.katzbanks.com/blogs.

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ENDNOTES

[1] SEC Press Release No. 2022-206, SEC Announces Enforcement Results for FY22 (Nov. 15, 2022), https://www.sec.gov/news/press-release/2022-206. This Guide follows SEC numbering practice by referring to the Rules as "Rule 21F-1," etc. The rules are codified at 17 C.F.R. §240.21F-1 et seq. The most recent version of the rules, as amended in December 2020, can be found on the SEC's website at https://www.sec.gov/files/amended-rules-whistleblower-december2020.pdf. The rule establishing the range of awards is Rule 21F-3(a).

[2] SEC Division of Enforcement 2022 Annual Report, 1 (Nov. 15, 2022), available at https://www.sec.gov/files/2022_ow_ar.pdf (hereinafter "2022 Annual Report").

[2.1] SEC Press Release No. 2023-234, SEC Announces Enforcement Results for Fiscal Year 2023 (Nov. 14, 2023), https://www.sec.gov/news/press-release/2023-234.

[2.2] *Id.*

[2.3] *Id.*

[2.4] *Id.*

[2.5] SEC Division of Enforcement 2023 Annual Report, 5-6 (Nov. 14, 2023), available at https://www.sec.gov/files/fy23-annual-report.pdf (hereinafter "2023 Annual Report").

[2.6] Supra note 2.1.

[3] 12 U.S.C. 7201 et seq.

[4] 18 U.S.C. § 1514A.

[5] Fraud Enforcement and Recovery Act of 2009, Pub. L. 111-21, 123 Stat. 1617 (2009); see also False Claims Act, 31 U.S.C. § 3729 et seq.

[6] SEC Release No. 34-64545, Implementation of the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934, 4 (Aug. 12, 2011), https://www.sec.gov/rules/final/2011/34-64545.pdf (hereinafter "2011 Final Rules and Adopting Release").

[7] The 2011 Final Rules and Adopting Release, supra note 6, a combined 305 pages, provides a very useful summary of the policy discussion surrounding the formation of the SEC Whistleblower Program and remains an invaluable resource for whistleblowers and their lawyers in preparing tips and applying for awards. Corporate counsel whose clients may be the subject of whistleblower tips can also benefit from a review of the Adopting Release. The text of the rules themselves begins on page 241.

[8] 2023 Annual Report, supra note 2.5, at 1. The 2023 Annual Report includes awards through September 30, 2023. This Practice Guide contained updated information about whistleblower awards issued through November 15, 2023, so the total number of awards and total dollar value of awards through November 15, 2023, was calculated by adding together the awards since September 2023 to the totals included in the 2023 Annual Report.

[9] 2023 Annual Report, supra note 2.5, at 1. SEC Division of Enforcement 2021 Annual Report, 1 (Nov. 15, 2021), available at https://www.sec.gov/files/owb-2021-annual-report.pdf (hereinafter "2021 Annual Report").

[10] 2022 Annual Report, supra note 2, at 1. Appendix A: SEC Whistleblower Awards Through November 15, 2023, infra, for a list of awards and amounts.

[11] See Appendix A: SEC Whistleblower Awards Through November 15, 2023, infra.

[12] EC Press Release No. 2023-89, SEC Issues Largest-Ever Whistleblower Award (May 5, 2023), https://www.sec.gov/news/press-release/2023-89. For the previous largest-ever award, see [existing cite in the endnote]. SEC Press Release No. 2020-266, SEC Issues Record $114 Million Whistleblower Award (Oct. 22, 2020), https://www.sec.gov/news/press-release/2020-266 (consisting of approximately $52 million in connection with an SEC action and approximately $62 million arising from related actions by another enforcement agency).

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[12.1] SEC Press Release No. 2023-147, SEC Awards More Than $104 Million to Seven Whistleblowers (Aug. 4, 2023), https://www.sec.gov/news/press-release/2023-147.

[13] 2022 Annual Report, supra note 2, at 1.

[14] 2022 Annual Report, supra note 2, at 6.

[15] For a comprehensive guide to the CFTC Whistleblower Program, see Lisa J. Banks' CFTC Whistleblower Practice Guide, a sister publication to this SEC Whistleblower Practice Guide that is also published annually by Katz Banks Kumin. The 2023 edition is available online at http://www.katzbanks.com/resources/guide-navigating-cftc-whistleblower- program. The range of trading activity that can form the basis for tips to the CFTC includes trades not only in cotton and pork bellies but also in oil and gas, treasury futures, commodities such as currencies, cryptocurrencies, and alternative investment products such as derivatives and swaps. Although the CFTC program has attracted far fewer whistleblower tips than the SEC program, it has seen increased activity in the past few years, resulting in the CFTC's announcement in October 2021 of its largest award of approximately $200 million. Id. at 3; CFTC Release No. 8453-21, CFTC Awards Nearly $200 Million to a Whistleblower (October 21, 2021), https://www.cftc.gov/PressRoom/PressReleases/8453-21.

[16] SEC Release No. 34-89963, Whistleblower Program Final Rules (Sept. 23, 2020), https://www.sec.gov/rules/final/2020/34-89963.pdf (referred to hereinafter as "2020 Final Rules and Adopting Release"); SEC Press Release No. 2020-219, SEC Adds Clarity, Efficiency and Transparency to Its Successful Whistleblower Award Program (Sept. 23, 2020), https://www.sec.gov/news/press-release/2020-219.

[17] 2020 Final Rules and Adopting Release, supra note 16, at 49-52; Rule 21F-6(c).

[18] For the definition of "whistleblower," see Rule 21F-2(a), and 2020 Final Rules and Adopting Release, supra note 16, at 63-64 (discussing changes to the rule). For the definition of "action," see Rule 21F-4(d), and 2020 Final Rules and Adopting Release supra note 16, at 15-20 (discussing changes). For the definition of "related action," see Rule 21F-3(b), and 2020 Final Rules and Adopting Release, supra note 16, at 35-43 (discussing changes).

[19] 2020 Final Rules and Adopting Release, supra note 16, at 94-102; Rule 21F-9(e).

[20] SEC Release No. 34-95620, Whistleblower Program Final Rules (Aug. 26, 2022), https://www.sec.gov/rules/final/2022/34-95620.pdf (referred to hereinafter as "2022 Final Rules and Adopting Release").

[21] SEC Press Release No. 2019-3, Court Orders $1 Billion Judgment Against Operators of Woodbridge Ponzi Scheme Targeting Retail Investors (Jan. 28, 2019), https://www.sec.gov/news/press-release/2019-3.

[22] Order Determining Whistleblower Award Claim, Exchange Act Release No. 82181, at 8 n.13 (Nov. 30, 2017), https://www.sec.gov/rules/other/2017/34-82181.pdf.

[23] 2021 Annual Report, supra note 9, at 31.

[24] Order Determining Whistleblower Award Claim, Exchange Act Release No. 73174, at 2 n.2 (Sept. 22, 2014), https://www.sec.gov/rules/other/2014/34-73174.pdf.

[25] Order Determining Whistleblower Award Claim, Exchange Act Release No. 84270 (Sept. 24, 2018), https://www.sec.gov/rules/other/2018/34-84270.pdf (awarding nearly $4 million to an "individual residing in a foreign country").

[26] Order Determining Whistleblower Award Claim, Exchange Act Release No. 81200 (July 25, 2017), https://www.sec.gov/rules/other/2017/34-81200.pdf.

[27] Section 922 of the Dodd-Frank Act amends the Securities Exchange Act of 1934 (commonly referred to as the "Exchange Act") to add a Section 21F, which directs the SEC to establish the SEC Whistleblower Program. 15 U.S.C. § 78u-6.

[28] 2011 Final Rules and Adopting Release, supra note 6, at 35-37.

[29] SEC Press Release No. 2014-154, SEC Announces Award for Whistleblower Who Reported Fraud to SEC After Company Failed to Address Issue Internally, and the linked Order Determining Whistleblower Award Claim (July 31, 2014), https://www.sec.gov/ news/press-release/2014-154.

[30] *Id.*

[31] SEC Press Release No. 2019-81, SEC Awards $3 Million to Joint Whistleblowers, and the linked Order Determining Whistleblower Award Claim 2-3 (June 3, 2019), https://www.sec.gov/news/press-release/2019-81.

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[32] See also Rule 21F-8(a), which expressly allows the SEC "upon a showing of extraordinary circumstances" to waive any of the procedures for submitting tips and claiming an award that are set forth in Rules 21F-9 through 21F-11.

[33] 2011 Final Rules and Adopting Release, supra note 6, at 47.

[34] *Id.* at 47 n. 104.

[35] *Id.* at 51.

[36] 2020 Final Rules and Adopting Release, supra note 16, at 110-24.

[37] *Id.* at 118-19.

[38] *Id.* at 120. The SEC gave examples in its proposed rule of insufficiently insightful analysis, such as where the whistleblower "points to common hallmarks of fraud on the face of public materials (e.g., impossibly high, guaranteed investment returns or extravagant claims in press releases) or to public discourse (e.g., discussions on a public message board) in which investors or others are alleging a fraudulent scheme." Id. at 113; SEC Whistleblower Program Rules, Proposed Rule, Release No. 34-83557, at 106-08 (June 28, 2018), available online at https://www.sec.gov/rules/proposed/2018/34-83557.pdf (hereinafter "2018 Proposed Rules).

[39] *Id.* at 119-20.

[40] *Id.* at 123.

[41] *Id.* at 124.

[42] *Id.* at 112.

[43] *Id.* at 120.

[44] *Id.* at 107–08. See also SEC Press Release No. 2016-10 and the linked Order Determining Whistleblower Award Claim, (Jan. 15, 2016), https://www.sec.gov/news/pressrelease/2016-10.html

[45] Francine McKenna, Whistleblower Award for NYSE Fine Goes to HFT Critic, MarketWatch (Mar. 1, 2016), http://www.marketwatch.com/story/whistleblower-award-for-nyse-fine-goes-to-hft-critic-2016-03-01.

[46] SEC Press Release No. 2020-201, SEC Awards Over $2.5 Million to Two Whistleblowers for Detailed Analysis That Led to Multiple Successful Actions (Sept. 1, 2020), https://www.sec.gov/news/press-release/2020-201.

[47] 2021 Annual Report, supra note 9, at 23.

[48] 2022 Annual Report, supra note 2, at 2.

[49] Standards of Professional Conduct for Attorneys Appearing and Practicing Before the Commission in the Representation of an Issuer, 17 C.F.R. Part 205, available at https://www.law.cornell.edu/cfr/text/17/part-205.

[50] New York County Lawyers Association, Ethics Opinion 746, "Ethical Conflicts Caused by Lawyers as Whistleblowers under the Dodd-Frank Act of 2010" (Oct. 7, 2013), available online at https://www.nycla.org/sitefiles/publications/publications1647_0.pdf.

[51] New York ex rel. Danon v. Vanguard Group, Inc., No. 100711/13, 2015 WL 7594570 (N.Y. Sup. Ct. Nov. 13, 2015).

[52] Individuals who obtain information for a tip using methods that a court finds to have violated criminal laws are excluded as well, without exception. Rule 21F-4(b)(4)(iv).

[53] SEC Press Release No. 2014-180, SEC Announces $300,000 Whistleblower Award to Audit and Compliance Professional Who Reported Company's Wrongdoing, and the linked Order Determining Whistleblower Award Claim (Aug. 29, 2014), https://www.sec.gov/news/press-release/2014-180.

[54] SEC Press Release No. 2015-45, Former Company Officer Earns Half-Million Dollar Whistleblower Award for Reporting Fraud Case to SEC, and the linked Order Determining Whistleblower Award Claim (March 2, 2015), https://www.sec.gov/news/pressrelease/2015-45.html.

[55] SEC Press Release No. 2020-75, SEC Awards $450,000 to Whistleblower, and the linked Order Determining Whistleblower Award Claim (March 30, 2020), https://www.sec.gov/news/press-release/2020-75.

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[56] SEC Press Release No. 2021-128, SEC Awards More Than $1 Million to Whistleblower (July 15, 2021), https://www.sec.gov/news/press-release/2021-128.

[57] SEC Press Release No. 2023-131, SEC Awards Whistleblower More Than $9 Million" (July 12, 2023), https://www.sec.gov/news/press-release/2023-131; SEC Press Release No. 2021-168, SEC Issues Whistleblower Awards Totaling $2.6 Million (Aug. 27, 2021), https://www.sec.gov/news/press-release/2021-168.

[58] SEC Press Release No. 2015-73, SEC Announces Million-Dollar Award to Compliance Officer, and the linked Order Determining Whistleblower Award Claim (Apr. 22, 2015), https://www.sec.gov/news/pressrelease/2015-73.html.

[59] *Id.*

[60] SEC Press Release No. 2020-316, SEC Awards More than $300,000 to Whistleblower with Audit Responsibilities, and the linked Order Determining Whistleblower Award Claim (Dec. 14, 2020), https://www.sec.gov/news/press-release/2020-316.

[61] Order Determining Whistleblower Award Claim, Exchange Act Release No. 90656, at 2 (Dec. 14, 2020), https://www.sec.gov/rules/other/2020/34-90656.pdf.

[62] 2011 Final Rules and Adopting Release, supra note 6, at 64.

[63] 2011 Final Rules and Adopting Release, supra note 6, at 90–92 for the SEC's most comprehensive explanation of these competing interests and how the Commission weighed them in developing the final rules.

[64] 29 C.F.R. § 1980.104(a).

[65] As reflected in a November 2017 SEC award determination, the Commission takes the "original source" requirement seriously and is hostile to applications from persons whom a whistleblower retained to assist that whistleblower in communicating information to the SEC. Order Determining Whistleblower Award Claim, Exchange Act Release No. 82181, at 10-12 (Nov. 30, 2017), https://www.sec.gov/rules/other/2017/34-82181.pdf. In that case, two claimants had been hired by a whistleblower to prepare an expert report on behalf of that whistleblower, which the whistleblower then provided to the Commission. The SEC eventually gave an award of $8 million to the whistleblower, but it refused awards to the two experts who also applied for a share of the award in the same covered action, reasoning that the experts were not the original source of the information but rather were working on behalf of the whistleblower.

[66] SEC Press Release No. 2018-58, SEC Awards More than $2.2 Million to Whistleblower Who First Reported Information to Another Federal Agency Before SEC, and the linked Order Determining Whistleblower Award Claim (April 5, 2018), https://www.sec.gov/news/press-release/2018-58.

[67] *Id.*

[68] Order Determining Whistleblower Award Claims, Exchange Act Release No. 80596, at 6 (May 4, 2017), https://www.sec.gov/rules/other/2017/34-80596.pdf.

[69] 2011 Final Rules and Adopting Release, supra note 6, at 105.

[70] *Id.* at 103.

[71] *Id.* at 104.

[72] *Id.*

[73] *Id.* at 91-92.

[74] 2011 Final Rules and Adopting Release, supra note 6, at 91-92.

[75] *Id.* at 104.

[76] *Id.* at 92 n.197.

[77] 2021 Annual Report, supra note 9, at 24.

[78] *Id.*

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[79] 2011 Final Rules and Adopting Release, supra note 6, at 100.

[80] Order Determining Whistleblower Award Claim, Exchange Act Release No. 82897, at 7-9 (Mar. 19, 2018), https://www.sec.gov/rules/other/2018/34-82897.pdf (emphasizing the importance of the "leads to" requirement and underscoring the SEC's strong reluctance ever to waive that requirement). The SEC website provides a complete list of orders approving and denying awards, many of which turn on the "leads to" requirement, at http://www.sec.gov/about/offices/owb/owb-final-orders.shtml.

[81] SEC Press Release No. 2016-88, Whistleblower Earns $3.5 Million Award for Bolstering Ongoing Investigation, and the linked Order in Whistleblower Award Proceeding (May 13, 2016), https://www.sec.gov/news/pressrelease/2016-88.html.

[82] SEC Press Release No. 2019-76, SEC Awards $4.5 Million to Whistleblower Whose Internal Reporting Led to Successful SEC Case and Related Action (May 24, 2019), https://www.sec.gov/news/press-release/2019-76. As discussed above, a similar 120-day rule applies to cases in which a whistleblower seeks an award based on information passed to the SEC by another federal agency. In such cases, the SEC will treat the whistleblower as "first in line" as of the time he or she submitted the information to the other federal agency only if the whistleblower submits the same information with 120 days of providing the information to the other federal agency. Order Determining Whistleblower Award Claims, Exchange Act Release No. 80596, at 6, n.9 (May 4, 2017), https://www.sec.gov/rules/other/2017/34-80596.pdf.

[83] 2020 Final Rules and Adopting Release, supra note 16, at 113-14 & n.301 (largely incorporating 2018 Proposed Rules).

[84] 2018 Proposed Rules at 108.

[85] *Id.* at 108–09.

[86] *Id.* at 109.

[87] Order Determining Whistleblower Award Claim, Exchange Act Release No.77530, at 2 (Apr. 5, 2016), available online at https://www.sec.gov/rules/other/2016/34-77530.pdf (discussion of "Claimant 2").

[88] Order Determining Whistleblower Award Claim, Exchange Act Release No. 82897 (March 19, 2018), https://www.sec.gov/rules/other/2018/34-82897.pdf.

[89] *Id.* at 6–12.

[90] Order Determining Whistleblower Award Claim, Exchange Act Release No. 85412 (March 26, 2019), https://www.sec.gov/rules/other/2019/34-85412.pdf.

[91] Stryker v. SEC, 780 F.3d 163 (2d Cir. Mar. 11, 2015), discussed in the 2015 Annual Report to Congress on the Dodd-Frank Whistleblower Program, 15 (Nov. 16, 2015), available at https://www.sec.gov/files/owb-annual-report-2015.pdf. See also Order Determining Whistleblower Award Claim, Exchange Act Release No. 79294, at 4-8 (Nov. 14, 2016), http://www.lexissecuritiesmosaic.com/gateway/sec/press-release/2016_34-79294.pdf (two claimants denied awards because information submitted prior to July 21, 2010, did not constitute "original information" under the rules, citing Second Circuit's decision in Stryker).

[92] 2011 Final Rules and Adopting Release, supra note 6, at 110.

[93] Rule 21F-4(d); 2020 Final Rules and Adopting Release, supra note 16, at 15-20.

[94] 2020 Final Rules and Adopting Release, supra note 16, at 16-20.

[95] *Id.* at 12.

[96] *Id.* at 21.

[97] *Id.* at 22-24.

[98] Order Determining Whistleblower Award Claim, Exchange Act Release No. 80521, at 2 n.1 (Apr. 25, 2017), https://www.sec.gov/rules/other/2017/34-80521.pdf.

[99] Order Determining Whistleblower Award Claim, Exchange Act Release No. 77530 (Apr. 5, 2016), https://www.sec.gov/rules/other/2016/34-77530.pdf.

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[100] SEC Press Release No. 2023-89, SEC Issues Largest-Ever Whistleblower Award (May 5, 2023), https://www.sec.gov/news/press-release/2023-89.

[101] Rule 21F-3(b)(3); 2020 Final Rules and Adopting Release, supra note 16, at 38-43.

[102] Rule 21F-3(b)(3)(i). Factors for determining which award program has a more direct or relevant connection to the action include "(A) The relative extent to which the misconduct charged in the potential related action implicates the public policy interests underlying the Federal securities laws (such as investor protection) rather than other law-enforcement or regulatory interests (such as tax collection or fraud against the Federal Government); (B) The degree to which the monetary sanctions imposed in the potential related action are attributable to conduct that also underlies the Federal securities law violations that were the subject of the Commission's enforcement action; and (C) Whether the potential related action involves state-law claims and the extent to which the state may have a whistleblower award program that potentially applies to that type of law-enforcement action." Rule 21F-3(b)(3)(ii).

[103] Rule 21F-3(b)(iii).

[104] 2022 Final Rules and Adopting Release, supra note 20, at 5-7.

[105] Dave Michaels, U.S. Fines Billions for Wall Street Fraud. Nearly Half the Time It Doesn't Collect, Wall St. J. (May 20, 2019), https://www.wsj.com/articles/some-securities-fraudsters-escape-paying-sec-fines-11558344601.

[106] SEC Press Release No. 2014-68, SEC Announces Additional $150,000 Payment to Recipient of First Whistleblower Award (April 4, 2014), https://www.sec.gov/news/press-release/2014-68.

[107] See, e.g., SEC Press Release No. 2022-125, SEC Issues More than $17 Million Award to a Whistleblower (July 19, 2022), https://www.sec.gov/news/press-release/2022-125 (the accompanying order specifies that the award is based on "the monetary sanctions collected, or to be collected" in the Covered Action); see also Appendix A, infra.

[108] The Form TCR can be found online at https://www.sec.gov/files/formtcr.pdf. The 2020 Final Rules and Adopting Release allowed the SEC to update the Form TCR as frequently as it chooses, so attorneys and whistleblowers should monitor the website for form changes. 2020 Final Rules and Adopting Release, supra note 16, at 84.

[109] In an October 2017 award determination granting more than $1 million, the Commission exercised its discretionary power to waive the requirement that a whistleblower have submitted a declaration to the SEC under penalty of perjury. Order Determining Whistleblower Award Claim, Exchange Act Release No. 81857, at 2 n.1 (Oct. 12, 2017), https://www.sec.gov/rules/other/2017/34-81857.pdf (noting that this failure was the result of the SEC's online portal and that the claimant promptly submitted a declaration once the issue was flagged for him by the SEC).

[110] SEC OWB Frequently Asked Questions No. 4 at https://www.sec.gov/whistleblower/frequently-asked-questions.

[111] See also 2020 Final Rules and Adopting Release, supra note 16, at 72-76.

[112] Id. at 94-95. The only exception to this rule is for information submitted between July 21, 2010, when Dodd-Frank was enacted, and August 11, 2011, when the SEC Whistleblower Program Rules took effect. E.g. SEC Press Release No. 2017-1, SEC Awards $5.5 Million to Whistleblower, and the linked Order Determining Whistleblower Award Claim, at 1 & nn.2, 3 (Jan. 6, 2017) https://www.sec.gov/news/pressrelease/2017-1.html (waiving "in writing" requirement where whistleblower provided information before Dodd-Frank and in the format the SEC requested). The Commission also waived the requirement in April 2020 under "highly unusual facts and circumstances" where the SEC had requested that the Claimant provide information over the phone. Order Determining Whistleblower Award Claim, Exchange Act Release No. 88687, at 1-3 (Apr. 20, 2020), https://www.sec.gov/rules/other/2020/34-88687.pdf.

[113] The SEC waived the Form TCR requirement twice in December 2020 for unique circumstances but may be stricter for tips submitted after December 7, 2020, when the Final Rules went into effect. In the first case, the whistleblower had provided the information in writing, unambiguously indicated that it was a tip pursuant to the whistleblower program. However, their attorney misunderstood SEC communications about the procedural requirements and they would otherwise have been eligible for an award. Order Determining Whistleblower Award Claims, Exchange Act Release No. 90580, at 1-2 (Dec. 7, 2020), https://www.sec.gov/rules/other/2020/34-90580.pdf. In the second, the whistleblower provided information to their attorney, who submitted a Form TCR with the attorney as the whistleblower, without the client's informed consent. The client provided follow-up information to the SEC and believed that the information was submitted on the client's behalf. Order

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Determining Whistleblower Award Claim, Exchange Act Release No. 90721, at 1-2 (Dec. 18, 2020), https://www.sec.gov/rules/other/2020/34-90721.pdf.

[114] See, e.g., Order Determining Whistleblower Award Claim, Exchange Act Release No. 96076, at 2 (Oct. 14, 2022), https://www.sec.gov/rules/other/2022/34-96076.pdf (neither claimant filed a timely Form TCR or met the requirements for waiver, but the SEC "determined that it would be in the public interest and consistent with the protection of investors for the Commission to exercise our discretionary authority under Section 36(a) of the Exchange Act to waive the TCR-submission requirements…"); Order Determining Whistleblower Award Claim, Release No. 96129, at 1-2 (Oct. 24, 2022), https://www.sec.gov/rules/other/2022/34-96129.pdf (waiving the Form TCR requirement through the exercise of the SEC's discretionary authority where claimant filed an anonymous Form TCR and signed the counsel certification on behalf of the claimant's counsel).

[115] SEC Form TCR Tip, Complaint or Referral and related instructions are available online at https://www.sec.gov/files/formtcr.pdf.

[116] SEC OWB Frequently Asked Questions No. 6 at https://www.sec.gov/whistleblower/frequently-asked-questions.

[117] SEC v. Yorkville Advisors, LLC, 300 F.R.D. 152 (S.D.N.Y. May 27, 2014) (granting in part and denying in part motion to compel production of documents).

[118] *Id.*; see also SEC Order Determining Whistleblower Award Claim, Exchange Act Release No. 85412, at 2 n.3 (Mar. 16, 2019), https://www.sec.gov/rules/other/2019/34-85412.pdf.

[119] 2020 Final Rules and Adopting Release, supra note 16, at 49-50.

[120] *Id.* at 50.

[121] *Id.* at 50-51.

[122] *Id.* at 51.

[123] *Id.* at 52.

[124] Order Determining Whistleblower Award Claim, Exchange Act Release No. 90867, at 2 (Jan. 7, 2021).

[125] 2020 Final Rules and Adopting Release, supra note 16, at 53.

[126] 2020 Final Rules and Adopting Release, supra note 16, at 54-55.

[127] *Id.* at 55-59.

[128] *Id.* at 59-60.

[129] *Id.* at 43-44.

[130] 2022 Final Rules and Adopting Release, supra note 20, at 23-24.

[131] Lydia DePhillips, *The SEC Undermined a Powerful Weapon Against White-Collar Crime*, ProPublica (Jan. 13, 2021), https://www.propublica.org/article/the-sec-undermined-a-powerful-weapon-against-white-collar-crime

[132] 2020 Final Rules and Adopting Release, supra note 16, at 135-36.

[133] 2022 Annual Report, supra note 2, at 3.

[134] 2022 Annual Report, supra note 2, at 3; 2021 Annual Report, supra note 9, at 10.

[135] See the landing page on the SEC's website for the Division of Enforcement at https://www.sec.gov/page/enforcement-section-landing, with links to SEC litigation releases (https://www.sec.gov/litigation/litreleases.shtml), notices and orders in SEC administrative proceedings (https://www.sec.gov/litigation/admin.shtml), and other information regarding enforcement actions.

[136] For example, the SEC Office of Investor Education and Advocacy, which maintains its own separate website at https://www.investor.gov/, issues Investor Alerts that notify mainly retail investors to be aware of risky or unsound investments and of those who offer them. https://www.investor.gov/additional-resources/news-alerts/alerts-bulletins.

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Recent alerts have focused on issues ranging from trading suspensions to variable annuities to a wide range of investment scams. Similarly, the SEC Office of Compliance and Examinations publishes at least annually an explanation of the issues that the SEC is focusing on in its review of the work of investment advisors, broker-dealers, and other financial institutions. SEC Office of Compliance Inspections and Examinations, 2019 Examination Priorities (2019) https://www.sec.gov/files/OCIE%202019%20Priorities.pdf and accompanying SEC Press Release 2018-299, SEC Office of Compliance Inspections and Examinations Announces 2019 Examination Priorities (Dec. 20, 2018), https://www.sec.gov/news/press-release/2018-299.

[137] Congressional testimony and speeches by SEC commissioners and staff are available in searchable databases online at https://www.sec.gov/news/testimony and https://www.sec.gov/news/speeches. See, e.g., Jay Clayton, Chairman, Director, SEC, Testimony on "Oversight of the U.S. Securities and Exchange Commission" (Dec. 11, 2018), available at https://www.sec.gov/news/testimony/testimony-oversight-us-securities-and-exchange-commission-0; Speech by Chairman Jay Clayton, SEC Rulemaking Over the Past Year, The Road Ahead and Challenges Posed by Brexit, LIBOR Transition and Cybersecurity Risks (Dec. 6, 2018), available at https://www.sec.gov/news/speech/speech-clayton-120618; Speech by Steven Peikin, Co-Director, SEC Division of Enforcement, The Salutary Effects of International Cooperation on SEC Enforcement: Remarks at the IOSCO/PIFS-Harvard Law School Global Certificate Program for Regulators of Securities Markets (Dec. 3, 2018), available online at https://www.sec.gov/news/speech/speech-peikin-120318.

[138] SEC Press Release 2018-250, SEC Division of Enforcement Publishes Annual report for Fiscal Year 2020 (Nov. 2, 2020), https://www.sec.gov/news/press-release/2020-274.

[139] Search Company Filings, SEC https://www.sec.gov/search/search.htm.

[140] SEC Press Release No. 2014-206, SEC Announces Largest-Ever Whistleblower Award, and the linked Order Determining Whistleblower Award (Sept. 22, 2014), https://www.sec.gov/news/press-release/2014-206.

[141] SEC Press Release No. 2015-252, SEC Announces Whistleblower Award of More Than $325,000, and the linked Order Determining Whistleblower Claim (Nov. 4, 2015), http://www.sec.gov/news/pressrelease/2015-252.html.

[142] *Id.*

[143] SEC Order Determining Whistleblower Award Claim, Exchange Act Release No. 83037 (Apr. 12, 2018), https://www.sec.gov/rules/other/2018/34-83037.pdf.

[144] SEC Order Determining Whistleblower Award Claim, Exchange Act Release No. 82214 (Dec. 5, 2017), https://www.sec.gov/rules/other/2017/34-82214.pdf.

[145] Order Determining Whistleblower Award Claim, Exchange Act Release No. 88658 (Apr. 16, 2020), https://www.sec.gov/rules/other/2020/34-88658.pdf.

[146] SEC Order Determining Whistleblower Award Claim, Exchange Act Release No. 77530 (Apr. 5, 2016), https://www.sec.gov/rules/other/2016/34-77530.pdf.

[147] Order Determining Whistleblower Award Claim, Exchange Act Release No. 78719 (Aug. 30, 2016), https://www.sec.gov/rules/other/2016/34-78719.pdf.

[148] Suzanne Barlyn, SEC Awards $22 Million to Ex-Monsanto Executive Through Whistleblower Program, Reuters (Aug. 30, 3016), http://www.reuters.com/article/us-sec-monsanto-whistleblower-idUSKCN1152KG.

[149] Order Determining Whistleblower Award Claim, Exchange Act Release No. 80115 (Feb. 28, 2017), https://www.sec.gov/rules/other/2017/34-80115.pdf.

[150] Order Determining Whistleblower Award Claim, Exchange Act Release No. 84125, at 2 (Sept. 14, 2018), https://www.sec.gov/rules/other/2018/34-84125.pdf.

[151] Order Determining Whistleblower Award Claim, Exchange Act Release No. 85414, at 4 (March 26, 2019), https://www.sec.gov/rules/other/2019/34-85412.pdf.

[152] Order Determining Whistleblower Award Claim, Exchange Act Release No. 90720, at 2 (Dec. 18, 2020), https://www.sec.gov/rules/other/2020/34-90720.pdf.

[153] Order Determining Whistleblower Award Claim, Exchange Act Release No. 93648, at 2 (Nov. 23, 2021), https://www.sec.gov/rules/other/2021/34-93648.pdf.

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[154] Order Determining Whistleblower Award Claim, Exchange Act Release No. 94767, at 2 (April 21, 2022), https://www.sec.gov/rules/other/2022/34-94767.pdf.

[155] 2023 Annual Report, supra note 2.5, at 1.

[156] The list of Covered Actions can be accessed by clicking on the "Claim an Award" tab on the SEC Office of the Whistleblower website, at https://www.sec.gov/whistleblower/claim-award. The SEC has published on its website an easy-to-read flow chart describing the program, with attention to the steps in the award application and determination process. https://www.sec.gov/page/whistleblower-100million.

[157] The Form WB-APP and instructions for completing and submitting it are available at https://www.sec.gov/files/formwb-app.pdf. Note that the SEC released a new version of the Form WB-APP along with the 2020 Rule Amendments.

[158] Order Determining Whistleblower Award Claim, Exchange Act Release No. 72659 (July 23, 2014), http://www.sec.gov/rules/other/2014/34-72659.pdf.

[159] Order Determining Whistleblower Award Claim, Exchange Act Release No. 79464 (Dec. 5, 2016), https://www.sec.gov/rules/other/2016/34-79464.pdf.

[160] Order Determining Whistleblower Award Claim, Exchange Act Release No. 85412, at 12-14 (Mar. 26, 2019), https://www.sec.gov/rules/other/2019/34-85412.pdf, in which the SEC denied an award to a claimant who failed to file an application until 15 months past the deadline because he or she had not seen the Notice of Covered Action and was "under the impression that the Commission would contact claimants about filing an award application." In denying the claimant an award, the Commission explained that it would waive the 90-day deadline only under "extraordinary circumstances" that caused a failure to file on time for reasons "beyond the claimant's control."

[161] Order Determining Whistleblower Award Claim, Exchange Act Release No. 96765, at 4-5 (Jan. 30, 2023), https://www.sec.gov/rules/other/2023/34-96765.pdf.

[162] Dave Michaels, SEC Whistleblower Payouts Slow Amid Deluge of Reward Seekers, Wall St. J. (Apr. 5, 2018), https://www.wsj.com/articles/sec-whistleblower-payouts-slow-amid-deluge-of-reward-seekers-1533474001.

[163] The 2021 Annual Report contains a concise summary of the claims-review and awards process, along with an explanation of some of the factors that bear on the length of time it takes the SEC to issue a final determination of an award claim. 2021 Annual Report, supra note 9, at 13-17.

[164] 2020 Final Rules and Adopting Release, supra note 16, at 8-10.

[165] Report No. 575, SEC's Whistleblower Program: Additional Actions Are Needed To Better Prepare for Future Program Growth, Increase Efficiencies, and Enhance Program Management, at 10-11 (Dec. 19, 2022), https://www.sec.gov/files/secs-whistleblower-program-additional-actions-needed-report-no-575.pdf.

[166] Kilgour v. Sec. & Exch. Comm'n, 942 F.3d 113 (2nd Cir. 2019); see also Hong v. Sec. & Exch. Comm'n, 41 F.4th 83 (2nd Cir. 2022) (petition filed with U.S. Supreme Court); Ross v. Sec. & Exch. Comm'n, No. 21-1165 (D.C. Cir. May 27, 2022).

[167] Kilgour, 942 F.3d at 121-23.

[168] *Id.* at 124-25.

[168.1] Everhart et al. v. Sec. & Exch. Comm'n, No. 22-2049 (9th Cir. Oct. 20, 2023).

[169] Ethics Resource Center, 2021 Global Business Ethics Survey Report: The State of Ethics & Compliance in the Workplace, at 22 (March 2021), available at https://www.boeingsuppliers.com/2021-ECI-GBES-State-of-Ethics-Compliance-in-Workplace.pdf.

[170] 15 U.S.C. § 78u-6.

[171] See e.g., SEC Press Release No. 2016-204, SEC: Casino-Gaming Company Retaliated Against Whistleblower (Sept. 29, 2016), https://www.sec.gov/news/pressrelease/2016-204.html, (announcing second whistleblower retaliation case under Dodd-Frank); SEC Press Release No. 2016-270, Company Settles Charges in Whistleblower Retaliation Case (Dec. 20, 2016), https://www.sec.gov/news/pressrelease/2016-270.html (announcing first settlement for retaliation against internal whistleblower).

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[172] 18 U.S.C. § 1514A(a)(1).

[173] *Id.*

[174] 18 U.S.C. § 1514A(a)(2).

[175] 15 U.S.C. § 78u-6.

[176] Kathryn Evans, Congress Ends Forced Arbitration of Sexual Assault and Harassment Cases, Katz Banks Kumin (March 29, 2022), https://katzbanks.com/employment-law-blog/congress-ends-forced-arbitration-sexual-assault-harassment-cases (providing a history of arbitration in the U.S. and an overview of statistics and studies demonstrating how arbitration benefits employers over employees); see also Nicolas O'Connor, The "Insurmountable Textual Obstacle": A Narrow Interpretation of the Federal Arbitration Act, 32 Geo. J. Legal Ethics 855 (2019), https://www.law.georgetown.edu/legal-ethics-journal/wp-content/uploads/sites/24/2019/11/GT-GJLE190042.pdf (same).

[177] 18 U.S.C. § 1514A(a).

[178] Lawson v. FMR LLC, 571 U.S. 429 (2014). Compare Limbu v. UST Glob., Inc., 2017 WL 8186674, at *4 (C.D. Cal. Apr. 20, 2017) (declining to craft a rule which would exclude the employees of the contractors and subcontractors of publicly traded companies based on "their job responsibilities or the nature of the publicly traded entity's industry") ((citing Lawson, 571 U.S. at 433) ("Plaintiffs read § 1514A to convey that '[n]o ... contractor ... may ... discriminate against [its own] employee [for whistleblowing].' We find that reading consistent with the text of the statute and with common sense.")), with Moody v. Am. Nat'l Ins. Co., 466 F. Supp. 3d 727, 730 (S.D. Tex. 2020), aff'd, 842 F. App'x 875 (5th Cir. 2021) (while recognizing that the employees of contractors of public companies may assert claims, holding that independent contractors contracted directly by a public company cannot), and Baskett v. Autonomous Rsch. LLP, 2018 WL 4757962, at *8 (S.D.N.Y. Sept. 28, 2018) (requiring that the employee of a contractor of a public company have reported on fraud or securities violations in which the public company participated).

[179] OSHA handles the initial investigation and remediation stages for complaints of retaliation not only under SOX but also under more than 20 other federal statues, most of which are particular to certain industries. OSHA publishes desk aids for some of the statutes it administers, including SOX. OSHA, Investigator's Desk Aid to the Sarbanes-Oxley Act (SOX) Whistleblower Protection Provision (Sept. 27, 2018), available at https://www.osha.gov/sites/default/files/SOXDeskAid.pdf.

[180] 15 U.S.C. § 76u-6(h)(1)(B)(iii)(I).

[181] *Id.* § 78u-6(h)(1)(C).

[182] Rosenblum v. Thomson Reuters (Markets) LLC, 13 CIV. 2219 SAS, 2013 WL 5780775, at *5 (S.D.N.Y. Oct. 25, 2013).

[183] Securities Whistleblower Incentives and Protections, 76 Fed. Reg. 34,300–01 (June 13, 2011); Interpretation of the SEC's Whistleblower Rules Under Section 21F of the Securities Exchange Act of 1934, SEC Release No. 34-75592 (Aug. 4, 2015), available at http://www.sec.gov/rules/interp/2015/34-75592.pdf.

[184] Digital Realty Tr., Inc. v. Somers, 138 S. Ct. 767 (2018).

[185] Rule 21F-2(d)(1)(i).

[186] *Id.* at 76.

[187] 2020 Final Rules and Adopting Release, supra note 16, at 8; Rule 21F-2.

[188] H.R.2515 – Whistleblower Protection Reform Act of 2019, https://www.congress.gov/bill/116th-congress/house-bill/2515 s (last accessed Jan. 29, 2023).

[189] S.3977 – SEC Whistleblower Reform Act of 2022, https://www.congress.gov/bill/117th-congress/senate-bill/3977? (last accessed Jan. 29, 2023).

[190] Gen. Elec. Co., et al., Comments on Proposed Rules for Implementing Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934, at 1 (Dec. 17, 2010), https://www.sec.gov/comments/s7-33-10/s73310-179.pdf; Alcoa et al., Comments on Proposed Rules for Implementing Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934, at 11 (Dec. 17, 2010), https://www.sec.gov/comments/s7-33-10/s73310-182.pdf.

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[191] 2020 Final Rules and Adopting Release, supra note 16, at 80; Rule 21F-6(a)(4), (b)(3).

[192] SEC Press Release No. 2020-288, SEC Awards Whistleblower Over $900,000 (Nov. 19, 2020), https://www.sec.gov/news/press-release/2020-288 ("The agency has received whistleblower tips from individuals in 130 countries. Overseas whistleblowers are in a unique position to help identify wrongdoing occurring abroad that may otherwise be hard to detect.").

[193] Blanchard v. Exelis Sys. Corp., ARB No. 15-031, ALJ No. 2014-SOX-20, 2017 WL 3953474 (Dep't of Labor Aug. 29, 2017).

[194] Hu v. PTC, Inc., ARB No. 2017-0068, ALJ No. 2017-SOX-00019, 2019 WL 5089597 (Dep't of Labor Sept. 18, 2019).

[195] Garvey v. Admin. Rev. Brd., No. 21-1182 (D.C. Cir., Dec. 22, 2022); see also Carnero v. Bos. Sci. Corp., 433 F.3d 1 (1st Cir. 2006) (prior to the passage of Dodd-Frank, holding that SOX ant-retaliation provisions do not apply extraterritorially).

[196] Liu Meng-Lin v. Siemens AG, 763 F.3d 175, 180-83 (2d Cir. 2014).

[197] *Id.*

[198] See Daramola v. Oracle Am., Inc., 2022 WL 2047553, at *2 (N.D. Cal. June 7, 2022) (Canadian employee of Canadian subsidiary of U.S. company did not have a claim under either SOX or Dodd-Frank); Ulrich v. Moody's Corp., 2014 WL 12776746, at *7 (S.D.N.Y. Mar. 31, 2014), report and recommendation adopted as modified, 2014 WL 4977562 (S.D.N.Y. Sept. 30, 2014), aff'd 721 Fed.Appx. 17 (2nd Cir. 2018) (dismissing Dodd-Frank claims of Hong Kong employee of U.S. company who reported on violations regarding international bonds).

[199] Order Determining Whistleblower Award Claim, Exchange Act Release No. 73174, at 2 n.2 (Sept. 22, 2014), https://www.sec.gov/rules/other/2014/34-73174.pdf.

[200] In the Matter of Anheuser-Busch InBev, Administrative Proceeding File No. 3-17586 (Sept. 28, 2016) (finding that respondent violated Rule 21F-17 by requiring an employee of an Indian subsidiary sign a confidentiality agreement, which because of its language and a liquidated damages provision, resulted in a that employee ceasing communication with the SEC).

[201] SEC Press Release No. 2014-118, SEC Charges Hedge Fund Adviser With Conducting Conflicted Transactions and Retaliating Against Whistleblower, and the linked Order Instituting Cease and Desist Proceedings (June 16, 2014), http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370542096307#.VAndkPldXxp.

[202] SEC Press Release No. 2015-75, SEC Announces Award to Whistleblower In First Retaliation Case, and the linked Order Determining Whistleblower Award Claim (Apr. 28, 2015), https://www.sec.gov/news/pressrelease/2015-75.html.

[203] SEC Press Release No. 2016-204, SEC: Casino-Gaming Company Retaliated Against Whistleblower (Sept. 29, 2016), available online at https://www.sec.gov/news/pressrelease/2016-204.html. For more analysis of the enforcement action, see Alexis Ronickher, SEC Brings Its First Stand-Alone Whistleblower Retaliation Action, FCPA Blog (Oct. 6, 2016), http://www.fcpablog.com/blog/2016/10/6/sec-brings-its-first-stand-alone-whistleblower-retaliation-a.html. Ms. Ronickher and Lisa Banks, both partners with whistleblower law firm Katz Banks Kumin, represented the IGT whistleblower in the case.

[204] SEC Administrative Proceeding, File No. 3-20820, SEC Charges Co-Founder of Technology Company for Violating Whistleblower Protection Rule (April 12, 2022), https://www.sec.gov/enforce/34-94703-s.

[205] 2011 Final Rules and Adopting Release, supra note 6, at 12-13.

[206] Rule 21F-2(b)(1)(ii) ("The anti-retaliation protections apply whether or not you satisfy the requirements, procedures and conditions to qualify for an award.").

[207] Head v. Kane Co., 668 F. Supp. 2d 146, 152 (D.D.C. 2009).

[208] On May 22, 2017, the CFTC adopted a series of amendments to the rules governing the CFTC Whistleblower Program. Among other changes, the amendments allow the agency, like the SEC, to take action to enforce the anti-retaliation provisions of the Dodd-Frank Act that apply to CFTC whistleblowers. The amendments also prohibit entities from impeding whistleblowers from reporting commodities-trading violations to the CFTC, including through the use of confidentiality and pre-dispute arbitration agreements. CFTC Office of Public Affairs, Strengthening Anti-Retaliation Protections for Whistleblowers and Enhancing the Award Claims Review Process,

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(May 22, 2017), available at https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/wbruleamend_factsheet052217.pdf.

[209] David Marshall & Debra Katz, SEC Whistleblowers' Rights Being Restricted in Severance Agreements, Katz Banks Kumin (May 15, 2013), http://www.katzbanks.com/sec-whistleblower-blog/sec-whistleblowers-rights-being-restricted-severance-agreements; David Marshall & Debra Katz, Letter to SEC Commissioners re: The Use of Severance Agreements to Impede Individuals from Participating in the SEC Whistleblower Program: A Growing Problem and a Recommendation (May 8, 2013), available at http://www.katzbanks.com/wp-content/uploads/2015/04/130508-Letter-to-SEC-Commissioners.pdf.

[210] Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order, Exchange Act Release No. 74619, at 2 (Apr. 1, 2015), http://www.sec.gov/litigation/admin/2015/34-74619.pdf.

[211] *Id.* at 3.

[212] Mary Jo White, The SEC as the Whistleblower's Advocate (Apr. 30, 2015), http://www.sec.gov/news/speech/chair-white-remarks-at-garrett-institute.html.

[213] David Marshall & Debra Katz, Letter to SEC Commissioners re: The Use of Severance Agreements to Impede Individuals from Participating in the SEC Whistleblower Program: A Growing Problem and a Recommendation, at 6-7 (May 8, 2013), available at http://www.katzbanks.com/wp-content/uploads/2015/04/130508-Letter-to-SEC-Commissioners.pdf.

[214] For an up-to-date list of all enforcement actions the SEC has taken based on employer actions to impede reporting, see SEC, Enforcement Actions Based on Actions Taken to Impede Reporting, https://www.sec.gov/whistleblower/retaliation#enforcement-actions (last visited Feb. 1, 2021).

[215] SEC Press Release No. 2017-24, Financial Company Charged With Improper Accounting and Impeding Whistleblowers, and the linked Order Determining Whistleblower Award Claim (Jan. 19, 2017), https://www.sec.gov/news/pressrelease/2017-24.html.

[216] SEC Administrative Proceeding, File No. 3-20904, SEC Charges the Brink's Company with Violating Whistleblower Protection Rule (June 22, 2022), https://www.sec.gov/enforce/34-95138-s.

[216.1] SEC Press Release No. 2023-22, Activision Blizzard to Pay $35 Million for Failing to Maintain Disclosure Controls Related to Complaints of Workplace Misconduct and Violating Whistleblower Protection Rule (Feb. 3, 2023), https://www.sec.gov/news/press-release/2023-22.

[216.2] SEC Press Release No. 2023-213, SEC Charges D. E. Shaw with Violating Whistleblower Protection Rule (Sept. 29, 2023), https://www.sec.gov/news/press-release/2023-213.

[217] SEC v. Collector's Coffee, 19 Civ. 4355 (VM), 2021 U.S. Dist. LEXIS 22216,| 2021 WL 5360440 (S.D.N.Y. Nov. 17, 2021).

[218] Other agencies have also given greater scrutiny to confidentiality agreements. The National Labor Relations Board, Equal Employment Opportunity Commission, and Financial Industry Regulatory Authority, to name a few, have taken action against employer-employee confidentiality agreements in recent years. In addition, a March 2015 report by the State Department's Office of the Inspector General examined confidentiality agreements that the 30 largest State Department contractors have required their employees to sign. U.S. Dep't of State Office of Inspector General, Review of the Use of Confidentiality Agreements by Department of State Contractors, Report ESP-15-03 (March 2015), https://www.stateoig.gov/system/files/esp-15-03.pdf.

[219] This Practice Guide does not discuss all of the forms and procedures in detail, but they are spelled out clearly in the SEC Whistleblower Program, including Rules 21F-1, 21F-2 and 21F-10, and in the sample forms and directions for Form TCR ("Tip, Complaint or Referral") and Form WB-APP ("Application for Award of Original Information") that are appended to the rules at 278–305.

[220] 2023 Annual Report, supra note 2.5, at 5.

[221] Order Determining Whistleblower Award Claim, Exchange Act Release No. 79294, at 6-7 (Nov. 14, 2016), http://www.lexissecuritiesmosaic.com/gateway/sec/press-release/2016_34-79294.pdf.

[222] *Id.* at 4–8.

[223] Order Determining Whistleblower Award Claim, Exchange Act Release No. 79464, at 3 n.6 (Dec. 5, 2016), available online at https://www.sec.gov/rules/other/2016/34-79464.pdf.

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APPENDIX A

U.S. Securities and Exchange Commission ("SEC")
Whistleblower Awards Through November 15, 2023

Each SEC award is issued through an "Order Determining Whistleblower Award Claim." The SEC also issues press releases announcing most but not all awards. The first number in the second column in the table below refers to the Exchange Release number that appears on all Orders. The second, hyphenated number refers to the Press Release number that appears at the top left of each press release.

Readers can find all SEC press releases listed by date and number on at https://www.sec.gov/news/pressreleases. Most press releases announcing whistleblower awards have links to the accompanying order at the upper right of the page. The orders granting and denying award applications are also listed, by date only, on the SEC Office of the Whistleblower website at https://www.sec.gov/about/offices/owb/owb-final-orders.shtml.

The SEC heavily redacts its Orders Determining Whistleblower Award Claims to eliminate any information that would potentially disclose a whistleblower's identity. This practice has evolved to the point where the redacted orders on the website lack not only the names of the whistleblower and the sanctioned entity but also the percentage of proceeds awarded and occasionally the total amounts of the award. The reasoning behind these redactions is that disclosing these numbers could make it possible to link an award to a Covered Action, which would in turn show which actions rested on whistleblower tips and possibly encourage employers, the media, or others to search for the identity of the whistleblower.

Date	Release Nos.	Award Total	%	Allocation Among Claimants	Notes from SEC Press Releases and Orders Determining Awards
May 5, 2023	97438; 2023-89	$279 million	?	All to Claimant 1	Claimant 1 received this largest-ever award from funds collected in a Covered Action and two Related Actions, even though the SEC had already opened its investigation by the time it received Claimant 1's information.
April 13, 2023	97295; No press release.	$1.9 million	?	All to single claimant	Claimant provided independent analysis of facts in a separate litigation to identify securities violations for the SEC.
April 11, 2023	97285; No press release.	$1 million	?	All to Claimant 1	Claimant 2 was denied an award because Claimant 2 filed an award application 17 months after the Notice of Covered Action.
March 31, 2023	97229; 2023-68	$12 million	?	$9 million to Claimant 1; $3 million to Claimant 2	Claimant 1 received a larger award because Claimant 1's information was more important and was received years earlier and Claimant 2 unreasonably delayed.

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Date	Release Nos.	Award Total	%	Allocation Among Claimants	Notes from SEC Press Releases and Orders Determining Awards
March 27, 2023	97202; No press release.	$31,000	30%	$21,000 to Claimant 1; $5,000 to Claimant 2; $5,000 to Claimant 4	The SEC denied Claimant 1's request to increase the award based upon additional amounts collected in bankruptcy because bankruptcy actions are neither Covered Actions brought by the SEC nor enumerated Related Actions. The SEC also denied Claimants 1's and 2's requests for the Commission to exercise its discretion to make awards larger than 30% of collected monetary sanctions.
March 7, 2023	97051; No press release.	$500,000	?	All to joint claimants	Claimants initially provided information to another agency which shared it with the SEC.
Feb. 14, 2023	96923; No press release.	<$5 million	30%	All to single claimant	The SEC made the maximum award under Rule 21F-6(c) presumption for awards under $5 million.
Feb. 13, 2023	96887; No press release.	$3 million	?	All to single claimant	The claimant received an award from both an SEC covered action and a related criminal action.
Jan. 30, 2023	96765; No press release.	$1 million	?	All to Claimant 1	The SEC declined to waive for Claimant 2 the requirement to file a Form WB-APP with 90 days of the relevant Notice of Covered Action.
Jan. 19, 2023	96705; 2023-10	$18 million	?	Undisclosed allocation among three claimants	Claimant 1's information led the SEC to open its investigation, and Claimants 2 and 3 later provided information to support the Covered Action.
Jan. 13, 2023	96656; 2023-8	$5 million	?	All to Claimant 1	Claimant 1's tip helped the SEC develop its strategy, craft subpoenas and document requests, and identify witnesses. While Claimant 2 submitted a tip three years before Claimant 1, it was "vague" and "conclusory."
Jan. 12, 2023	96642; No press release	$300,000	?	Undisclosed allocation among two claimants	Claimant 1 received a reduced award because they attempted to "trade up" their tip to the respondent in exchange for withholding their tip from the SEC.
Jan. 12, 2023	96641; No press release	$900,000	?	All to single claimant	Claimant's information allowed the SEC to act quickly to prevent additional misappropriation.
Jan. 6, 2023	96604; No press release.	$5 million	?	All to single claimant	The SEC reduced claimant's award because they delayed four years in reporting to the Commission and only came forward about respondent's misconduct when they received a subpoena about their own conduct.
Dec. 19, 2022	96527; 2022-231	$37 million	?	All to single claimant	Claimant, an outsider to respondent, received credit for the respondent's self-reporting because claimant had first emailed the respondent with their allegations, prompting an internal investigation, and then claimant filed a Form TCR with the SEC.
Dec. 12, 2022	96474; 2022-218	$20 million	?	All to single claimant	Claimant received a smaller award because much of their information was known to the SEC because of a referral from its Division of Examination.
Dec. 2, 2022	96439; No press release.	$2.5 million	?	All to Claimant 1	The SEC denied an award for Claimant 2 because they submitted information through an entity they owned, not as an "individual."
Nov. 29, 2022	96399; No press release.	Undisclosed	?	Undisclosed allocation among three claimants	Even though two of the successful claimants had the same counsel, they were not joint whistleblower because they approached the SEC at different times.

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Date	Release Nos.	Award Total	%	Allocation Among Claimants	Notes from SEC Press Releases and Orders Determining Awards
Nov. 28, 2022	96391; 2022-211	$20 million	?	All to Claimant 1	Claimant 1's award was reduced because they provided information on only part of the basis of the Covered Action, was briefly involved in the underlying misconduct, and delayed reporting by two years.
Nov. 4, 2022	96231; No press release.	$3.2 million	?	$1.6 million to three joint claimants; $1.6 million to Claimant 4	All claimants provided independent analysis to the SEC. Claimant 4's request for a higher award, based on their assertion that the other claimants based their tip on one of Claimant 4's research publications, was denied because the joint claimants submitted their tip before Claimant 4's publication.
Nov. 3, 2022	Unknown; No press release.	Unknown	?	Unknown	SEC's website displays a 404 error.
Oct. 31, 2022	96178; 2022-196	$10 million	?	All to single claimant	Claimant's information led to a substantial recovery for harmed investors.
Oct. 24, 2022	96129; No press release.	$400,000	?	All to single claimant	The SEC waived the Form TCR filing requirement for the claimant, a prospective investor.
Oct. 24, 2022	96128; No press release.	$1.5 million	?	$1 million to Claimant 1; $500,000 to Claimant 2	Claimant 2 received a smaller award because they delayed reported to the SEC by 30 months and because their information, while important, was less significant than that of Claimant 1.
Oct. 21, 2022	96119; No press release.	$2.7 million	?	All to single claimant	Claimant provided documents to the SEC and participated in multiple voluntary interviews.
Oct. 14, 2022	96076; No press release.	$1 million	?	Split evenly between Claimant 1 and Claimant 2	While Claimant 1 did not personally contact the SEC before the Commission contacted them, Claimants 1 and 2 spoke before Claimant 2 submitted a tip, and Claimant 1 reasonably believe that Claimant 2 was acting on his behalf. The SEC also waived the requirement to file a Form TCR for both claimants.
Oct. 11, 2022	96012; No press release.	$825,000	?	All to single claimant	Claimant quickly provided information to the SEC and then submitted a Form TCR within the allotted time.
Sept. 20, 2022	95834; No press release.	$1.5 million	?	All to single claimant	Claimant provided information to the SEC and to another agency and received an award from both a Covered Action and a Related Action.
Sept. 16, 2022	95802; No press release.	$280,000	?	All to joint claimants	Claimants provided independent analysis identifying a "pattern of suspicious behavior."
Sept. 13, 2022	95748; No press release.	$500,000	?	All to single claimant	Claimant's information led the SEC to open its investigation, and claimant raised concerns internally to attempt to remedy the misconduct.
Aug. 18, 2022	95537; No press release.	$2.3 million	?	$1.5 million to joint claimants, Claimant 1; $800,000 to Claimant 2	The joint claimants received a larger award because they provided more ongoing helpful assistance to the SEC than did Claimant 2.

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Date	Release Nos.	Award Total	%	Allocation Among Claimants	Notes from SEC Press Releases and Orders Determining Awards
Aug. 12, 2022	95490; No press release.	$70,000	30%	All to single claimant	After a preliminary denial, the SEC determined the claimant was entitled to an award and decided that the Rule 21F-6(c) presumption did apply. Unusually, the SEC provided both a dollar amount of the award and a percentage, likely because this $70,000 award represents only a portion of what the claimant could receive if the Commission can collect more from the respondent.
Aug. 12, 2022	95489; No press release.	$3.1 million	?	$2.1 million to Claimant 1; $1 million to Claimant 2	The SEC declined to give Claimant 1 an even higher award because, while Claimant 1 provided more assistance during the investigation, Claimant 2 also continued to provide assistance and reported to the Commission before Claimant 1 had.
Aug. 9, 2022	95443; 2022-139	$16.3 million	?	$13 million to Claimant 1; $3.3 million to Claimant 2	Claimant 2 received a smaller award because they unreasonably delayed in reporting the wrongdoing to the SEC.
Aug. 2, 2022	95408; No press release.	$500,000	?	Undisclosed split between Claimants 1 and 2	Claimant 1 predeceased this award, so their estate received it instead.
July 28, 2022	95384; No press release.	$5 million	?	All to Claimant 1	Claimant 1 satisfied Rule 21F-9(e) by filing a Form TCR within 30 days of learning about the requirement to do so.
July 19, 2022	95309; 2022-125	$17 million	?	All to single claimant	Claimant's information led the SEC to open its investigation, and they continued providing information and documents.
July 18, 2022	95304; No press release.	Less than $5 million	30%	All to single claimant	The SEC made the maximum award under Rule 21F-6(c) presumption for awards under $5 million.
July 15, 2022	95292; 2022-122	$3 million	?	All to single claimant	Claimant reported concerns internally before approaching the SEC.
July 15, 2022	95291; 2022-122	$3 million	?	All to single claimant	Claimant was a non-employee solicited to invest in a misrepresented product, and they promptly informed the SEC about it.
May 19, 2022	94946; No press release.	$16,000	?	All to single claimant	Claimant's tip led to the opening of an investigation, and they provided continuing assistance.
May 6, 2022	94860; 2022-80	$3.5 million	?	Undisclosed allocations between three joint claimants and Claimant 2	On appeal, Claimant 2 merited an award from the Covered Action based upon their independent analysis. However, that same independent analysis played no role in the Related Action, so Claimant 2 was denied an award from the Related Action.
April 27, 2022	94797; No press release.	$500,000	?	All to single claimant	Claimant met the voluntariness requirement because they approached a different federal agency before the SEC contacted them. The SEC also waived its Form TCR filing requirements.
April 25, 2022	94789; 2022-67	$6 million	?	Undisclosed allocation between two sets of joint claimants	Both sets of claimants provided continuing assistance to the SEC, and the second set of joint claimants also provided on-the-record testimony.

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Date	Release Nos.	Award Total	%	Allocation Among Claimants	Notes from SEC Press Releases and Orders Determining Awards
April 21, 2022	94767; No press release.	$580,000	?	All to single claimant	The Rule 21F-6(c) presumption did not apply because the claimant financially benefited from the fraudulent transaction and delayed reporting by two years.
April 18, 2022	94738; No press release.	$700,000	?	All to joint claimants	The SEC shared claimants' information with another agency, resulting in an award being made based upon both a Covered Action and a Related Action.
April 18, 2022	94737; No press release.	$45,000	?	All to single claimant	Claimant, whose information prompted the SEC's investigation, suffered hardships because of the respondent's misconduct.
April 18, 2022	94736; No press release.	$450,000	?	All to single claimant	Claimant reported their concerns internally before beginning to assist the SEC.
April 4, 2022	94589; No press release.	$240,000	?	$160,000 to Claimant 1; $80,000 to Claimant 2	Claimant 2 received a smaller award because their information was less helpful than that provided by Claimant 1.
March 25, 2022	94519; 2022-52	$1.25 million	?	All to single claimant	The Rule 21F-6(c) presumption did not apply because the claimant waited one and a half years before internally reporting the wrongdoing and three years before reporting it to the SEC.
March 18, 2022	94461; No press release.	$60,000	?	All to single claimant	Some of the SEC's charges were based on claimant's information, and that information helped prove fraud which harmed investors.
March 18, 2022	94460; 2022-45	$400,000	?	All to single claimant	Claimant's internal reporting led the respondent to cease its illegal conduct.
March 18, 2022	94459; 2022-45	$1 million	?	All to single claimant	In addition to leading the SEC to open an investigation, the claimant also reported the violations internally.
March 18, 2022	94458; 2022-45	$1.5 million	?	All to single claimant	Claimant's information led the SEC to start an examination and later open an investigation.
March 17, 2022	94442; No press release.	$1.5 million	?	All to single claimant	Claimant submitted information based on their independent analysis.
March 11, 2022	94399; No press release.	$38,000	?	All to Claimant 1	The SEC denied Claimant 2 because there were a compliance employee who did not fall into any of the enumerated exceptions in Rule 21F-4(b)(4)(v).
March 11, 2022	94398; 2022-40	$14 million	?	All to Claimant 1	After a preliminary denial, the SEC chose to waive the Form TCR filing requirement because of Claimant 1's efforts to share their online report with the Commission, which used their information to succeed in a Covered Action, and because the program was new at the time Claimant 1 submitted information and the Commission gave them warnings about the penalties for false information. In contrast, whereas Claimant 1 gave their report to the SEC, Claimant 2 merely published a report which attracted significant attention, but they never provided it to the Commission.
March 8, 2022	94375; 2022-38	$3.5 million	?	All to single claimant	Claimant's information allowed the SEC to further investigate potential securities violations in the Covered Action.

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March 7, 2022	94366; No press release.	Less than $5 million	30%	20% to Claimant 1; 10% to Claimant 2	The SEC made the maximum award under Rule 21F-6(c) presumption for awards under $5 million, but Claimant 1 received a larger award because they approved the SEC first.
Feb. 22, 2022	94288; No press release.	$600,000	?	All to single claimant	Claimant "significantly contributed" to the success of the Covered Actions through interviews and by providing documents.
Feb. 18, 2022	94282; No press release.	$450,000	?	$375,000 to Claimant 1; $75,000 to Claimant 2	The Rule 21F-6(c) presumption did not apply because Claimant 1 unreasonably delayed and Claimant 2 provided limited assistance. Claimant 1 received a larger award because they provided independent analysis on more issues.
Jan. 21, 2022	94022; 2022-7	$1.5 million	?	All to single claimant	Claimant's new information significantly contributed to the success of the Covered Action.
Jan. 21, 2022	94021; 2022-7	$1.8 million	?	All to single claimant	Claimant reported the misconduct internally to remedy it and suffered hardships as a result.
Jan. 21, 2022	94020; No press release.	Less than $5 million	?	All to single claimant.	The SEC made the maximum award under Rule 21F-6(c) presumption for awards under $5 million.
Jan. 21, 2022	94019; 2022-7	$37 million	?	All to joint claimants	Joint Claimants received awards from both a Covered Action and a Related Action.
Jan. 11, 2022	93948; No press release.	$20,000	?	All to single claimant	Claimant provided important documents and continued to converse with the SEC after the submission of the tip.
Jan. 11, 2022	93947; No press release.	$450,000	?	All to single claimant	Claimant's information led to the SEC opening an investigation.
Jan. 11, 2022	93946; No press release.	Less than $5 million	30%	All to single claimant	The SEC made the maximum award under Rule 21F-6(c) presumption for awards under $5 million.
Jan. 11, 2022	93945; No press release.	Less than $5 million	30%	All to single claimant	The SEC made the maximum award under Rule 21F-6(c) presumption for awards under $5 million.
Jan. 10, 2022	93936; 2022-5	$1.5 million	?	Jointly to two claimants	Claimants provided very substantial ongoing assistance, including consulting with the SEC before and after the interviews of key witnesses.
Jan. 10, 2022	93935; 2022-5	$2.6 million	?	All to single claimant	Claimant's information helped the SEC uncover wrongdoing abroad which would have been difficult to do without the Claimant.
Jan. 6, 2022	93913; 2022-2	$13 million	?	All to single claimant	Claimant's information helped the SEC secure emergency relief and understand the mechanics of the fraud.
Dec. 17, 2021	93812; No press release.	$900,000	?	All to Claimant 1	Claimant 2 was denied because they submitted a Form TCR one month after the investigation opened and the enforcement staff did not recall any other communications with Claimant 2.
Dec. 7, 2021	93726; No press release.	$4.9 million	?	All to single claimant	The SEC noted that funds collected by a court-appointed receiver to distribute to harmed investors may be included as "collected" monetary sanctions for which an award can be made.
Dec. 1, 2021	93685; No press release.	$175,000	?	All to single claimant	Rule 29F-6(c) presumption did not apply because of the claimant's "limited assistance."

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Date	Release Nos.	Award Total	%	Allocation Among Claimants	Notes from SEC Press Releases and Orders Determining Awards
Nov. 23, 2021	93648; No press release.	$400,000	?	All to single claimant	Claimant 2's award was reduced due to their culpability, which was in turn mitigated by their position as an investor, their unawareness of certain parts of the misconduct, and their efforts to remediate harm.
Nov. 22, 2021	93637; 2021-243	$2.4 million	?	Majority to Claimant 1	Claimant 2 received a smaller award because their information was substantially less valuable than that of Claimant 1.
Nov. 22, 2021	93636; 2021-243	$7.5 million	?	$6.2 million to Claimant 1; $1.3 million to Claimant 2	Claimant 2's information did not contribute to the related action, and Claimant 2 delayed 16 months before reporting to the SEC, thus justifying a smaller award.
Nov. 22, 2021	93635; 2021-243	$435,000	?	$240,000 to Claimant 1; $195,000 to Claimant 2	While the claimants received equal portions of the award from the Covered Action, Claimant 1 received a larger award from the Related Action because Claimant 1 contributed more to the Related Action than Claimant 2 had.
Nov. 10, 2021	93547; 2021-232	$15 million	?	$12.5 million to Claimant 1; $2.5 million to Claimant 2	Claimant 2 received a smaller award because their information was more limited and less impactful than that of Claimant 1.
Oct. 29, 2021	93465; 2021-220	$2 million	?	All to single claimant	Claimant previously received an award from a Covered Action. This award was made from the DOJ's Related Action.
Oct. 28, 2021	93441; No press release.	$750,000	?	All to single claimant	Claimants' information led the SEC to open its investigation, and claimant continued to provide assistance.
Oct. 28, 2021	93440; No press release.	$24,000	?	All to single claimant	Claimant's information helped the SEC bring an "emergency action."
Oct. 25, 2021	93414; No press release.	$1.5 million	?	All to two joint claimants	Claimants' information helped the SEC expedite its discovery requests.
Oct. 18, 2021	93370; No press release.	$400,000	?	All to single claimant	30% presumption under Rule 21F-6(c) did not apply because claimant unreasonably delayed four years from first learning of the violations before reporting them to the SEC and made efforts to hide the misconduct.
Oct. 15, 2021	93340; No press release.	$300,000	?	All to single claimant	Claimant's information led to the opening of the SEC's investigation.
Oct. 15, 2021	93339; 2021-211	$40 million	?	$32 million to Claimant 1; $8 million to Claimant 2	Claimant 2 received a reduced award because they unreasonably delayed in reporting the misconduct to the SEC for several years.
Oct. 12, 2021	93286; No press release.	$1.3 million	?	All to single claimant	Claimant provided information to SEC over a two-year period.
Oct. 8, 2021	93275; No press release.	Less than $5 million	30%	All to single claimant	The SEC made the maximum award under Rule 21F-6(c) presumption for awards under $5 million.
Oct. 8, 2021	93274; No press release.	$100,000	?	All to single claimant	The charges in the Covered Action were based upon the information the claimant provided.
Oct. 1, 2021	93233; No press release.	$1.7 million	?	All to Claimant 1	Claimant 2 provided duplicative information Claimant 1 had already provided to the SEC.

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Date	Release Nos.	Award Total	%	Allocation Among Claimants	Notes from SEC Press Releases and Orders Determining Awards
Sept. 24, 2021	93118; 2021-192	$36 million	?	All to Claimant 1	While Claimant 2 was denied because their information did not lead to the Covered Action, Claimant 2 likely would have been ineligible because they worked for a foreign government.
Sept. 20, 2021	93055; No press release.	$2.5 million	?	All to Claimant 1	In addition to providing assistance to the SEC, Claimant 1 also repeatedly raised concerns at respondent to try to remedy the misconduct.
Sept. 17, 2021	93049; 2021-180	$11.5 million	?	$7 million to Claimant 1; $4.5 million to Claimant 2	Claimant 2 received a reduced award because, even though they had more recent information about wrongdoing, they delayed in reporting the wrongdoing by several years.
Sept. 16, 2021	93016; No press release.	Less than $5 million	30%	All to joint claimants	The SEC made the maximum award under Rule 21F-6(c) presumption for awards under $5 million.
Sept. 16, 2021	93013; No press release.	$1.2 million	?	All to single claimant	Claimant's information led to the opening of the SEC's investigation and then continued to provide assistance.
Sept. 15, 2021	92985; 2021-177	$114 million	?	$110 million to Claimant 1; $4 million to Claimant 3	Claimant 1 received an award because they submitted independent analysis which used many not readily accessible sources that in conjunction demonstrated securities violations. Claimant 3 received a smaller award because Claimant 3 submitted information after the SEC opened its investigation and the information was more limited than Claimant 1's information.
Sept. 10, 2021	92931; No press release.	$400,000	?	All to single claimant	Claimant was a harmed investor whose information, in addition to leading to the SEC opening an investigation, also led to the recovery of the sole assets used to compensate other harmed investors.
Sept. 10, 2021	92929; No press release.	$700,000	?	All to single claimant	Claimant provided information about the misappropriation of investor funds.
Aug. 27, 2021	92780; 2021-168	$350,000	?	All to single claimant	Claimant provided independent analysis comparing the promotional emails of a microcap company to emails from other promotional campaigns.
Aug. 27, 2021	82778; 2021-168	$1 million	?	Plurality to Claimant 1; remainder to Claimants 2 and 3	All three claimants were compliance professionals. Claimants 1 and 2 waited 120 days after informing their supervisors of the violations. Claimant 3 waited 120 days after learning that senior management was already aware of the problem.
Aug. 27, 2021	92777; 2021-168	$1.2 million	?	All to single claimant	Claimant provided independent analysis to the SEC in the form of a complex algorithm which analyzed publicly available data.
Aug. 26, 2021	92767; No press release	Less than $5 million	30%	All to single claimant	The SEC made the maximum award under Rule 21F-6(c) presumption for awards under $5 million.
Aug. 19, 2021	92708; No press release	Undisclosed	?	All to Claimant 1	The SEC denied Claimant 4 an award because they provided information to the Commission two years after it opened an investigation and two months after it filed the Covered Action in federal court.

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Aug. 10, 2021	92623; No press release.	$17,000	?	All to single claimant	The SEC waived Rule 21F-9 requirement to file a Form TCR within 30 days of submitting information to the SEC because claimant filed a Form TCR within 30 days of learning of that requirement.
Aug. 10, 2021	92622; 2021-149	$2.4 million	?	All to single claimant	Claimant first reported the violations internally before alerting the SEC.
Aug. 10, 2021	92621; 2021-149	$3.5 million	?	All to single claimant	Claimant, a foreign national, provided information which expanded the geographic scope of the SEC's investigation.
Aug. 6, 2021	92589; 2021-146	$1.5 million	?	$1 million to Claimant 1; $500,000 to Claimants 2	Claimant 2 received a smaller award because their independent analysis and observations was less impactful than Claimant 1's information.
Aug. 6, 2021	92587; 2021-146	$2 million	?	All to single claimant	Claimant alerted the SEC to on-going fraud, participated in interviews, and provided documents and additional information to the Commission.
Aug. 2, 2021	92542; 2021-143	$1.6 million	?	$1.1 million to Claimant 1; $500,00 to Claimant 2	While the 30% presumption under Rule 21F-6(c) applied to Claimant 1, Claimant 2 received a smaller portion of the award because they unreasonably delayed in reporting by several years.
Aug. 2, 2021	92541; 2021-143	$2.15 million	?	$2 million to Claimant 1; $150,000 to Claimant 2	Claimant 2 received a smaller award because, while they alerted the SEC to new wrongdoing, their allegations involved individuals not charged in the covered action and Claimant 2 did not provide additional assistance after their initial submission.
July 21, 2021	92456; 2021-134	$2.9 million	?	All to single claimant	30% presumption under Rule 21F-6(c) did not apply because claimant unreasonably delayed two years from first learning of the violations before reporting them to the SEC.
July 16, 2021	92416; No press release.	$40,000	?	All to single claimant	30% presumption under Rule 21F-6(c) did not apply because claimant unreasonably delayed 33 months from first learning of the violations before reporting them to the SEC.
July 15, 2021	92413; No press release.	Less than $5 million	30%	All to single claimant	The SEC made the maximum award under Rule 21F-6(c) presumption for awards under $5 million.
July 15, 2021	92412; No press release.	Less than $5 million	30%	All to single claimant	The SEC made the maximum award under Rule 21F-6(c) presumption for awards under $5 million.
July 15, 2021	92411; 2021-128	$1.2 million	?	All to single claimant	This is the fourth award made to a compliance professional who waited 120 days after internally reporting information to report it to the SEC. Here, the claimant also had first received the information from a subordinate.
June 24, 2021	92251; No press release.	Less than $5 million	30%	All to single claimant	The SEC made the maximum award under Rule 21F-6(c) presumption for awards under $5 million.
June 24, 2021	92248; No press release.	Less than $5 million	30%	All to single claimant	The SEC made the maximum award under Rule 21F-6(c) presumption for awards under $5 million.
June 24, 2021	92247; 2021-110	$1 million	?	All to single claimant	Claimant's information led to the SEC's investigation, and they suffered personal and professional hardships.

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June 21, 2021	92212; 2021-106	$1.3 million	?	Over $1 million to Claimant 1; over $270,000 to Claimants 2 and 3, jointly	Claimant 1 received a larger share because they provided information about more violations by more actors than Claimants 2 and 3. Claimants 2 and 3 were considered joint whistleblower because they were treated as such in a previous award which they did not contest and, here, submitted a joint award application through the same counsel.
June 21, 2021	92210; 2021-106	$4 million	?	All to single claimant	Claimant provided "extraordinary assistance" to the SEC, participating in hours of interviews and exchanging more than 125 emails with Commission staff, providing and explaining documents, and identifying key witness.
June 14, 2021	92164; No press release	Less than $5 million	30%	28% to Claimant 1; 2% to Claimant 2	Claimant 2 received a smaller award because they reporting information only after a delay and much of Claimant 2's information was already known to the SEC because of Claimant 1.
June 14, 2021	92163; 2021-100	$3 million	?	Undisclosed shares to two claimants	Both claimants played distinct roles at different points in the SEC's investigation.
June 3, 2021	92102; No press release.	Over $180,000	?	All to single claimant	Claimant received a combined award from a Covered Action and a Related Action.
June 3, 2021	92101; No press release.	Over $10,000	?	All to single claimant	Claimant had previously received an award from Covered Action. This is a supplemental award from a Related Action.
June 3, 2021	92100; No press release.	Less than $5 million	30%	All to single claimant	The SEC made the maximum award under Rule 21F-6(c) presumption for awards under $5 million.
June 3, 2021	92099; No press release.	Almost $200,000	?	All to single claimant	The SEC waived Rule 21F-9 requirement to file a Form TCR within 30 days of submitting information to the SEC because claimant filed a Form TCR within 30 days of learning of that requirement.
June 2, 2021	92086; 2021-91	$23 million	?	$13 million to Claimant 1; $10 million to Claimant 2	The SEC exercised its discretionary authority to exempt Claimant 2, whose award was reduced due to unreasonable delay in reporting to the Commission, from the 90-day Form WB-APP filing deadline.
May 27, 2021	92037; 2021-88	$4.2 million	?	All to Claimant 1	Claimant 2 was denied an award because their tip was marked "No Further Action," and enforcement staff did not receive their information.
May 19, 2021	91933; 2021-86	$28 million	?	All to single claimant	Part of claimant's award is attributable to a related action.
May 17, 2021	91903; 2021-85	$3.75 million; $750,000	?	$750,000 to Claimant 1; $3.75 million to Claimant 2	Claimant 1's award was reduced because they reported information one year into the SEC's investigation, their information only supported an action against an individual, and they delayed reporting by five years. On appeal, Claimant 2 received an award because they presented evidence they voluntarily provided information to another entity prior to being contacted by the CFTC.

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Date	Release Nos.	Award Total	%	Allocation Among Claimants	Notes from SEC Press Releases and Orders Determining Awards
May 17, 2021	91902; 2021-85	$27 million	?	Split equally between joint whistleblowers	The SEC refused to credit an alleged oral agreement between three potential claimants that Claimant 1 would allocate the award among the claimants and instead considered the two claimants who did seek an award to be joint whistleblowers. A third claimant was denied because the Enforcement staff did not receive information from that claimant.
May 14, 2021	91896; No press release.	Less than $5 million	?	All to single claimant	The SEC made the maximum award under Rule 21F-6(c) presumption for awards under $5 million.
May 12, 2021	91854; 2021-83	$3.6 million	?	All to Claimant 1	The SEC denied Claimant 2's request to review the investigative file of the Covered Action.
May 10, 2021	91808; 2021-81	$22 million	?	$18 million to Claimant 1; $4 million to Claimant 2	Claimant 1 received a larger share than Claimant 2 because Claimant 1 provided information that led to the opening of the investigation and Claimant 2 unreasonably delaying in reporting to the SEC, among other reasons.
April 23, 2021	91651; No press release.	Less than $5 million	30%	All to single claimant	The SEC made the maximum award under Rule 21F-6(c) presumption for awards under $5 million.
April 23, 2021	91650; 2021-70	$100,000	?	All to single claimant	The SEC noted that the claimant suffered "personal and professional hardships."
April 23, 2021	91649; 2021-70	$3.2 million	?	All to single claimant	The SEC declined to apply the 30% presumption under Rule 21F-6(c) because of the claimant's unreasonable delay in reporting to the SEC.
April 15, 2021	91568; 2021-62	Over $50 million	?	Two claimants split the award.	The SEC denied a third claimant because the regional office to which the claimant submitted information marked those tips as "No Further Action" and did not provide them to the Enforcement staff conducting the covered action.
Mar. 29, 2021	91427; No press release.	Less than $5 million	20% and 10%	Two-thirds to one claimant; one-third to another.	The SEC cited the revised Rule 21F-6(c), which created a presumption for a maximum (30%) award where the award would be less than $5 million, the claimant has no negative factors, and the claimant is not a culpable whistleblower. Notably, both claimants were harmed investors, not insiders. The claimant receiving the larger award (20% of the proceeds) submitted information earlier in time, significantly expanding an ongoing investigation. Both claimants provided substantial assistance that helped the SEC stop an ongoing fraudulent scheme.
Mar. 29, 2021	91426; 2021-54	Over $500,000	?	All to single claimant.	The SEC granted this award through the safe harbor provision under Rule 21F-4(b)(7), which provides that if the whistleblower submits information to another federal agency and submits same to the SEC within 120 days, the SEC will treat the information as though submitted at the same time it was submitted to the other agency.

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Mar. 16, 2021	91332; No press release.	Less than $5 million	30%	All to single claimant.	The SEC for the first time cited the presumption under revised Rule 21F-6(c) for a maximum (30%) award where the award would be less than $5 million. The claimant provided significant ongoing assistance, answering the investigative staff's questions and providing numerous documents.
Mar. 9, 2021	91280; 2021-44	$1.5 million	?	All to single claimant.	The claimant raised flags about previously unknown misconduct, identified potential witnesses, and talked with the SEC on multiple occasions.
Mar. 4, 2021	91253; 2021-41	Over $5 million	?	Two claimants split the award.	Claimants provided significant information about misconduct overseas that directly supported certain allegations in the enforcement action.
2021	91225; 2021-37	$500,000	?	Two claimants split the award	Both claimants provided substantial, ongoing assistance that conserved the agencies' time and resources.
Feb. 25, 2021	91207; 2021-34	Over $800,000	?	All to single claimant.	The Commission waived noncompliance with the requirement to file a TCR because the claimant complied with this obligation within 30 days of having learned of those filing requirements. The claimant participated in an interview and provided documents that showed false and misleading statements made to investors.
Feb. 25, 2021	91206; 2021-34	Over $900,000	?	All to single claimant.	The Commission waived noncompliance with the requirement to file a TCR because the claimant complied with this obligation within 30 days of having learned of those filing requirements. The claimant's substantial information and "critical declaration" helped stop a scheme to defraud retail investors.
Feb. 23, 2021	91183; 2021-31	Over $9.2 million	?	All to single claimant.	This marks the first time an award had been granted on the basis of the Dec. 7, 2020 amendments which included deferred and non-prosecution agreements as "related actions" eligible for an award.
Feb. 19, 2021	91164; 2021-30	Nearly $700,000	?	All to single claimant.	Claimant prompted the SEC investigation, provided significant information, and reported internally.
Feb. 19, 2021	91163; 2021-30	Over $2.2 million	?	All to single claimant.	Information in the claimant's submission was "of such high quality that staff was able to draft document requests . . . without speaking to Claimant."
Jan. 14, 2021	90922; 2021-7	Nearly $600,000	?	All to single claimant.	Claimant provided substantial assistance and met with investigators multiple times.
Jan. 7, 2021	90866; 2021-2	Nearly $600,000	?	All to single claimant.	Claimant prompted the SEC investigation, provided significant information, and reported internally many times.
Jan. 7, 2021	90867; 2021-2	Over $100,000	?	All to single claimant.	Claimant credited for independent analysis of public documents. The Rule 21F-6(c) presumption of the 30% maximum award applied but was overcome because claimant provided limited assistance.

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Jan. 7, 2021	90864; 2021-2	Nearly $500,000	?	$240,000 to one claimant, $240,000 to another claimant, $10,000 to a third claimant.	Claimant 1, an outsider, prompted the SEC investigation. The others provided significant additional information leading to two SEC actions.
Dec. 22, 2020	90767; 2020-333	Over $1.6 million	?	All to single claimant.	Claimant provided ongoing assistance to the SEC despite fears for personal safety.
Dec. 18, 2020	90721; 2020-325	Over $500,000	?	All to single claimant.	The SEC waived the Form TCR requirement due to attorney misconduct, but the award was reduced due to unreasonable delay in reporting.
Dec. 18, 2020	90718; 2020-325	Over $1.8 million	?	All to single claimant.	Claimant took immediate steps to mitigate harm to investors and provided significant assistance to the SEC, leading to millions of dollars returned to investors.
Dec. 18, 2020	90720; 2020-325	Over $1.2 million	?	All to single claimant.	The SEC determined that claimant did not initiate the misconduct but did actively participate in it, financially benefit from it, and unreasonably delay reporting. Award was therefore reduced.
Dec. 14, 2020	90656; 2020-316	$300,000	?	All to single claimant.	Claimant had audit responsibilities but met the exception where the wrongdoer is engaging in conduct that impedes internal investigation.
Dec. 7, 2020	90582; 2020-307	Nearly $400,000	?	Half to each of two claimants.	Claimants' independent analysis prompted the SEC to open an investigation and provided ongoing support.
Dec. 7, 2020	90580; 2020-307	$750,000	?	$500,000 to one and $250,000 to another.	Claimant 1 submitted the first tip and provided more information than Claimant 2, whose information led to additional allegations in the charges brought. Claimant 1 refused to participate in the wrongdoing and Claimant 2 reported internally.
Dec. 7, 2020	90578; 2020-307	Nearly $1.8 million	?	All to single claimant.	Claimant reported internally and to the SEC, provided detailed information into wrongdoing the SEC would not otherwise have uncovered.
Dec. 1, 2020	90537; 2020-297	Over $6 million	?	Half to each of two claimants.	Claimants' joint tip and ongoing assistance led to successful actions by multiple agencies, uncovering tens of millions of dollars in ill-gotten gains.
Nov. 24, 2020	90506; No press release.	?	30%	All to single claimant.	Claimant's tip was a factor in the SEC opening an investigation, which uncovered additional misconduct. Minimal sanctions were collected.
Nov. 20, 2020	90468; No press release.	?	30%	All to single claimant.	Claimant helped uncover a Ponzi scheme preying on retail investors. No collections were anticipated in the matter.
Nov. 19, 2020	90460; 2020-288	Over $900,000	?	All to single claimant.	Claimant provided timely and ongoing assistance, including information about misconduct overseas.
Nov. 13, 2020	90412; 2020-283	Over $1.1 million	?	All to single claimant.	Claimant's independent analysis refocused an ongoing SEC investigation, saved significant time and resources, and allowed the SEC to freeze wrongdoer assets.
Nov. 5, 2020	90351; 2020-278	$750,000	?	All to single claimant.	Claimant provided significant information without which the SEC likely would not have uncovered the fraud.

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Nov. 5, 2020	90350; 2020-278	Over $3.6 million	?	All to single claimant.	Claimant successfully contested the award amount and the SEC increased the award percentage. Claimant provided significant information, including misconduct abroad, and traveled internationally at own expense for the investigation.
Nov. 3, 2020	90317; 2020-275	Over $28 million	?	All to single claimant.	Claimant's reports prompted internal and SEC investigations. Claimant identified a key witness and provided information closely related to some of the charges brought.
Oct. 29, 2020	90284; 2020-270	Over $10 million	?	All to single claimant. Two others denied.	Claimant's information caused the SEC to open its investigation and led to almost every finding and charge. Claimant also raised concerns internally several times. Other claimants submitted information later and did not add significant new information.
Oct. 22, 2020	90247; 2020-266	Over $114 million	?	All to single claimant. Three others denied.	The award consisted of $52 million in connection with the SEC case and $62 million from related actions. Other claimants did not significantly contribute to the enforcement actions. This is the highest award as of publication.
Oct. 15, 2020	90189; 2020-255	More than $800,000	?	All to single claimant.	Claimant offered detailed independent analysis but no continuing assistance.
Sept. 30, 2020	90054; No press release.	Nearly $400,000	?	Half to each of two claimants.	Claimants provided detailed and ongoing information, reported internally, and faced retaliation.
Sept. 30, 2020	90059; No press release.	Nearly $2.9 million	?	All to single claimant. Two others denied.	Claimant's tip prompted the SEC to open an investigation. Claimant did not recover for "related action" because it was not based on the same original information. Claimants 2 and 3 submitted tips after Claimant 1 and did not provide significant additional information.
Sept. 30, 2020	90049; 2020-239	Nearly $30 million	?	$22 million to one; $7 million to another.	Claimant 1 reported to the SEC first, provided substantial ongoing assistance, and internally reported. Claimant 2 provided more limited and duplicative information.
Sept. 30, 2020	90057; No press release.	Over $1.7 million	?	All to single claimant.	The award was reduced for unreasonable delay of three years but mitigated because the claimant attempted to alert investors in the interim and feared retaliation by the company.
Sept. 28, 2020	90021; 2020-231	Over $1.8 million	?	All to single claimant.	Claimant was unaffiliated with the wrongdoer and provided prompt information that was closely connected to the charges brought.
Sept. 25, 2020	89996; 2020-225	Over $1.8 million	?	All to single claimant.	Claimant provided key information to an internal investigation, which aided the SEC's investigation and uncovered overseas misconduct. The company had been sanctioned previously for similar misconduct.

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Sept. 25, 2020	89995; 2020-225	$750,000	?	All to single claimant.	Claimant's information prompted the SEC investigation and uncovered foreign misconduct, but the case was largely built on information from other sources.
Sept. 21, 2020	89929; 2020-215	$2.4 million	?	All to single claimant.	Claimant's information prompted the investigation and contributed to all charges.
Sept. 17, 2020	89912; 2020-214	Nearly $250,000	?	Half to each of two claimants.	Claimants promptly provided the information that initiated the investigation, but the case was largely built by SEC investigators.
Sept. 14, 2020	89850; 2020-209	Over $10 million	?	All to single claimant.	Claimant exposed abuses and provided extensive and ongoing assistance during the investigation, including identifying witnesses and assisting the SEC in understanding complex issues. Claimant suffered hardships after persistently trying to remedy the issues.
Sept. 8, 2020	89780; No press release.	Nearly $30,000	?	All to single claimant.	Claimant alerted the SEC to violations and provided exemplary assistance to programmatically significant enforcement action, but collections were limited.
Sept. 1, 2020	89721; 2020-201	Over $2.5 million	?	Half to each of two claimants.	Claimants, both unaffiliated with the company, provided highly probative independent analysis of the company's filings which caused the SEC to open an investigation and saved significant resources.
Aug. 31, 2020	89712; 2020-199	Over $1.25 million	?	All to single claimant.	Claimant's information led to an investigation that promptly returned millions of dollars to investors.
July 21, 2020	89355; No press release.	?	30%	All to single claimant.	Claimant promptly provided unknown information and continued to provide helpful information.
July 21, 2020	89354; No press release.	?	20%	All to single claimant.	Claimant provided detailed and previously unknown information to an ongoing investigation but was not able to provide ongoing information.
July 14, 2020	89311; 2020-155	$3.8 million	?	All to single claimant.	The award was lowered because claimant provided discrete information and had no firsthand knowledge of the fraud.
June 23, 2020	89124; 2020-141	$125,000	?	All to single claimant.	The award was based on monetary sanctions obtained by the SEC and another agency in a related action, where claimant's information led to both investigations.
June 19, 2020	89102; 2020-138	Nearly $700,000	?	All to single claimant.	Claimant's information prompted the SEC to open the investigation, which led to significant returns to investors. Claimant reported internally and suffered retaliation.
June 4, 2020	89002; 2020-126	Nearly $50 million	?	All to single claimant. Second claimant denied.	First claimant provided significant unknown information that led to significant recovery for investors. Second claimant did not provide information to the SEC relating to the covered action or file a timely WB-APP.
May 4, 2020	88803; 2020-100	Nearly $2 million	?	All to single claimant.	Claimant's information allowed the SEC to obtain a temporary restraining order and asset freeze against wrongdoer, and investors recovered much of their investments.

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April 28, 2020	88759; 2020-98	Over $18 million	?	All to single claimant.	Claimant's information prompted the SEC to start an investigation which led to millions of dollars being returned to retail investors, but a large portion stemmed from violations not reported by claimant.
April 20, 2020	88687; No press release.	?	?	All to single claimant.	The SEC waived the "in writing" requirement due to unusual circumstances, where claimant provided information to an officer who reported it to the SEC, and claimant provided additional information over the phone as requested by the SEC.
April 20, 2020	88689; 2020-91	$5 million	?	All to single claimant.	Claimant promptly provided information which led to the SEC's investigation, provided a critical document and suffered unique hardship after raising concerns internally.
April 16, 2020	88658; 2020-89	Over $27 million	?	All to single claimant.	Claimant provided critical information uncovering misconduct partly overseas and saving the SEC significant time. The award was not reduced despite an unreasonable delay in reporting.
April 3, 2020	88547; 2020-80	$2 million	?	All to single claimant.	Claimant provided vital information that would have been difficult to obtain otherwise and despite receiving implicit threats from the wrongdoers.
March 30, 2020	88507; 2020-75	$450,000	?	All to single claimant.	Claimant's information did not originate but refocused the SEC investigation. Claimant complied with internal reporting procedures and suffered unique hardships as a result. Claimant had internal compliance responsibilities but met the 120-day waiting period for reporting to the SEC.
March 24, 2020	88462; 2020-71	Over $570,000	?	$478,000 to one claimant; $94,000 to another.	One claimant received a substantially higher amount because they supplied more information to the SEC, which led to more enforcement actions, and provided it much earlier than the other claimant did.
March 23, 2020	88449; 2020-69	Over $1.6 million	?	All to single claimant.	Claimant's information caused the SEC to open its investigation and supported some charges. The underlying fraud would have been difficult for the SEC to detect without the claimant's information, but the claimant also unreasonably delayed in reporting.
Feb. 28, 2020	88299; 2020-46	Over $7 million	?	All to single claimant.	Claimant provided extensive and sustained assistance to the SEC's investigation and enforcement action against serious financial abuses.
Jan. 22, 2020	88015; 2020-15	$277,000	?	All to single claimant.	This award included proceeds recovered from a related action. The SEC noted that claimant's information helped shut down an ongoing scheme preying on retail investors.
Jan. 22, 2020	88014; 2020-15	$45,000	?	All to single claimant.	Claimant was an investor who lost money in the fraudulent scheme and was able to provide the SEC "new, critical, time-sensitive information that allowed staff to recover assets that were later returned to harmed investors."

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Nov. 15, 2019	87544; 2019-238	$260,000	?	$260,000 jointly to three claimants.	Claimants were not insiders but rather were themselves harmed investors who alerted the agency "to a well-concealed fraud targeting retail investors." The SEC noted that it would have been unlikely for Commission staff to have learned of the misconduct absent the claimants' initial tip.
Sept. 20, 2019	87039; no press release	$38,000	?	All to single claimant.	Claimant prompted the SEC to open an investigation that resulted in two successful enforcement actions involving harm to retail investors.
Aug. 29, 2019	86803; 2019-165	Over $1.8 million	?	All to single claimant.	Claimant informed the SEC of misconduct, which occurred overseas, and provided extensive and ongoing cooperation during the course of the investigation. Claimant also internally reported the conduct on multiple occasions.
July 23, 2019	86431; 2019-138	$500,000	?	All to single claimant.	The award was to "an overseas whistleblower" and involved misconduct occurring abroad. The SEC noted that the claimant's tip was the first information that the Commission received on the charged misconduct.
June 3, 2019	86010; 2019-81	$3 million	?	$3 million jointly to two claimants.	The SEC noted that it "positively assessed" the "significant and timely steps" the claimants undertook to have the company remediate the harm caused by the alleged violations, including advocating for full disclosure of the violation and for compensation of harmed investors.
May 24, 2019	85936; 2019-76	$4.5 million	?	All to single claimant.	The award was to Claimant whose tip triggered the company to review the allegations as part of an internal investigation and subsequently report the whistleblower's allegations to the SEC and another agency. This was the first time a claimant was awarded under Rule 21F-4(c)(3), which incentivizes internal reporting by whistleblowers who also report the same information to the Commission within 120 days.
Mar. 26, 2019	85412; 2019-42	$50 million	?	$13 million to one claimant; $37 million to another; five claimants denied.	$13 million to Claimant 1, who "unreasonably delayed" reporting while investors were harmed and who "passively financially benefitted" as the basis for an award amount grew. $37 million to Claimant 2 who "swiftly" provided "smoking gun" evidence; the award was reduced by the amount Claimant 2 received through another agency's reward program so as to avoid double payment for the same information.
Sept. 24, 2018	84270; 2018-209	Nearly $4 million	?	All to single claimant.	The award was to an "overseas whistleblower" where covered action had "opened as a direct result of Claimant's tip to the Commission."

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Sept. 14, 2018	84125; 2018-194	Over $1.5 million	?	All to single claimant.	The SEC noted it had "severely reduced" the award because claimant had "unreasonably delayed in reporting the information to the Commission and was culpable."
Sept. 6, 2018	84046; 2018-179	Over $54 million	?	One claimant received $39 million; another received $15 million. A third claimant was denied an award.	The SEC noted that, although Claimants 1 and 2 both provided helpful information, Claimant 1 came forward 18 months before Claimant 2, and his or her information was "critical to advancing the investigation" and "saved the Commission considerable time and resources." The SEC also noted that "several facts mitigate the unreasonableness of Claimant 1's reporting delay." In its order, the SEC also stated that Claimant 2, who had a pending action with "Agency 2," which had its own whistleblower award mechanism, would not be eligible for an SEC award for information that led to enforcement action by Agency 2.
Apr. 12, 2018	83037; 2018-64	Over $2.1 million	?	All to single claimant.	Claimant was a former company insider whose information strongly supported the findings and provided the SEC with ongoing helpful assistance to staff during the investigation. The SEC reduced the award because claimant unreasonably delayed in reporting the matter to the SEC.
Apr. 5, 2018	82996; 2018-58	Over $2.2 million	?	All to single claimant.	This marked the SEC's first safe harbor award under Rule 21F-4(b)(7), which provides that, if a whistleblower submits information to another federal agency and submits the same to the SEC within 120 days, the SEC will treat the information as though it was submitted at the same time it was submitted to the other agency.
Mar. 19, 2018	82897; 2018-44	About $88 million	?	Nearly $50 million jointly to two claimants; over $33 million to one claimant; three other claimants denied.	The $50 million award had been reduced slightly due to the whistleblowers' unreasonable delay.
Dec. 5, 2017	82214; 2017-222	Over $4.1 million	?	All to single claimant.	Although the SEC reduced the award because of Claimant's unreasonable delay in reporting misconduct, this award reduction was also mitigated by, *inter alia,* fact that claimant was a foreign national working outside U.S. and, therefore, potentially not protected against retaliation.
Nov. 30, 2017	82181; 2017-216	Over $16 million	?	$8 million each to two claimants; five other claimants denied.	Claimant 1 informed the SEC of misconduct that was the focus of the staff's investigation and the cornerstone of the agency's subsequent enforcement action. Claimant 2 provided additional significant information" that saved a substantial amount of time and agency resources.

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Oct. 12, 2017	81857; 2017-195	Over $1 million	?	All to single claimant.	Award was granted to a "company outsider" who provided the SEC with information regarding securities violations by an entity that impacted retail customers. The SEC found "extraordinary circumstances" that warranted waiver of the requirement that claimants submit a declaration signed under penalty of perjury at the time the tip was filed.
July 27, 2017	81227; 2017-134	Over $1.7 million	?	All to single claimant.	Company insider provided the SEC with information to help stop a fraud that would have otherwise been difficult to detect. The SEC waived noncompliance with the rule requiring information be submitted "in writing" if submitted between the signing of Dodd-Frank Act and the effective date of the SEC rules based on quality of whistleblower's cooperation with the SEC.
July 25, 2017	81200; 2017-130	Nearly $2.5 million	30% [i]	All to single claimant.	Claimant was a public sector employee who assisted the SEC in stopping a mutual fund company's illegal practice of manipulating the prices of mutual fund shares to the detriment of shareholders.
May 2, 2017	80571; 2017-90	$500,000	?	All to single claimant.	"Claimant, a company insider, provided information to the Commission that instigated the Commission's investigation into well-hidden and hard-to-detect violations of the securities laws."
Apr. 25, 2017	80521; 2017-84	$4 million	?	All to single claimant.	Claimant provided "detailed and specific information about serious misconduct and provided additional assistance during the ensuing investigation, including industry-specific knowledge and expertise." The award was based in part on moneys paid to a government agency not among those enumerated as prosecutors of "related actions" under Rule 21F-3(b)(1).
Feb. 28, 2017	80115; no press release	?	20% of	All to single claimant.	The amount of the award not disclosed. The SEC "reduced the award from what it might otherwise have been because of both the Claimant's culpability in connection with the securities law violations at issue in the Covered Action and the Claimant's unreasonable delay in reporting the wrongdoing to the Commission."
Jan. 23, 2017	79853; 2017-27	$7 million	?	One claimant received $4 million; two others shared $3 million.	Information submitted by claimant awarded $4 million provided impetus for investigation of "investment scheme that defrauded hundreds of investors, many . . . unsophisticated." Two claimants awarded $3 million jointly submitted new information while the investigation was underway, significantly contributing to successful enforcement action. All claimants were to receive additional award moneys based on additional sanctions recovered after the date of the order.

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Jan. 6, 2017	79747; 2017-1	$5.5 million	?	All to single claimant.	Claimant "helped prevent further harm to a vulnerable investor community by boldly stepping forward while still employed at the company." The SEC applied the first waiver of Rule 21F-9(d) "in writing" requirement for pre-TCR period between the enactment of Dodd-Frank and the issuance of program rules.
Dec. 9, 2016	79517; 2016-260	Over $900,000	?	All to single claimant.	Claimant's tip led to "multiple actions against wrongdoers." Actions were consolidated for purpose of award determination; claimant received an award based on sanctions collected in both, including proceeds collected after date of order.
Dec. 5, 2016	79464; 2016-255	$5 million	?	All to single claimant; two other claimants were denied.	The SEC rejected an unsuccessful claimant's arguments that 1) the claimant's information "should have caused an investigation," and 2) the SEC's failure to provide the claimant with "actual notice" of the Covered Action, rather than simply post it on the SEC Office of the Whistleblower website list of covered actions, caused the claimant to submit application for an award after 90-day deadline elapsed.
Nov. 14, 2016	70294; 2016-237	$20 million	?	All to single claimant.	Sizable award upwardly adjusted after claimant contested preliminary amount. Award will include amounts collected in future. Award went to a claimant whose information "enabled the Commission to move quickly to shut down the [illegal scheme] and to obtain a near total recovery of investors' funds . . . before the Defendants could squander those monies." Two additional claimants denied awards for information submitted prior to July 21, 2010.
Sept. 20, 2016	78881; 2016-17	$4 million	?	All to single claimant.	Claimant did not contest award.
Aug. 30, 2016	78719; 2016-173	$22.437 million	28%	All to single claimant.	The SEC did not disclose the percentage, but the claimant's counsel informed the media that his client had received 28% of sanctions against Monsanto. The SEC's press release announced that this award pushed the program total to date above $100 million mark. The SEC referenced the claimant's culpability in the misconduct in explaining the SEC's decision to make this sizable award.
June 9, 2016	78025; 2016-13	$17 million	?	All to single claimant.	Claimant's information, provided in one or more TCRs and in subsequent communications, directed SEC staff to new information that conserved the SEC's time and resources, helped staff collect evidence, "substantially advanced" investigation, and thus "led to" successful enforcement action" for securities violations already under investigation. The SEC denied applications of four other claimants.
May 20, 2016	77873; 2016-11	Over $450,000	?	Awarded jointly to two claimants.	The SEC paid each claimant half of the amount awarded.

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May 17, 2016	77843; 2016-10	$5 to $6 million	?	All to single claimant.	Claimant's "detailed tip led the agency to uncover securities violations that would have been nearly impossible for it to detect[.]"
May 13, 2016	77833; 2016-88	Over $3.5 million	?	All to single claimant.	Claimant's award did not cause the SEC to initiate investigation but rather bolstered an ongoing investigation, strengthened the SEC's settlement position, and thus "significantly contributed" to success of the covered action. May be the first award issued in connection with a whistleblower's disclosures of Foreign Corrupt Practice Act violations.
Apr. 5, 2016	77530; no press release	$275,000 or more, offset by sanctions against claimant	?	All to single claimant. Second claimant denied.	The $275,000 award, issued in part for sanctions in a related criminal action, "shall be subject to offset for any monetary obligations" remaining unpaid as part of an earlier final judgment against claimant, probably in a related action. The SEC denied award to second claimant upon determining that he/she had not provided any information which led to successful enforcement of the covered action.
Mar. 8, 2016	77322; 2016-41	$1.93 million	?	$1.8 million to Claimant 1 and $65,000 to each of Claimants 2 & 3. Claimant 4 denied.	Claimant receiving bulk of award submitted tip causing the SEC to open investigation, met with SEC staff several times and gave useful information, all before the other two filed their tips 1.5 years later. The SEC denied award altogether to a fourth claimant who had "knowingly and willfully made false, fictitious, or fraudulent statements" to the SEC over several years.
Jan. 15, 2016	76921; 2016-10	Over $700,000	?	All to single claimant	First award for "independent analysis" by an "industry expert," whose information significantly contributed to a successful enforcement action.
Nov. 4, 2015	76338; 2015-252	Over $325,000	?	All to single claimant.	Percentage was not disclosed but was reduced by "unreasonable delay" that allowed wrongdoers to obtain additional ill-gotten gains.
Sept. 29, 2015	76025; no press release	?	28%	All to single claimant.	Amount of award was not disclosed by the SEC.
Sept. 28, 2015	76000; no press release	?	20%	11% and 9% to two claimants.	Amount of award was not disclosed by the SEC.
July 17, 2015	75477; 2015-150	Over $3 million	?	All to single claimant.	Information allowed the SEC to "crack a complex fraud." Award increased because of successful "related actions" and reduced due to unreasonable delay, not "as severely" as could have been because some of delay occurred before establishment of the SEC Whistleblower Program.
Apr. 28, 2015	74826; 2015-75	Over $600,000	30%	All to single claimant.	First award issued in part in connection with retaliation case. Percentage set at 30% in light of "unique hardships" claimant experienced for reporting to the SEC.
Apr. 22, 2015	74781; 2015-73	$1.4 to $1.6 million	?	All to single claimant.	Second award to an employee working in compliance function and first application of "substantial injury" exception to exclusion of such employees from program.

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March 2, 2015	74404; 2015-45	Between $475,000 & $575,000	?	All to single claimant.	First award to company officer receiving information in compliance role; waited 120 days after reporting internally. Percentage not disclosed.
Sept. 22, 2014	73174;2014-206	$30 million	?	All to single claimant.	Substantial award issued to a foreign resident working outside U.S. Percentage was not disclosed but the award was decreased by "unreasonable delay" in reporting to the SEC.
Aug. 29, 2014	72947; 2014-180	$300,000	20%	All to single claimant.	First award to claimant working in compliance and audit function; also first application of "120-day" exception to exclusion of such employees from program.
July 31, 2014	72727; 2014-154	$400,000	25% [ii]	All to single claimant.	The SEC waived "voluntary" requirement where employee tried diligently to have company address violations.
July 22, 2014	72652	?	30%	15%, 10%, and 5% to three claimants.	Amount of award was not disclosed by the SEC.
June 3, 2014	72301; 2014-113	$875,000	30%	15% of collected sanctions to each of two claimants.	Information allowed the SEC to "bring a successful enforcement action in a complex area of the securities market."
Oct. 30, 2013	70775; 2013-231	$150,000	30%	All to single claimant.	The SEC investigated fraud scheme and "obtain[ed] emergency relief before additional investors were harmed."
Sept. 30, 2013	70544; 2013-209	$14 million	30%	All to single claimant.	Information allowed recovery of "substantial investor funds . . . more quickly than otherwise would have been possible."
June 12, 2013	69749; no press release [iii]	$125,000	15%	5% of collected proceeds to each of three claimants.	In two award announcements concerning a June 12 Order, the SEC announced payment to three whistleblowers a total of 15% of amounts that the SEC collected, and also of amounts the U.S. Department of Justice collected in related action, against sham hedge fund.
Aug. 30, 2013	70293; 2013-169				
Aug. 21, 2012	67698; 2012-162	$50,000	30%	All to single claimant.	Claimant helped prevent "multi-million dollar fraud" from "ensnaring additional victims"; the SEC later paid an additional $150,000 after further collections, for a total of $200,000.

[i] Although the SEC Order Determining Whistleblower Award Claim and the agency press release did not specify the percentage of the whistleblower's award, the whistleblower was a client of the authors' law firm, Katz Banks Kumin, and authorized the firm to disclose the percentage information publicly. Read more about the award and our representation here: https://www.katzbanks.com/news/katz-marshall-banks-client-awarded-24-million-sec-whistleblower-office-role-stopping.

[ii] The SEC did not report the percentage in its press release or accompanying order. However, the whistleblower later sat for a newspaper interview and reported that he had received 25% of a $1.6 million penalty. See J. Nocera, The Man Who Blew the Whistle, N.Y. Times (Aug. 18, 2014), https://www.nytimes.com/2014/08/19/opinion/joe-nocera-the-man-who-blew-the-whistle.html. At around this time the SEC began redacting the percentage from most orders prior to public release.

[iii] The SEC released only a press announcement and not a formal press release. See SEC Announces Whistleblower Action (June 12, 2013), available online at https://www.sec.gov/news/press/2013/2013-06-announcement.htm.

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