U.S. SECURITIES AND EXCHANGE COMMISSION

2021 ANNUAL REPORT TO CONGRESS

Whistleblower Program

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Report available on the Web at: www.sec.gov/whistleblower

MESSAGE FROM THE ACTING CHIEF OF THE OFFICE OF THE WHISTLEBLOWER

Fiscal Year (FY) 2021 saw another record-breaking year for the U.S. Securities and Exchange Commission's whistleblower program. Since the inception of the program, the SEC has awarded more than $1.1 billion to 214 individuals for providing high-quality information that led to the success of SEC and other agency enforcement actions. FY 2021 marked many milestones, including the highest number of awards, both in terms of dollars and individuals awarded, and the largest number of whistleblower tips received. More significantly, the Commission made more whistleblower awards in FY 2021 than in all prior years combined. These results reflect the ongoing commitment by staff in the Office of the Whistleblower (OWB), and across the Commission, to process whistleblower award claims more quickly, despite the continued challenges due to COVID-19.

Whistleblowers make a tremendous contribution to the agency's ability to detect securities law violations and protect investors and the marketplace. As SEC Chair Gary Gensler recently noted, "[t]he assistance that whistleblowers provide is crucial to the SEC's ability to enforce the rules of the road for our capital markets."[1] This is evidenced most clearly by the amount of financial remedies stemming from whistleblower tips. Since the program's inception, enforcement matters brought using information from meritorious whistleblowers have resulted in orders for nearly $5 billion in total monetary sanctions, including more than $3.1 billion in disgorgement of ill-gotten gains and interest, of which more than $1.3 billion has been, or is scheduled to be, returned to harmed investors. Whistleblowers receiving awards in FY 2021 included those who helped the Commission open investigations and return millions of dollars to harmed investors. For example, in April 2021, the Commission awarded over $50 million to joint whistleblowers whose information alerted the agency to potential violations and caused the Commission to open an investigation into unlawful conduct that involved highly complex transactions, resulting in the return of tens of millions of dollars to investors.[2]

> "[T]he Commission made more whistleblower awards in FY 2021 than in all prior years combined."

We recognize and applaud the courage and commitment of the hundreds of whistleblowers who submitted valuable information under the SEC's whistleblower program, and we anticipate that the awards made in FY 2021 will continue to incentivize others to come forward promptly and report high-quality information regarding possible securities laws violations to the Commission.

Record-Breaking Awards Paid and Claims Processed in FY 2021

In FY 2021, the Commission awarded approximately $564 million to 108 individuals —both the largest dollar amount and the largest number of individuals awarded in a single fiscal year. When compared with the entirety of the whistleblower program, FY 2021's results further stand out: from the inception of the program in FY 2011 through

1 Press Release, SEC Surpasses $1 Billion in Awards to Whistleblowers with Two Awards Totaling $114 Million, No. 2021-117 (Sept. 15, 2021).
2 Order Determining Whistleblower Award, Exchange Act Release No. 91568, File No. 2021-39 (Apr. 15, 2021).

FY 2020, the Commission made approximately $562 million in whistleblower awards to 106 whistleblowers. This means that the Commission made more whistleblower awards in FY 2021 than in all prior years combined. The awards made in FY 2021 also include the Commission's two largest awards to date—a $114 million award to one whistleblower made in October 2020,[3] and a combined $114 million award to two whistleblowers made in September 2021.[4] As noted above, the Commission also issued an over $50 million award to joint whistleblowers in April 2021. These large awards underscore the Commission's commitment to rewarding whistleblowers who provide specific and detailed information that plays a significant role in the success of the agency's enforcement actions.

In FY 2021, OWB also processed more claims than in any other year of the program and issued the largest number of Final Orders resolving whistleblower award claims, including both award and denial orders. The Commission issued 318 Final Orders for individual award claims. In addition, OWB processed 354 claims to Preliminary Determination or Preliminary Summary Disposition in FY 2021.[5] FY 2021's results reflect the Commission's dedication to the program and the commitment of the Division of Enforcement and OWB to the program's continued success.

Another Record-Breaking Year for Whistleblower Tips

FY 2021 featured the largest number of whistleblower tips received in a fiscal year since the program's inception. In FY 2021, the Commission received over 12,200 whistleblower tips—an approximate 76% increase from FY 2020, the second highest tip year, and a more than 300% increase since the beginning of the program. As in prior fiscal years, tips received this fiscal year came from a variety of geographic origins, both domestic and foreign. The Commission received tips from individuals in 99 foreign countries, as well as from every state in the United States and the District of Columbia.

"FY 2021 featured the largest number of whistleblower tips received in a fiscal year since the program's inception."

OWB also staffs a public hotline to answer questions from whistleblowers and the general public concerning the whistleblower program or how to submit information to the Commission. In FY 2021, OWB staff returned over 2,600 calls from the public. Since the hotline was established, the Office has returned more than 29,500 calls to respond to questions about the program.

Notable Enforcement Actions Addressing Whistleblower Protections

In FY 2021, the Commission brought two actions alleging violations of the Commission's whistleblower protections. On February 4, 2021, the Commission filed a complaint in federal court alleging that the defendant had included language in certain separation and consulting or transition agreements to impede former employees from communicating directly with the Commission in violation of Rule 21F-17.[6] The

3 Order Determining Whistleblower Award, Exchange Act Release No. 90247, File No. 2021-2 (Oct. 22, 2020).
4 Order Determining Whistleblower Award, Exchange Act Release No. 92985, File No. 2021-91 (Sept. 15, 2021).
5 A Preliminary Determination or a Preliminary Summary Disposition and a Final Order could be issued for the same award claim in a fiscal year.
6 *U.S. Sec. & Exch. Comm'n v. GPB Capital Holdings, LLC, et al.*, No. 21-cv-00583 (E.D.N.Y.) (Feb. 4, 2021).

complaint also alleges that the defendant had retaliated against a known whistleblower who had raised concerns about the defendant's use of investor funds. The action remains pending in federal court in New York. On June 23, 2021, the Commission brought a Rule 21F-17 charge against a broker-dealer for impeding the efforts of employees to report misconduct to the Commission.[7] The Commission's charge arose from the respondent's use of compliance policies and training materials that prohibited employees from communicating with any regulator without receiving prior approval.

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

Whistleblower Rule Amendments

On September 23, 2020, the Commission adopted Whistleblower Rule Amendments, which became effective on December 7, 2020. Certain of the rule amendments increased efficiencies around the review and processing of whistleblower award claims. For example, the Commission adopted a presumption setting awards at the maximum 30% of the monetary sanctions collected for awards under $5 million, which is applicable in the majority of cases. The Commission also adopted a new summary disposition process for straight-forward denials that has allowed OWB to provide an initial response to claimants on their award claims more quickly. The Commission also adopted a provision by which claimants who submit three or more frivolous award claims may be permanently barred from the Commission's whistleblower program. In FY 2021, the Commission issued permanent bar orders against two serial submitters who were responsible for hundreds of frivolous award applications. These bars are important because they allow OWB to devote more time and resources to processing the claims of meritorious whistleblowers. The Whistleblower Rule Amendments also provide the Commission with authority to make awards to meritorious whistleblowers for their efforts and contributions to additional types of successful actions. For example, the Commission may treat Deferred Prosecution Agreements and Non-Prosecution Agreements entered into by the Department of Justice as "related actions" for which a whistleblower may receive an award.

"Certain of the rule amendments increased efficiencies around the review and processing of whistleblower award claims."

In response to concerns from the whistleblower community that certain of the Whistleblower Rule Amendments could discourage whistleblowers from coming forward, on August 2, 2021, Chair Gensler announced that he was directing staff to consider revisions to Exchange Act Rule 21F-6 concerning the Commission's discretion to take the dollar amount of the award into consideration when determining the appropriate award amount.[8] Chair Gensler also directed staff to consider revisions to Exchange Act Rule 21F-3 concerning "related action" awards where there is another applicable whistleblower award program.[9]

7 *In the Matter of Guggenheim Sec., LLC*, Securities Exchange Act Release No. 92237 (June 23, 2021).
8 Chair Gary Gensler, Statement in Connection with the SEC's Whistleblower Program (Aug. 2, 2021), www.sec.gov/news/public-statement/gensler-sec-whistleblower-program-2021-08-02.
9 *Id.*

The success of the Commission's whistleblower program in landmark FY 2021 demonstrates that it is a vital component of the Commission's enforcement efforts. We hope the awards made this year continue to encourage whistleblowers to report specific, timely, and credible information to the Commission, which will enhance the agency's ability to detect wrongdoing and protect investors and the marketplace.

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

EMILY PASQUINELLI
Acting Chief, Office of the Whistleblower
November 15, 2021

HISTORY AND PURPOSE

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank)[10] amended the Securities Exchange Act of 1934 (Exchange Act)[11] by, among other things, adopting Section 21F,[12] entitled "Securities Whistleblower Incentives and Protection." Section 21F directs the Commission to make monetary awards to eligible individuals who voluntarily provide original information that leads to successful Commission enforcement actions resulting in monetary sanctions over $1 million and successful related actions.[13]

Awards must be made in an amount that is 10% or more and 30% or less of the monetary sanctions collected.[14] To ensure that whistleblower payments would not diminish the amount of recovery for victims of securities law violations, Congress established a separate fund, called the Investor Protection Fund (Fund), from which eligible whistleblowers are paid.

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

In addition to establishing an awards program to encourage the submission of high-quality information, Dodd-Frank and the Commission's Whistleblower Rules[15] also establish confidentiality protections for whistleblower submissions,[16] including the ability to file a whistleblower tip anonymously with the assistance of an attorney. Employers are prohibited from retaliating against whistleblowers for providing information to the Commission.[17]

"It is OWB's mission to protect investors by administering an efficient, high-quality whistleblower program that is responsive to whistleblower needs and helps the Commission identify and stop securities laws violations."

10 Pub. L. No. 111-203, § 922(a), 124 Stat. 1841 (2010).
11 15 U.S.C. § 78a *et seq*.
12 *Id*. § 78u-6.
13 "Related actions" is defined at 15 U.S.C. § 78u-6(a)(5) and 17 C.F.R. § 240.21F-3.
14 15 U.S.C. § 78u-6(b)(1).
15 17 C.F.R. §§ 240.21F-1 through 21F-18.
16 *Id*. § 240.21F-7.
17 15 U.S.C. § 78u-6(h)(1). The Commission's rule amendments modify the Whistleblower Rules to comport with the ruling in *Digital Realty* that an employee must report possible securities law violations to the Commission to qualify for protection against retaliation. *See Digit. Realty Tr., Inc. v. Somers*, 138 S. Ct. 767 (2018).

OWB, in consultation with other offices within the Commission, has prepared this report, which covers the period October 1, 2020 through September 30, 2021, to satisfy its reporting requirements. Section 924(d) of Dodd-Frank[18] requires OWB to discuss its activities, whistleblower complaints, and the response of the Commission to such complaints. Section 21F(g)(5) of the Exchange Act[19] requires the Commission to submit an annual report to Congress that addresses:

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

18 15 U.S.C. § 78u-7(d).
19 15 U.S.C. § 78u-6(g)(5).

ACTIVITIES OF THE OFFICE OF THE WHISTLEBLOWER

Section 924(d) of Dodd-Frank directed the Commission to establish a separate office within the Commission to administer and enforce the provisions of Section 21F of the Exchange Act. Emily Pasquinelli heads the Office as Acting Chief of OWB. Jonathan Carr is an Assistant Director on the team. In addition to the management team, there are currently 13 full time attorneys who are dedicated to the work of the Office, which includes, among other things, processing award claims and communicating with the public. OWB also currently has three attorneys assigned to OWB on temporary detail to support the work of the Office. OWB's work is also furthered by a number of support staff, including an accountant, paralegals, analysts, law clerks, and an administrative assistant. The improved efficiencies and increased temporary staffing contributed to OWB's ability to process a significant number of award claims in FY 2021. The following is an overview of OWB's primary responsibilities and activities over the past fiscal year.

Assessment of Award Applications

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

OWB posts a Notice of Covered Action (NoCA) on its webpage[20] for every Commission enforcement action that results in monetary sanctions of over $1 million. Those individuals who have submitted whistleblower tips pursuant to the program's requirements and whose information caused the opening of or significantly advanced the particular investigation that led to the Covered Action may submit an application in response to a posted NoCA.

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

For every claim, OWB attorneys assess the application and the eligibility of the claimant and confer with relevant investigative or other Commission staff to understand the contribution of the claimant, if any, to the success of the Covered Action. To help prioritize likely meritorious claims, OWB dedicates two attorneys to reviewing likely non-meritorious claims so that the majority of OWB attorneys are able to focus solely on likely meritorious claims. OWB makes recommendations to the Claims Review Staff, currently comprised of the Director of Enforcement and six other senior officers in Enforcement, as to award eligibility and amount. Pages 13 to 25 of this report provide a fuller explanation of how applications for awards are processed at the Commission, as well as what awards were made during this past fiscal year.

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

OWB has also used the new summary disposition process and a bar, authorized by the Whistleblower Rule Amendments for those who repeatedly submit frivolous applications, to gain further efficiencies and conserve resources. In September 2021, the Commission permanently barred two individuals from the program for filing frivolous claims that lacked any colorable connection to a Covered Action. Permanent bars will save considerable Commission time and resources and allow OWB staff to focus more on processing meritorious claims.

Advancing Anti-Retaliation Protections and Combating Efforts to Impede Reporting

OWB consults with Enforcement staff concerning whistleblower complaints alleging retaliation by employers or former employers in response to an employee's reporting of possible securities law violations. The Commission may bring an enforcement action against companies or individuals who violate the anti-retaliation provisions of Dodd-Frank. OWB views anti-retaliation protections as a high priority to ensure that whistleblowers can report to the Commission without fear of reprisal.

"OWB views anti-retaliation protections as a high priority to ensure that whistleblowers can report to the Commission without fear of reprisal."

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

OWB continues to work with staff to identify cases where companies take reprisals for whistleblowing efforts and to investigate practices involving confidentiality and other kinds of agreements, or other actions, that may violate Rule 21F-17(a).

Communications with Whistleblowers

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

During FY 2021, the Office returned over 2,600 phone calls from members of the public. Since the hotline was established, OWB has returned more than 29,500 calls from the public.

21 17 C.F.R. § 240.21F-17(a).

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

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

Public Outreach and Education

One of OWB's primary goals is to promote public awareness of the Commission's whistleblower program. As part of that outreach effort, the Office aims to promote the program and educate the public about the program through OWB's webpage.[22] The webpage contains information about the program, links to the forms required to submit a tip or claim an award, a listing of enforcement actions for which a claim for award may be made, links to helpful resources, including a section dedicated to retaliation-related issues, and answers to frequently asked questions. In FY 2021, the Commission issued 46 press releases concerning whistleblower awards and the program.

OWB also actively participates in numerous webinars, media interviews, presentations, and other public communications. In FY 2021, OWB continued to participate in public engagements aimed at promoting and educating the public about the Commission's whistleblower program, albeit primarily virtually. The Office's target audience generally includes potential whistleblowers, whistleblower counsel, and corporate compliance counsel and professionals. OWB also participates in legal panels and forums with other federal agencies with similar whistleblower programs.

22 www.sec.gov/whistleblower.

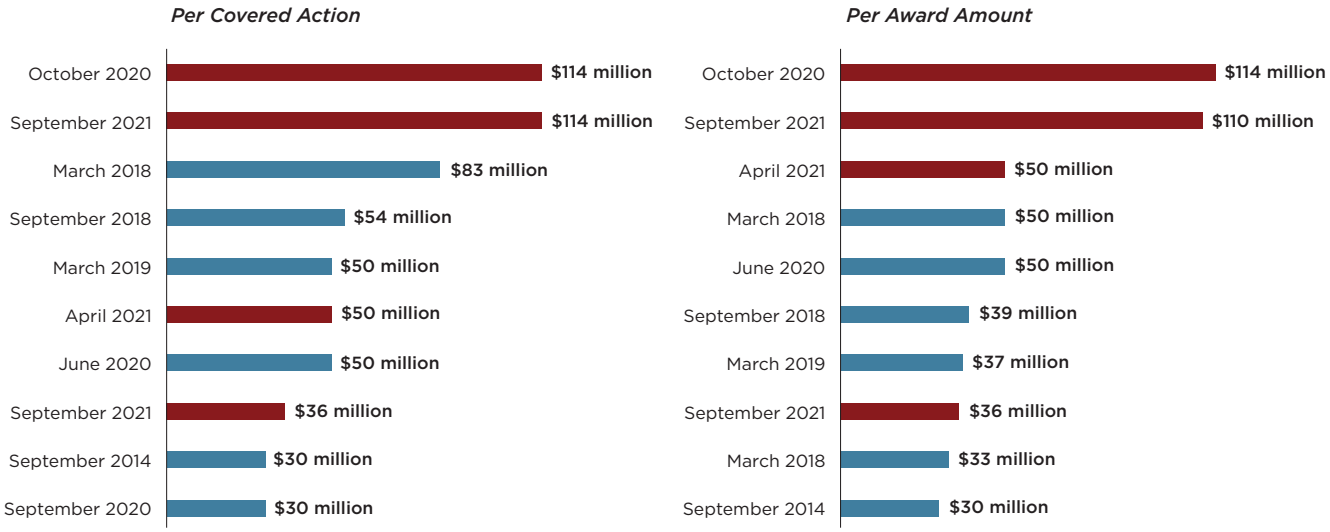
CLAIMS FOR AWARDS

Whistleblower Awards Made in Fiscal Year 2021

In FY 2021, in connection with 86 Covered Actions, the Commission ordered whistleblower awards of approximately $564 million to 108 individuals, each of whom voluntarily provided original information that either led to the opening of an investigation or examination or significantly contributed to an existing investigation or examination that led to the successful enforcement action. The Commission ordered awards to more whistleblowers in FY 2021 than in all prior years combined.

Below are the top ten highest awards made since the inception of the SEC's whistleblower program both by Covered Action (*i.e.*, considering all awards made within a single Covered Action, including any related actions) and by award amount paid to a single claimant (whether individual or joint). The awards highlighted in red were made this past fiscal year.

TOP 10 SEC WHISTLEBLOWER AWARDS



In FY 2021, the Commission made three of the largest awards in the history of the program, totaling more than a quarter of a billion dollars. The five largest awards of FY 2021 were as follows.

October 20, 2020: Over $114 Million Awarded to Whistleblower[23]

On October 20, 2020, the Commission announced a $114 million award to an individual, the largest award in the program's history. The award consisted of an approximately $52 million award in connection with a Commission enforcement action and an approximately $62 million award arising out of a related action by another agency. After repeatedly reporting the concerns internally, the whistleblower alerted the Commission and other agency staff to the violations, prompting the opening of the investigations. The whistleblower provided substantial and ongoing assistance to the staff throughout the investigations that proved critical to the success of the actions. The whistleblower also suffered serious personal and professional hardships as a result of the whistleblowing-related activities.

September 15, 2021: Nearly $114 Million Awarded to Two Whistleblowers[24]

On September 15, 2021, the Commission awarded almost $114 million to two whistleblowers. The first whistleblower received an approximately $110 million award, consisting of $40 million related to the Commission case and approximately $70 million related to actions brought by another agency. The whistleblower who received the $110 million award provided substantial independent analysis of publicly available information derived from multiple sources that significantly contributed to an existing investigation and the success of the actions. The whistleblower applied specialized skill and unusual effort in developing the analysis that afforded the Commission and the other agency with important insights into the misconduct at issue. The whistleblower who received the $4 million award provided new information that also significantly contributed to the success of the Commission's action, but was more limited compared to the breadth and significance of the information provided by the first whistleblower.

April 15, 2021: Approximately $50 Million Awarded to Joint Whistleblowers[25]

On April 15, 2021, the Commission awarded two joint whistleblowers approximately $50 million. The joint whistleblowers alerted the Commission to the securities law violations involving highly complex transactions that would have been difficult to detect in the absence of their information. The joint whistleblowers' information caused the staff to open the investigation, and they thereafter provided exemplary assistance, meeting with the staff on numerous occasions and providing voluminous helpful documents. The joint whistleblowers' information resulted in the return of tens of millions of dollars to harmed investors.

23 Order Determining Whistleblower Award, Exchange Act Release No. 90247, File No. 2021-2 (Oct. 22, 2020).
24 Order Determining Whistleblower Award, Exchange Act Release No. 92985, File No. 2021-91 (Sept. 15, 2021).
25 Order Determining Whistleblower Award, Exchange Act Release No. 91568, File No. 2021-39 (Apr. 15, 2021).

September 24, 2021: Approximately $36 Million Awarded to Whistleblower[26]

On September 24, 2021, the Commission awarded a whistleblower approximately $36 million based upon a successful Commission action and related actions by another agency. The whistleblower provided crucial information to the Commission and other agency, met with staff on multiple occasions, and provided key documents evidencing the illegal conduct. The Commission also considered that the whistleblower unreasonably delayed in reporting the information, and that while the whistleblower did not direct, plan, or initiate the misconduct, was involved in the underlying scheme.

November 3, 2020: Approximately $28 Million Awarded to Whistleblower[27]

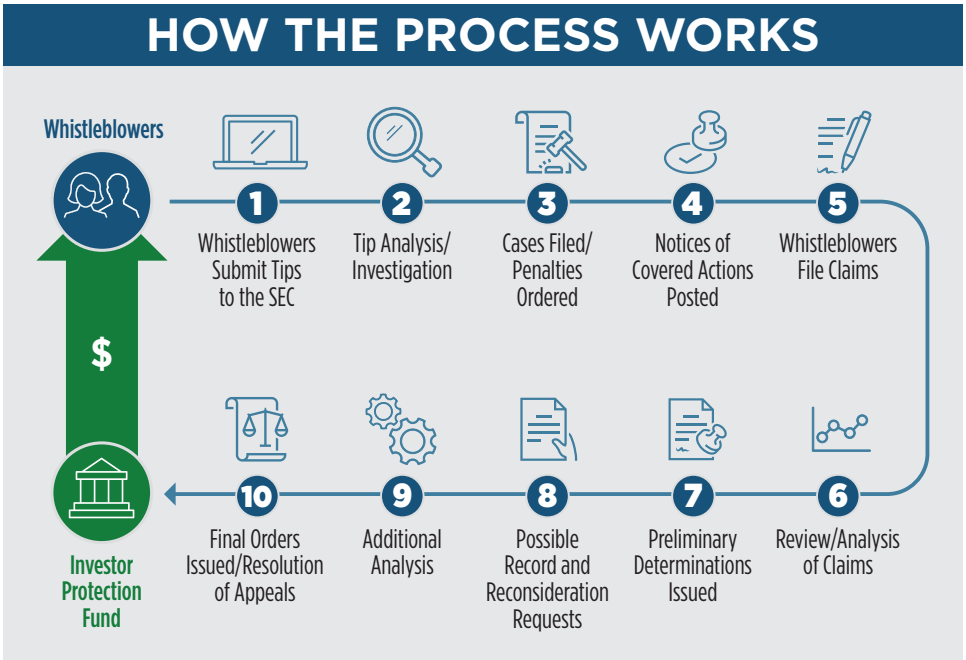
On November 3, 2020, the Commission awarded over $28 million to a whistleblower whose internal report prompted the company to initiate an internal investigation and factored into the staff's decision to open an investigation. In addition, the whistleblower assisted the staff by providing an interview, testimony, and identification of a key witness, all of which saved the staff's time and resources. The Commission also considered that, although the whistleblower's information was significant, the Covered Action included charges which were not attributable to the whistleblower's tip.

26 Order Determining Whistleblower Award, Exchange Act Release No. 93118, File No. 2021-96 (Sept. 24, 2021).

27 Order Determining Whistleblower Award, Exchange Act Release No. 90317, File No. 2021-4 (Nov. 3, 2020).

Overview of Award Process

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



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

NoCA Posted

OWB posts on its webpage a NoCA for each Commission enforcement action where a final judgment or order, by itself or together with other judgments or orders in the same action, results in monetary sanctions exceeding $1 million.[28] During FY 2021, OWB posted 150 NoCAs, including three NoCAs for Commission deferred prosecution agreements that are now eligible for awards pursuant to the Whistleblower Rule Amendments.[29]

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

29 *See* NoCAs 2020-143, 2020-144, and 2020-145.

OWB sends email alerts to GovDelivery[30] when the NoCA listing is updated. Whistleblowers and other members of the public may sign up to receive an update via email every time the list of NoCAs on OWB's webpage is updated. OWB posts new NoCAs on its webpage on the last business day of each month.

Whistleblowers File Claims

Once a NoCA is posted, claimants have 90 calendar days to apply for an award by submitting a completed award application on Form WB-APP to OWB.[31] Only claimants who provided information to the Commission that related to the charges in the underlying action should apply for an award. In making that determination, claimants are encouraged to (i) consider whether they had any communications with the relevant Enforcement staff who investigated the action and (ii) review the relevant charging documents and consider the connection between the specific Commission charges and the claimant's information. The Whistleblower Rule Amendments include tools intended to deter frivolous claims, which are discussed below at page 22.

While OWB may contact whistleblowers who have worked with investigative staff to inform them of the application deadline, it is the responsibility of the claimant to make a timely application for award. The Commission has denied late-filed award claims. The Court of Appeals for the Second Circuit upheld the Commission's denial of untimely filed claims.[32] As such, OWB encourages whistleblowers and their counsel to regularly review the monthly NoCA postings or to sign up to receive emails to alert them as to when new NoCAs are posted.

Review and Analysis of Award Claims

Based on an initial review of the award application and in consultation with investigative staff, OWB makes a preliminary assessment of each whistleblower claim. In keeping with OWB's goal of efficiently processing meritorious claims, claims that appear to be eligible for an award are prioritized for processing. During FY 2021, OWB dedicated two attorneys to reviewing likely non-meritorious claims, so that most OWB attorneys may focus on processing likely meritorious award claims.

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

30 GovDelivery is a vendor that provides communications for public-sector clients.
31 17 C.F.R. §§ 240. 21F-10(a), (b).
32 *See* Order Determining Whistleblower Award Claim, Exchange Act Release No. 77368 (Mar. 14, 2016), *pet. for rev. denied sub nom. Cerny v. SEC*, 707 F. App'x 29 (2d Cir. 2017), *cert. denied*, 138 S. Ct. 2005 (2018); *see also LaViola v. SEC*, No. 19-1079, 2019 WL 3229356 (D.C. Cir. July 16, 2019) (unpublished).

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

Preliminary Determinations Issued

The Claims Review Staff, designated by the Director of Enforcement, considers OWB's recommendation on the award application in accordance with the criteria set forth in Dodd-Frank and the Whistleblower Rules. The Claims Review Staff currently is composed of seven senior officers in Enforcement, including the Director of Enforcement. The Claims Review Staff then issues a Preliminary Determination setting forth its assessment of whether the claim should be approved or denied and, if approved, setting forth the proposed award amount.[33] Since the implementation of the Whistleblower Rule Amendments, OWB follows a summary disposition process for certain categories of denials of award applications that are relatively straightforward. Under this process, OWB, rather than the Claims Review Staff, assumes responsibility for reviewing the record, and then issues a Preliminary Summary Disposition identifying the basis for the denial of the application for award. The summary disposition process helps increase efficiencies in the claims review process.

As detailed below, if the maximum award would not be more than $5 million, the claimant's application presents no negative factors under Rule 21F-6(b), *i.e.*, culpability, unreasonable reporting delay, or interference with an internal compliance and reporting system, and the award claim does not trigger Rule 21F-16 concerning culpability, the Whistleblower Rules establish a presumption of a 30% award. The presumption can be overcome where the whistleblower provided limited assistance and in certain other circumstances. The Commission does not expect the presumption to be overcome in the vast majority of circumstances.[34]

If the presumption is not applicable, the Whistleblower Rules outline a number of positive and negative factors that the Commission and Claims Review Staff may consider in assessing an individual's award amount.[35] Award amounts are based on the particular facts and circumstances of each case.

33 17 C.F.R. § 240.21F-10(d).
34 Whistleblower Rule Amendments Adopting Release at 52.
35 *Id.* § 240.21F-6.

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

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

Possible Record and Reconsideration Requests

A claimant may submit a written request within 30 calendar days of the date of the Preliminary Determination asking for a copy of the record that formed the basis of the Claims Review Staff's decision as to the claim for award. As a precondition to receiving a copy of the record, OWB requires claimants and their counsel, if the claimant is represented, to execute a confidentiality agreement limiting the use of such materials to the claims review process.[36] In keeping with our statutory obligation of confidentiality, OWB carefully redacts each record to remove any information that could identify another whistleblower in the matter.

Claimants may seek reconsideration of the Preliminary Determination by submitting a written response to OWB within 60 calendar days of the later of (i) the date of the Preliminary Determination, or (ii) if the record was requested, the date when OWB made the record available for a claimant's review.[37] If a claim is denied and the claimant does not object within the time period prescribed under the Whistleblower Rules, then the Preliminary Determination of the Claims Review Staff becomes the Final Order of the Commission through operation of law.

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

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

37 17 C.F.R. § 240.21F-10(e).

Final Order Issued and Resolution of Appeals

After considering any requests for reconsideration, the Claims Review Staff makes a Proposed Final Determination, and the matter is submitted to the Commission for its decision.[38]

All Preliminary Determinations of the Claims Review Staff that involve granting an award are submitted to the Commission for consideration as Proposed Final Determinations irrespective of whether the claimant objected to the Preliminary Determination.[39]

Within 30 days of receiving the Proposed Final Determination, any Commissioner may request that the Proposed Final Determination be further reviewed by the Commission. If no Commissioner requests a review within the 30-day period, the Proposed Final Determination becomes the Final Order of the Commission. Claimants who are issued a denial have a right to appeal the Commission's Final Order within 30 days of issuance to the United States Court of Appeals for the District of Columbia Circuit, or to the circuit where the claimant resides or has their principal place of business.[40]

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

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

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

EFFECTS OF WHISTLEBLOWER RULE AMENDMENTS AND DISCUSSION OF EXCHANGE ACT RULE 21F-6 FACTORS

30% Presumption for Awards Under $5 Million

The Whistleblower Rule Amendments, which became effective in December 2020, created a 30% presumption for awards under $5 million. Under newly adopted Rule 21F-6(c), the presumption of a maximum 30% award applies where:

1. A maximum award would not be more than $5 million;
2. the claimant's application presents no negative factors under Rule 21F-6(b)—*i.e.*, culpability, unreasonable reporting delay, or interference with an internal compliance and reporting system; and
3. the award claim does not trigger Rule 21F-16, concerning culpability.

The Commission may depart from the presumption if (1) the assistance provided by the whistleblower was, under the relevant facts and circumstances, limited, or (2) a maximum award would be inconsistent with the public interest, the promotion of investor protection, or the objectives of the whistleblower program.

"Following the effective date of the Whistleblower Rule Amendments, the Commission applied the presumption approximately 89% of the time where the award amount was not more than $5 million."

If there are multiple meritorious claimants and at least one claimant's application would qualify for the presumption, the aggregate award will be the maximum 30%, and the individual award percentages will be apportioned according to the Rule 21F-6(a) and (b) factors discussed below.

The 30% presumption has had a significant impact on the SEC's whistleblower program. Prior to the effective date of the Whistleblower Rule Amendments, approximately 46% of all awards made in a Covered Action were, in the aggregate, at the statutory maximum of 30%. Following the effective date of the Whistleblower Rule Amendments, the Commission applied the presumption approximately 89% of the time where the award amount was not more than $5 million. The 30% presumption also allowed for increased consistency among awards and greater transparency to claimants and their counsel. Further, the 30% presumption assisted OWB in expediting the processing of award claims in FY 2021.

Positive and Negative Award Factors[41]

Where the 30% presumption does not apply, because the award would result in more than $5 million, a negative factor was present, or the claimant failed to provide more than limited assistance, the Commission determines the appropriate award percentage based on the factors in Rules 21F-6(a) and (b). The four positive factors set forth in Rule 21F-6(a) include the significance of the information provided by the whistleblower, the assistance provided by the whistleblower, the law enforcement interest, and participation in an internal compliance system. The three negative factors set forth in Rule 21F-6(b) include culpability, unreasonable reporting delay, and interference with internal

41 The 2020 Whistleblower Rule Amendments direct OWB to include in its annual report "in an aggregated manner, an overview discussion of the factors that were present in the awards throughout the year, including (to the extent practicable) a qualitative discussion of how these factors affected the Commission's determination of Award Amounts." Whistleblower Rule Amendments Adopting Release at 11.

compliance and reporting systems. The Commission also uses these factors to determine the allocation of awards where more than one claimant is eligible for an award in a particular Covered Action.

When the factors are applied, the significance of the whistleblower's information is an important consideration. It continues to be a key driver of the award percentage, and is often the most important factor in apportioning award amounts between two or more meritorious claimants. The Commission often considers whether the whistleblower's information relates to all or only some of the charged conduct. The quality of the information can also be an important consideration, including how quickly it was received. For example, in a recent award, two whistleblowers both contributed information about the same misconduct that caused Enforcement staff to open an investigation.[42] However, one of the claimants provided information first, which helped establish the framework for the investigation, and the information was broader and more current. This whistleblower received twice the award of another whistleblower who provided information that, although still valuable to the staff, was more limited.

The assistance provided by whistleblowers was another important factor that was positively assessed by the Commission in FY 2021. Whistleblowers often provide substantial assistance to the Enforcement staff during the investigation, including meeting with staff and identifying key witnesses and documents, which can conserve significant staff time and resources. Though a whistleblower's assistance will be judged based on the facts and circumstances of each case, in one notable instance, the Commission recognized the extraordinary assistance of one whistleblower who, while facing grave financial pressures, flew to another country to provide important information to Enforcement staff.[43]

Under Rule 21F-6(a), the Commission also positively assesses the degree of law enforcement interest in a matter. For example, the law enforcement interest may be particularly high where the whistleblower provides information about ongoing violations, such as a fraudulent securities offering preying on retail investors or one involving digital assets or investments, the misappropriation of investor funds, or misconduct occurring overseas. Law enforcement interests also are considered high where the whistleblower's information allows the Commission to return money to harmed investors. There also are significant law enforcement interests where the whistleblower provides information about securities violations occurring abroad, which may be more difficult for Commission staff to detect or to gather evidence about, in the absence of a whistleblower's information and cooperation.

Finally, the Commission positively assesses a whistleblower's participation in an internal compliance or reporting system. In FY 2021, the Commission positively assessed the participation of whistleblowers who internally reported their information prior to reporting to the Commission. While claimants are not required to report internally, if they do so, their award percentage may be increased.

42 Order Determining Whistleblower Award, Exchange Act Release No. 92542, File No. 2021-77 (Aug. 2, 2021).
43 Order Determining Whistleblower Award, Exchange Act Release No. 90350, File No. 2021-5 (Nov. 5, 2020).

With respect to the negative factors under Rule 21F-6(b), in FY 2021, the Commission found that whistleblowers in seven matters had unreasonably delayed in reporting their information to the Commission in FY 2021. The reporting delays ranged from about two years to more than five years. Significantly, certain reporting delays can be mitigated by a whistleblower's internal reporting or taking other efforts to remedy the violation, where the whistleblower is located abroad and may not have the benefit of the Dodd-Frank anti-retaliation protections, or where part of the delay occurred prior to July 21, 2010. Whistleblowers and their counsel are encouraged to include information in their award applications addressing possible delay issues, including when and how the whistleblower learned of the misconduct and steps they took in response, as well as any other reasons that help explain the delay. OWB staff routinely seek additional information from claimants and their counsel where the record is not clear about when and how the claimant learned the information. Whistleblowers are encouraged to report their information promptly to the Commission, particularly where there is ongoing investor harm. In FY 2021, the Commission also significantly reduced the award of two claimants who had engaged in culpable conduct in connection with the underlying scheme. No meritorious claimant in FY 2021 was found to have interfered with an internal compliance or reporting system.

"In FY 2021, the Commission issued awards to whistleblowers in connection with four DPAs and NPAs, resulting in over $117 million in whistleblower awards."

In FY 2021, the award percentages ranged from 10%, the statutory minimum, to 30%, the statutory maximum. Of the final award orders issued in FY 2021, approximately 85% were at the statutory maximum, approximately 10% were in the range of 20 to 29%, and approximately 5% were in the range of 10 to 19%.

Awards for Deferred and Non-Prosecution Agreements

The 2020 Whistleblower Rule Amendments clarify that Deferred Prosecution Agreements (DPAs) and Non-Prosecution Agreements (NPAs) entered into by the U.S. Department of Justice, as well as similar settlement agreements entered into by the Commission outside the context of a judicial or administrative action, may be considered "covered actions" and "related actions" on which whistleblower awards may be paid. In the adopting release, the Commission explained that this amendment sought to make awards available to meritorious whistleblowers in cases where these alternative vehicles are used to address violations of law. This is because meritorious whistleblowers should not be denied awards simply because of the procedural vehicle that the Commission or the Department of Justice has selected to resolve the matter.[44]

The inclusion of DPAs and NPAs within the definition of administrative actions that can be "related actions" has already provided significant benefits to whistleblowers. In FY 2021, the Commission issued awards to whistleblowers in connection with four DPAs and NPAs, resulting in over $117 million in whistleblower awards.

44 Whistleblower Rule Amendments Adopting Release at 12.

OWB and the Commission Use New Tools Provided by the Whistleblower Rule Amendments to Address Non-Meritorious Claims

In administering the whistleblower program for more than a decade now, OWB has observed that a small number of claimants have abused the program by applying for dozens, and sometimes hundreds, of awards even though their information had no reasonable connection or nexus to the Covered Action for which they applied. Such frivolous claims can slow down the award process for meritorious whistleblowers, as the Whistleblower Rules afford denied claimants time to challenge the Preliminary Determinations. Reviewing and providing recommendations on such frivolous claims wastes staff time and diverts resources.

To address this issue, the Commission enacted as part of the Whistleblower Rule Amendments Rule 21F-8(e), which allows the Commission to permanently bar anyone who submits three applications for an award that are "frivolous or lacking a colorable connection between the tip (or tips) and the Commission actions for which" the award is sought. The new rule contains various notice provisions, and OWB staff contacts claimants who may face a bar under the Rule Amendments because of frivolous submissions to give them an opportunity to withdraw those claims.

On September 14, 2021, the Commission for the first time barred a claimant under the Rule Amendments. This claimant had submitted hundreds of frivolous claims over a period of years, and after agreeing to withdraw certain claims after OWB provided the required notice, the claimant resubmitted the same claims.[45] The bar applies to all pending award applications at any stage of the process.

On September 28, 2021, the Commission barred a second individual from the whistleblower program who had also submitted hundreds of frivolous award applications.[46] OWB hopes that the permanent bars issued by the Commission in September 2021 will act as a deterrent to other frivolous or would-be frivolous submitters.

Summary Disposition Process

The Whistleblower Rule Amendments also authorize OWB to follow a streamlined summary disposition process for certain straightforward categories of denials of claims.[47] In adopting the process, the Commission sought to conserve time in preparing the administrative record and to avoid spending a disproportionate share of staff time and resources on straightforward denials, with little or no corresponding benefit from using the more robust non-summary process.[48]

45 Order Determining Whistleblower Award, Exchange Act Release No. 92969, File No. 2021-90 (Sept. 14, 2021).
46 Order Determining Whistleblower Award, Exchange Act Release No. 93145, File No. 2021-98 (Sept. 28, 2021).
47 Rule 21F-18.
48 Whistleblower Rule Amendments Adopting Release at 108.

The summary disposition process may be used in the following circumstances:

1. an award application was untimely;
2. claimant failed to submit a tip in the manner the Commission has prescribed;
3. staff handling the covered action or the underlying investigation (or examination) never received or used the claimant's information and otherwise had no contact with the claimant;
4. claimant failed to comply with Rule 21F-8(b), which encompasses Commission requests for supplemental information and for signed confidentiality agreements;
5. claimant failed to specify the tip on which the award claim is based; or
6. where the claim does not involve new or novel issues.

The summary disposition process allows OWB, rather than the Claims Review Staff, to issue a Preliminary Summary Disposition for a denial. The summary disposition process also has shorter time periods for record requests and requests for reconsideration. For instance, the claimant has 15 days to ask to see the staff declaration upon which the Preliminary Summary Disposition was based, and 30 days to challenge the Preliminary Summary Disposition.

The summary disposition process has already yielded benefits to the whistleblower program. In FY 2021, OWB issued 69 preliminary summary dispositions, 31 of which have become Final Orders of the Commission.

Independent Analysis

A whistleblower may satisfy the "original information" eligibility requirement by providing the Commission with "independent analysis." The Whistleblower Rules define "analysis" to mean an "examination and evaluation of information that may be publicly available, but which reveals information that is not generally known or available to the public."[49] The Commission explained that "independent analysis" requires that the whistleblower "do more than merely point the staff to disparate publicly available information that the whistleblower has assembled, whether or not the staff was previously 'aware of' the information." As part of the 2020 Whistleblower Rule Amendments, the Commission issued interpretive guidance regarding "independent analysis." To qualify as "independent analysis," a whistleblower's submission "must provide evaluation, assessment, or insight beyond what would be reasonably apparent to the Commission from publicly available information. In assessing whether this requirement is met, the Commission . . . determine[s] . . . whether the violations could have been inferred from the facts available in public sources."[50]

49 Rule 21F-4(b)(3).
50 Whistleblower Rule Amendments Adopting Release at 112.

In order for a whistleblower to be credited with providing "independent analysis," the whistleblower's examination and evaluation should contribute "significant independent information" that "bridges the gap" between the publicly available information and the possible securities violations.[51] "[I]n each case, the touchstone is whether the whistleblower's submission is revelatory in utilizing publicly available information in a way that goes beyond the information itself and affords the Commission with important insights or information about possible violations."[52]

The Commission provided an illustration of where a whistleblower's examination and evaluation of publicly available information might constitute "analysis" within the meaning of Rule 21F-4(b)(3) because it reveals information that is "not generally known" to the public. The Commission explained that one way in which a whistleblower might satisfy the independent analysis standard is (i) the whistleblower's "conclusion of possible securities violations derives 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 (ii) "these sources 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."[53]

After the issuance of the interpretive guidance, the Commission has continued to issue awards where the whistleblower's information was based on independent analysis. The Commission issued eight awards in FY 2021 that were based at least in part on independent analysis, including the second largest award ($110 million) to a single whistleblower in the history of the program.[54]

"The Commission issued eight awards in FY 2021 that were based at least in part on independent analysis, including the second largest award ($110 million) to a single whistleblower in the history of the program."

51 *Id.* at 119.
52 *Id.* at 113.
53 *Id.* at 119.
54 Order Determining Whistleblower Award, Exchange Act Release No. 92985, File No. 2021-91 (Sept. 15, 2021).

PROFILES OF AWARDS

Protecting whistleblower confidentiality is an integral component of the whistleblower program. Dodd-Frank prohibits the Commission and its staff from disclosing any information that reasonably could be expected to reveal the identity of a whistleblower, subject to certain exceptions. However, aggregated data that does not reveal the identity of the underlying whistleblowers can yield a fuller picture about the program and the contributions its participants make.

FY 2021 solidified the international nature of the whistleblower program. The successful whistleblowers recognized by the Commission hailed from six continents. In total, approximately 20% of the meritorious claimants in FY 2021 were based outside of the United States.

"In total, approximately 20% of the meritorious claimants in FY 2021 were based outside of the United States."

An individual may be eligible to receive an award where their information leads to a successful enforcement action—meaning generally that the original information either caused the staff to open an examination or investigation, or the original information significantly contributed to a successful enforcement action where the matter was already under examination or investigation. Of the whistleblowers who received awards in FY 2021, approximately 56% provided original information that caused staff to open an investigation or examination, and approximately 44% received awards because their original information significantly contributed to an already existing investigation or examination. In assessing whether information assisted with an ongoing matter, the Commission considers factors such as whether the information allowed the Commission to bring an action in significantly less time or with significantly fewer resources, and whether it supported additional successful charges, or successful claims against additional individuals or entities.[55]

Approximately 60% of the award recipients in FY 2021 were current or former insiders of the entity about which they reported information of wrongdoing to the Commission. Of those recipients, more than 75% raised their concerns internally to their supervisors, compliance personnel, or through internal reporting mechanisms, or understood that their supervisor or relevant compliance personnel knew of the violations, before reporting their information of wrongdoing to the Commission.

Award recipients in FY 2021 also included investors who had been victims of the fraud they reported, professionals working in the same or related industry as where the misconduct occurred, or other types of outsiders, such as individuals with a special expertise in the market.

In addition, whistleblowers who received awards in FY 2021 assisted the Commission in bringing enforcement cases involving an array of securities violations, including offering frauds, such as Ponzi schemes, false or misleading statements in a company's offering memoranda or marketing materials, accounting violations, internal controls violations, and Foreign Corrupt Practices Act violations, among other types of misconduct.

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

Under the Whistleblower Rules, individuals are permitted to jointly submit a tip to the Commission. Six of the matters for which whistleblower awards were ordered in FY 2021 involved two or more whistleblowers jointly submitting information to the Commission.

Individuals who provide information that leads to successful SEC actions resulting in monetary sanctions over $1 million also may be eligible to receive an award if the same information led to a related action, such as a parallel criminal prosecution. Seventeen award recipients in FY 2021 received an award based, in part, on collections made in related criminal or other qualifying related actions.

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

Section 21F(h)(1) of Dodd-Frank expanded protections for whistleblowers and broadened prohibitions against retaliation.[56] Following the passage of Dodd-Frank, the Commission implemented rules that enabled the SEC to take legal action against employers who have retaliated against whistleblowers. To date, the Commission has brought four anti-retaliation enforcement actions.

Exchange Act Rule 21F-17(a) prohibits any person from taking any action to prevent an individual from contacting the SEC directly to report a possible securities law violation. The rule states that "[n]o person may take any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement . . . with respect to such communications."[57] To date, the Commission has brought 14 enforcement actions or administrative proceedings involving violations of Rule 21F-17. In its most recent action, *In the Matter of Guggenheim Securities, LLC*,[58] the Commission charged the respondent with violating Rule 21F-17 by impeding employees from contacting the Commission. According to the findings in the order, language in the respondent's compliance manual and training materials prohibited an employee from contacting any regulator without prior approval from the respondent's legal or compliance department. Such prohibitions undermine the purpose of Section 21F and Rule 21F-17 to encourage individuals to report to the Commission.

In the Commission's February 2021 action against GPB Capital Holdings, LLC,[59] the Commission included a Rule 21F-17 charge against a defendant for impeding individuals from contacting the Commission. The complaint alleged that certain confidentiality and separation agreements with the defendant prohibited individuals from contacting the Commission about potential securities law violations. The complaint also alleged that the defendant retaliated against an employee who raised concerns internally and who filed a whistleblower complaint with the Commission. The Commission's action remains pending in federal court in New York. Also, in *SEC v. Collector's Coffee, Inc.*, where the Commission alleged that defendants agreed to resolve investors' charges of fraud by defendants on the condition that the investors refrain from communicating with the Commission, and later tried to sue to enforce that provision when certain investors reported the alleged fraud to the Commission,[60] the court in July 2021 denied a motion to dismiss the claim, holding that the Commission was within its authority to promulgate Rule 21F-17 and that the rule was not limited to employees being impeded by employers.[61]

56 15 U.S.C. § 78u-6(h)(1).
57 17 C.F.R. § 240.21F-17(a).
58 *In the Matter of Guggenheim Sec., LLC*, File No. 3-20370 (June 23, 2021).
59 *U.S. Sec. & Exch. Comm'n v. GPB Capital Holdings, LLC, et al.*, No. 21-cv-00583 (E.D.N.Y.) (Feb. 4, 2021).
60 *See SEC v. Collector's Coffee, Inc., et al.*, No. 19-cv-4435, Amended Compl. ¶¶110-36, 185-87 (S.D.N.Y. filed Nov. 14, 2019).
61 *See SEC v. Collector's Coffee, Inc.*, 2021 WL 3082209 (S.D.N.Y. July 21, 2021).

In February 2018, the Supreme Court in *Digital Realty* held that the whistleblower provisions of the Exchange Act require that an employee report a possible securities law violation to the Commission to qualify for protection against employment retaliation under Section 21F.[62] The Court thus invalidated the Commission's rule interpreting Section 21F's anti-retaliation protections to apply in cases where an employee had reported only internally. The 2020 rule amendments modify Rule 21F-2 to establish a uniform definition of "whistleblower" that would apply to all aspects of Exchange Act Section 21F. In addition, under the amended rule, to qualify as a "whistleblower" for either anti-retaliation or award eligibility purposes, one must submit an allegation of a possible securities law violation to the Commission in writing.

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

"Retaliation protection remains a key tenet of the whistleblower program."

62 138 S. Ct. 767 (2018).

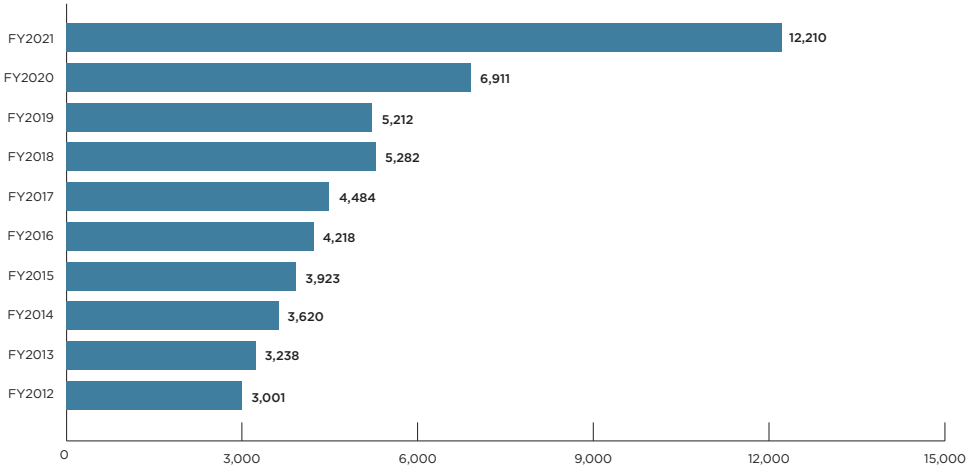
WHISTLEBLOWER TIPS RECEIVED

The Whistleblower Rules specify that individuals who would like to be part of the whistleblower program must submit their tips via the Commission's online portal or by mailing or faxing their tips, complaints, or referrals on Form TCR to the Commission.[63] Whistleblowers who use the online portal to submit a tip receive a computer-generated confirmation of receipt with a TCR submission number. All whistleblower tips referring to potential securities law violations are entered into the TCR System and are evaluated by the Commission's Office of Market Intelligence (OMI) within Enforcement. OWB encourages individuals and their counsel to submit tips via only one method using the Commission's online portal, rather than through a hard-copy Form TCR in order to quicken processing times. For example, the same tip should not be entered through the online portal and then mailed in hard copy. This can create duplication of work for intake staff and cause a delay in processing.

Number of Whistleblower Tips

In FY 2021, the Commission received over 12,200 whistleblower tips—the largest number of whistleblower tips received in a fiscal year, which represents an approximate 76% increase over FY 2020, for which the Commission received the now-second highest number of whistleblower tips in a fiscal year. Since August 2011, the Commission has received more than 52,400 whistleblower tips. The table below shows the number of whistleblower tips received by the Commission on a yearly basis since the inception of the whistleblower program.[64]

"In FY 2021, the Commission received over 12,200 whistleblower tips—the largest number of whistleblower tips received in a fiscal year."



From FY 2012, the first year for which we have full-year data,[65] to FY 2021, the number of whistleblower tips received by the Commission has grown by approximately 300%.

63 17 C.F.R. § 240.21F-9(a).

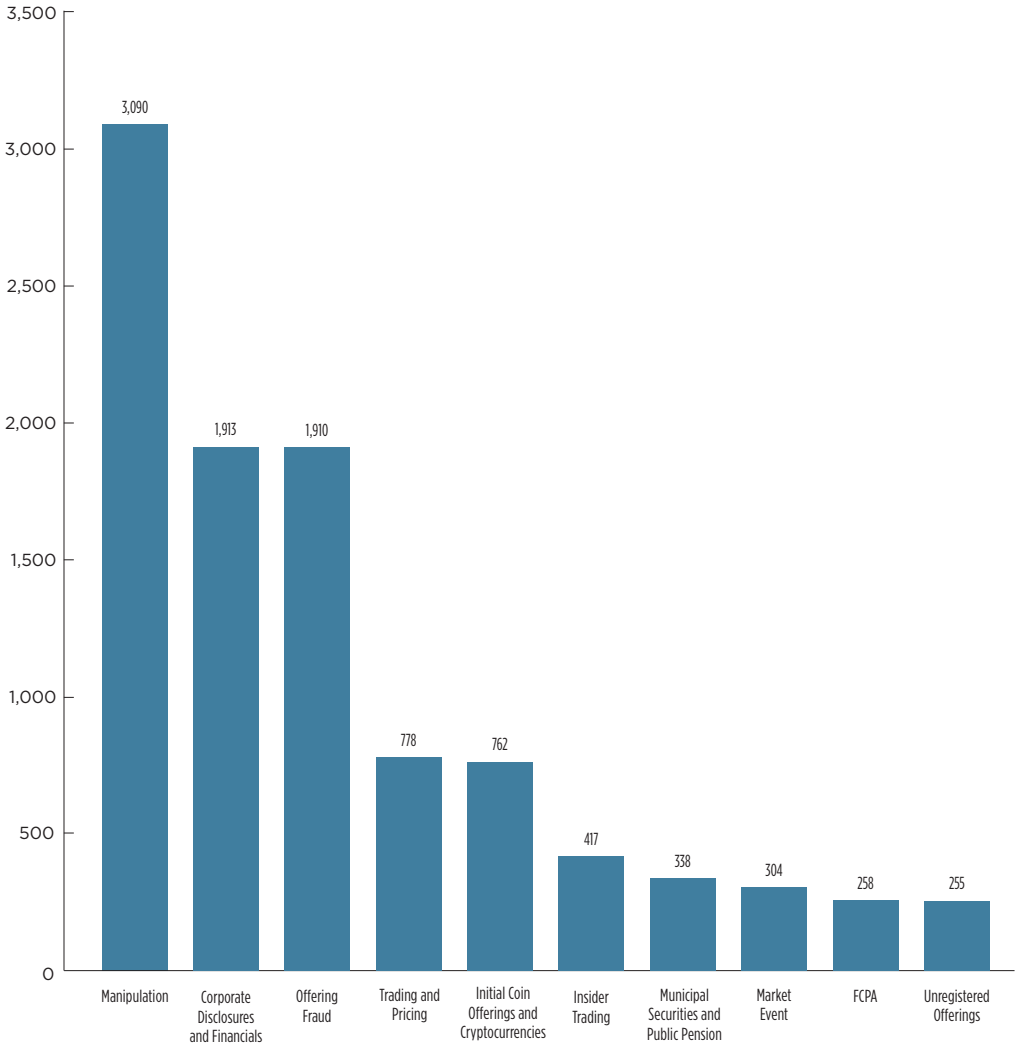
64 The Commission also receives tips from individuals who do not wish to be part of the whistleblower program. The data in this report is limited to whistleblower tips and does not reflect all tips or complaints received by the Commission during the fiscal year.

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

Whistleblower Allegation Type

Whether submitting tips on Form TCR or through the online portal, whistleblowers should identify the nature of their complaint allegations. In FY 2021, the most common complaint categories reported by whistleblowers were Manipulation (25%), Corporate Disclosures and Financials (16%), Offering Fraud (16%), Trading and Pricing (6%), and Initial Coin Offerings and Cryptocurrencies (6%).[66]

The following graph reflects the number of whistleblower tips received in FY 2021 by allegation type.[67]



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

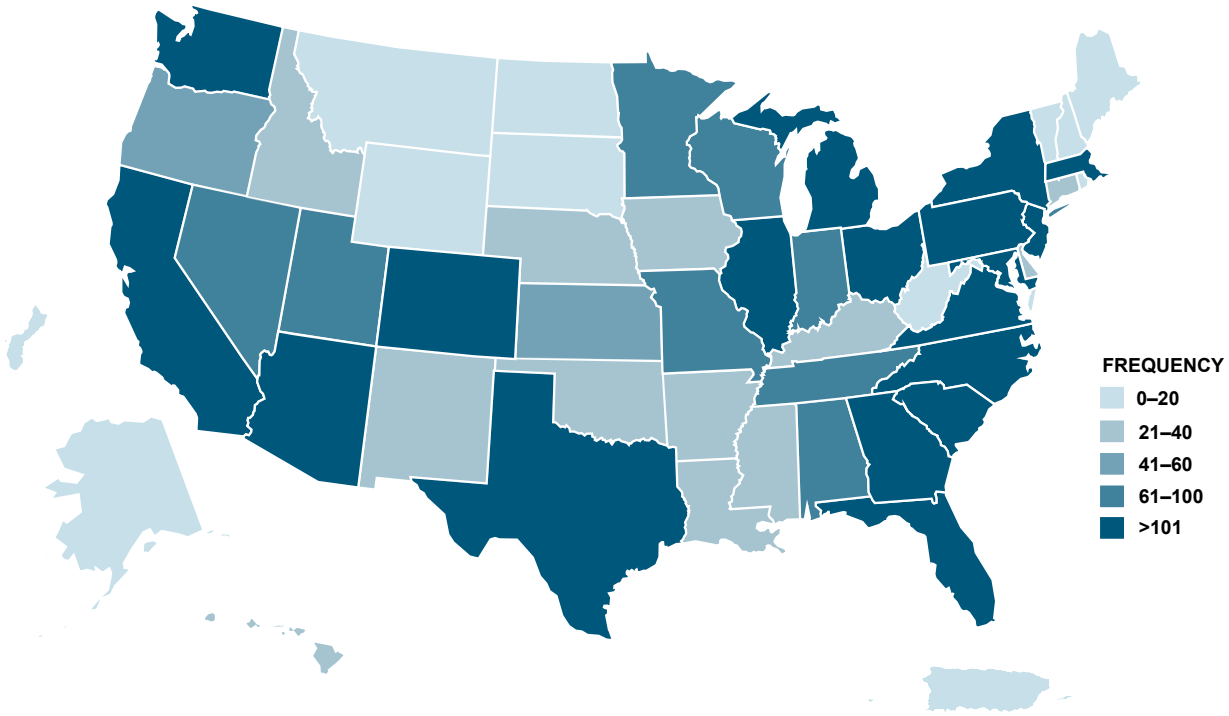
67 There were also 2,185 whistleblower tips where the whistleblower TCR was not identified as falling into any listed allegation category.

The types of securities violations reported by whistleblowers have remained generally consistent. Since the beginning of the program, Corporate Disclosures and Financials, Offering Fraud, and Manipulation have consistently ranked as the three highest allegation types reported by whistleblowers. The Initial Coin Offerings and Cryptocurrencies allegation category was added in the fourth quarter of 2018 and now comprises approximately 6% of the whistleblower tips received. Appendix A to this report provides a comparison among the number of whistleblower tips by allegation type that the Commission received during FY 2018 through FY 2021.

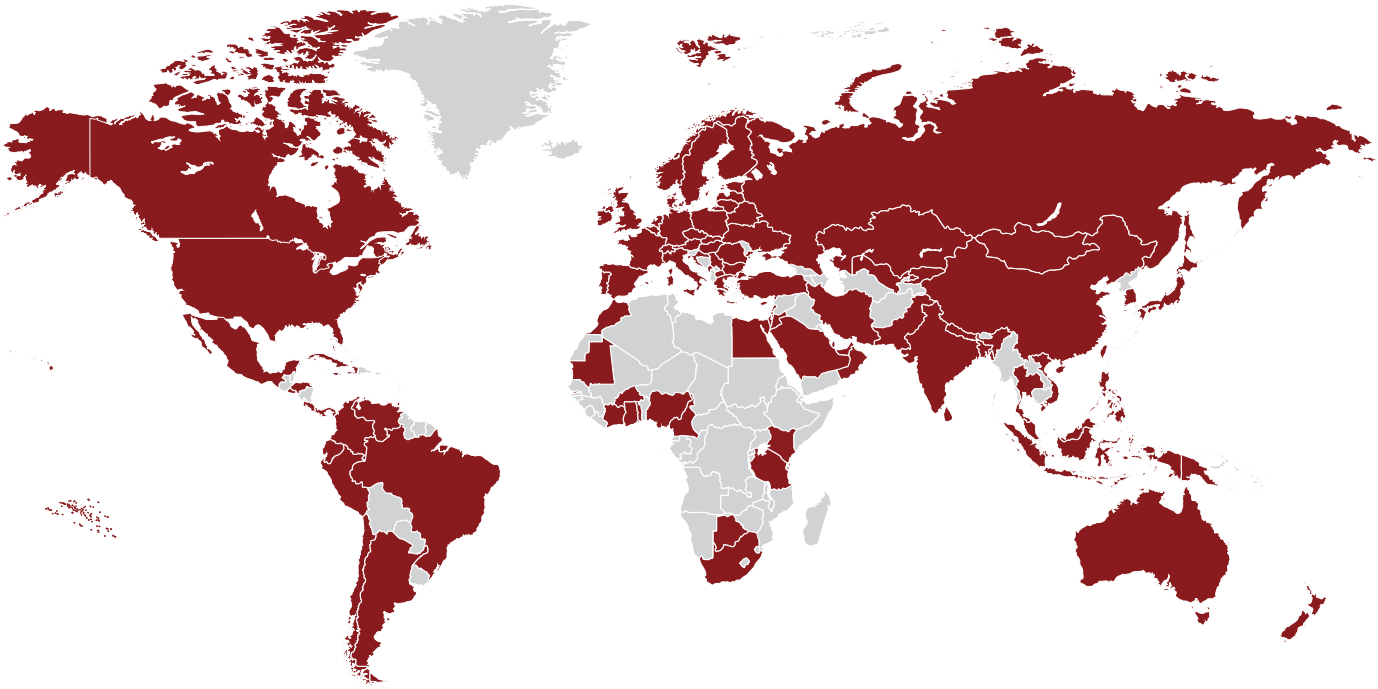
Geographic Origin of Whistleblower Tips

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

During FY 2021, California, Maryland, Florida, New York, and Texas yielded the highest number of whistleblower tips domestically.



Since the beginning of the whistleblower program, the Commission has received whistleblower tips from individuals in approximately 133 countries outside the United States. In FY 2021 alone, the Commission received whistleblower submissions from individuals in 99 foreign countries. After the United States, OWB received the highest number of whistleblower tips this past fiscal year from individuals in Canada, the People's Republic of China, and the United Kingdom. The map below reflects the countries in which whistleblower tips originated during FY 2021.



Appendices B and C to this report provide detailed information concerning the sources of domestic and foreign whistleblower tips that the Commission received during FY 2021.

PROCESSING OF WHISTLEBLOWER TIPS

We strongly encourage whistleblowers to submit any TCRs and additional information using the SEC's online portal. Because of the current telework posture of the agency due to COVID-19, until further notice, any TCRs or additional information submitted by mail should be sent to the SEC's alternative mailing address, which is posted on the SEC whistleblower program webpage. The alternative mailing address is: SEC Office of the Whistleblower (c/o ENF-CPU), 14420 Albemarle Point Place, Suite 102, Chantilly, VA 20151-1750, ATTN: SEC TCR SUBMISSIONS.

TCR Evaluation

OMI reviews every TCR submitted by a whistleblower to the Commission that alleges a possible securities law violation. OMI examines each tip to identify those with high-quality information that warrant the additional allocation of Commission resources. Generally, when the evaluation of a tip could benefit from the specific expertise of another Division or Office within the SEC, the tip is forwarded to staff in that Division or Office for further analysis. When OMI determines that a tip should be considered for investigation, OMI assigns the tip to one of the Commission's 11 regional offices, a specialty unit, or to an Enforcement group in the SEC's Washington, DC, headquarters. Tips that relate to an existing investigation are generally forwarded to the staff working on the matter.

"[W]histleblower tips that are specific, credible, and timely, and that are accompanied by corroborating documentary evidence, are more likely to be forwarded to investigative staff for further analysis or investigation."

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

OWB tracks whistleblower tips that are referred to Enforcement staff for investigation. OWB currently is tracking over 1,300 matters in which a whistleblower's tip has caused a Matter Under Inquiry or investigation to open, or has been forwarded to Enforcement staff for review and consideration in connection with an ongoing investigation. Not all of these matters, however, will result in an enforcement action, or an enforcement action where the required threshold of over $1 million in monetary sanctions will be ordered. Whistleblower tips may also be used to open an examination or referred to examination staff in connection with a planned or ongoing exam.

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

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

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

SECURITIES AND EXCHANGE COMMISSION INVESTOR PROTECTION FUND

Section 922 of Dodd-Frank established the Investor Protection Fund to provide funding for the Commission's whistleblower award program, including the payment of awards in related actions.[68] As required by statute, all payments are made out of this Fund, which is financed entirely through monetary sanctions paid to the SEC by securities law violators. No money has been taken or withheld from harmed investors to pay whistleblower awards. The Fund also is used to finance the operations of the suggestion program of the SEC's Office of Inspector General.[69] The suggestion program is intended for the receipt of suggestions from SEC employees for improvements in work efficiency, effectiveness, productivity, and the use of resources at the Commission, as well as allegations by SEC employees of waste, abuse, misconduct, or mismanagement within the Commission, and is operated outside of OWB.[70]

Section 21F(g)(5) of the Exchange Act requires certain Fund information to be reported to Congress on an annual basis. Below is a chart containing Fund-related information for FY 2021.

		FY 2021
Balance of Fund at beginning of fiscal year	$	260,281,554.26
Unavailable amounts from FY 2020 available during fiscal year[71]	$	1,299,045.94
Amounts deposited into or credited to Fund during fiscal year	$	472,066,246.30
Amounts of interest receipts from investments during fiscal year	$	2,739,123.01
Amount of receipts during the fiscal year that are unavailable[71]	$	(27,063,907.00)
Amounts paid from Fund during fiscal year to whistleblowers	$	(465,604,025.82)
Amounts estimated to be paid from Fund during fiscal year to whistleblowers	$	(99,260,141.81)
Amount disbursed to Office of the Inspector General during fiscal year	$	(15,761.00)
Balance of Fund at end of fiscal year	$	144,442,133.88

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

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

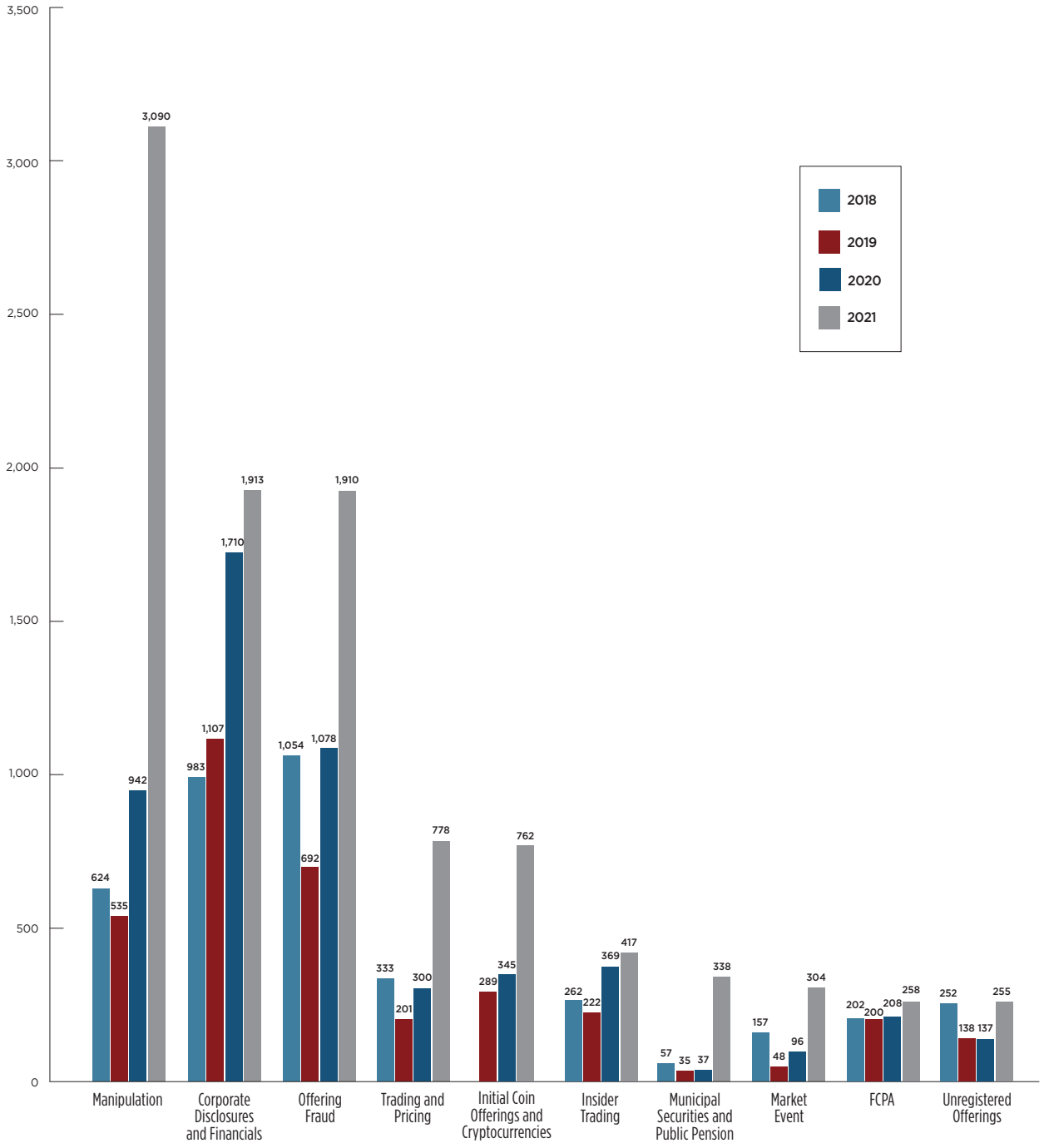
70 Section 4D(a) of the Exchange Act, *id.* § 78d-4(a).

71 Amounts relate to available resources temporarily reduced during the fiscal year as a result of The Budget Control Act of 2011. These amounts become available at the beginning of the following fiscal year.

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

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

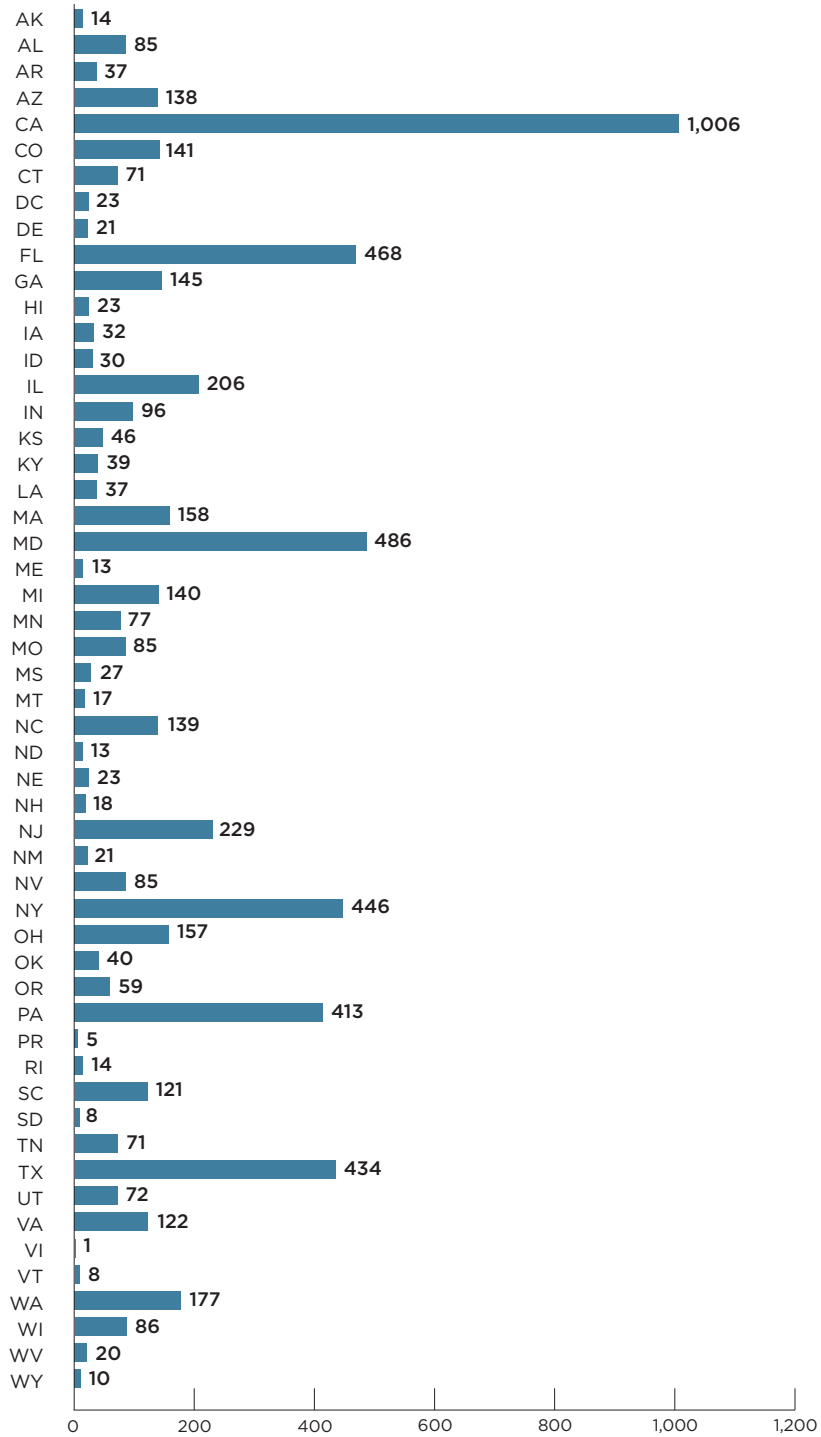
APPENDIX A
WHISTLEBLOWER TIPS BY ALLEGATION TYPE
COMPARISON OF FISCAL YEARS 2018–2021*



*The "Initial Coin Offerings and Cryptocurrencies" allegation category was introduced during the fourth quarter of FY 2018. In addition to what is depicted in the graph, there were whistleblower tips where the whistleblower TCR was not identified as falling into any listed allegation category.

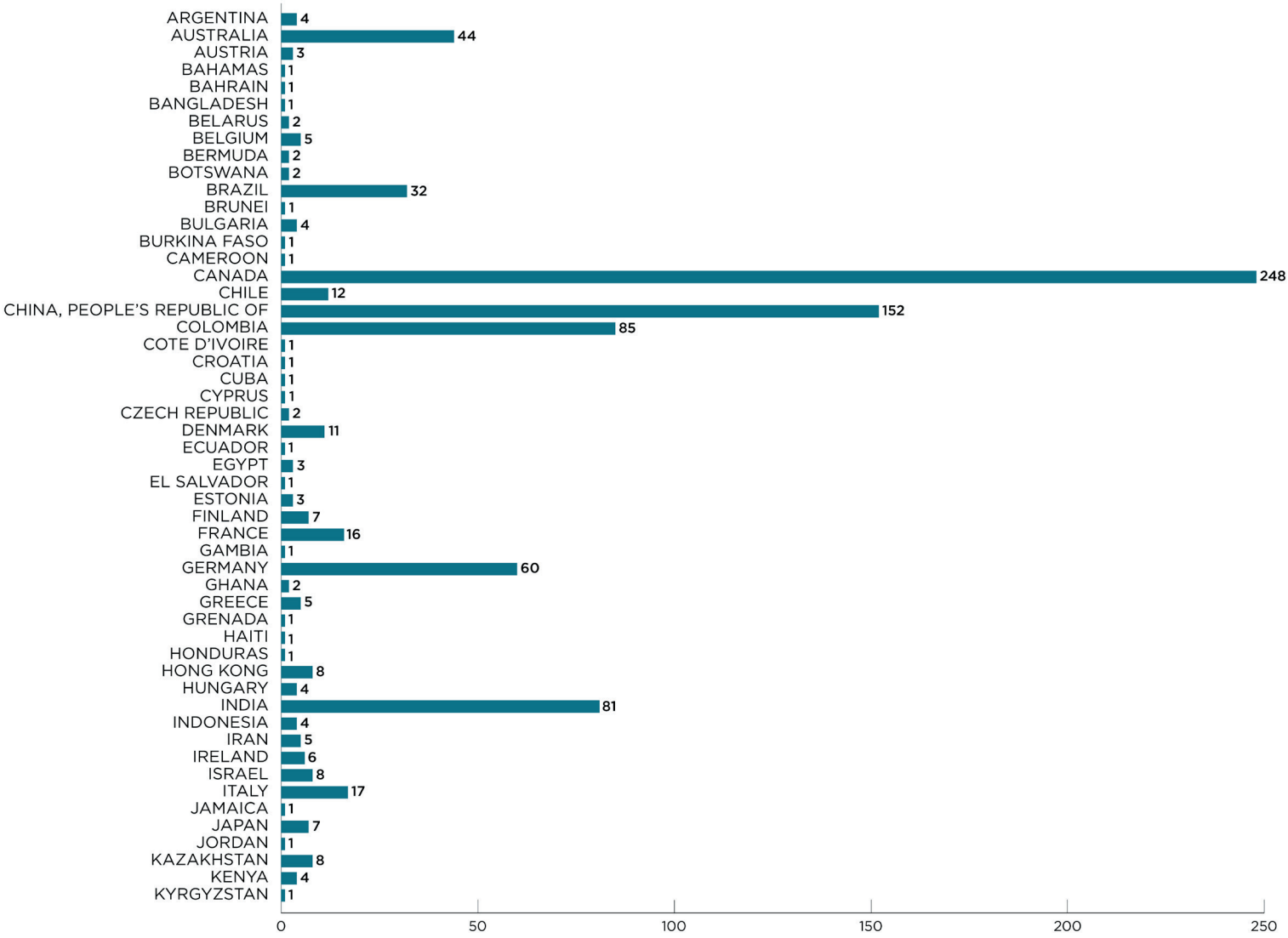
APPENDIX B

WHISTLEBLOWER TIPS RECEIVED BY GEOGRAPHIC LOCATION UNITED STATES AND ITS TERRITORIES, FISCAL YEAR 2021*



*Approximately 6,470 whistleblower TCRs were submitted from the United States or a U.S. territory during FY 2021, which constitutes approximately 53% of the whistleblower TCRs submitted during this period. In addition, approximately 4,385 whistleblower TCRs, constituting approximately 36% of the whistleblower TCRs submitted in FY 2021, were submitted with an unknown foreign or domestic geographical categorization or were submitted anonymously through counsel.

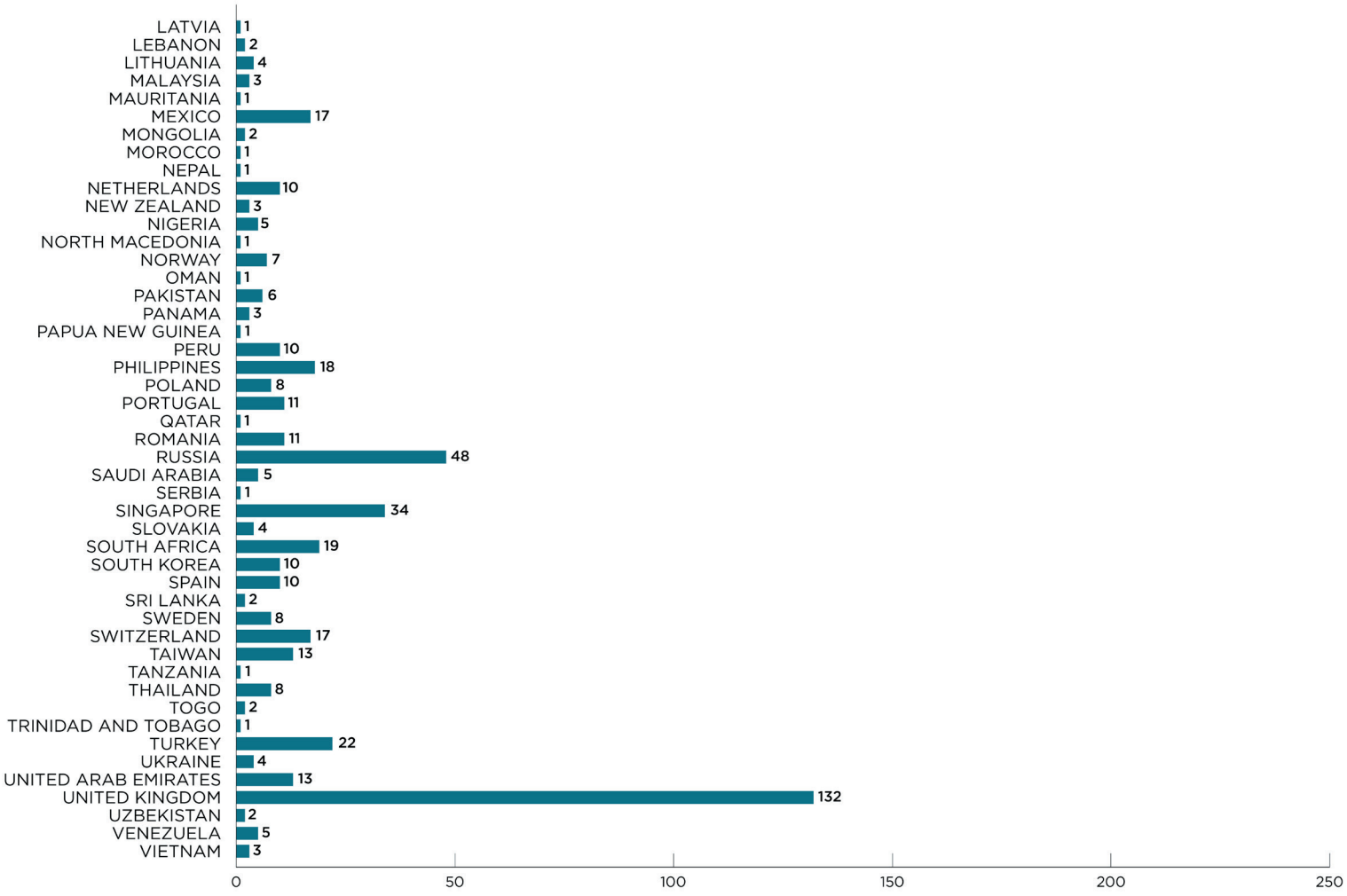
APPENDIX C
WHISTLEBLOWER TIPS RECEIVED BY GEOGRAPHIC LOCATION INTERNATIONAL, FISCAL YEAR 2021*



* The number of whistleblower TCRs submitted from abroad during FY 2021 exceeded 1350, constituting approximately 11% of the whistleblower TCRs submitted during this period.

APPENDIX C

WHISTLEBLOWER TIPS RECEIVED BY GEOGRAPHIC LOCATION INTERNATIONAL, FISCAL YEAR 2021 CONTINUED



OFFICE OF THE WHISTLEBLOWER

Washington, DC