2016 ANNUAL REPORT TO CONGRESS ON THE

Dodd-Frank Whistleblower Program

U.S. SECURITIES AND EXCHANGE COMMISSION

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

MESSAGE FROM THE CHIEF OF THE OFFICE OF THE WHISTLEBLOWER

Fiscal Year (FY) 2016 was historic for the SEC's whistleblower program. In August 2016, the SEC announced that its awards to whistleblowers since the beginning of the program have surpassed the $100 million mark. In the program's short term of existence, the SEC already has awarded more than $111 million to 34 whistleblowers whose information and cooperation assisted the agency in bringing multiple successful Commission enforcement actions and related actions.[1] The total award amount demonstrates the invaluable information and assistance whistleblowers have provided to the agency and underscores the program's extraordinary impact on the agency's enforcement initiatives.

"In the program's short term of existence, the SEC already has awarded more than $111 million to 34 whistleblowers..."

In FY 2016 alone, the agency issued awards totaling over $57 million—higher than all award amounts issued in previous years combined. The ten highest awards issued by the SEC to whistleblowers have each totaled more than $1 million, with the largest exceeding more than $30 million. Six of the ten highest whistleblower awards were made in FY 2016.

The transformative effect the SEC's whistleblower program has had on the agency's enforcement program is further demonstrated by the hundreds of millions of dollars that have been returned to investors. The information and assistance provided by the 34 whistleblowers who received awards under the program led to successful SEC enforcement actions in which over $584 million in financial sanctions was ordered, including more than $346 million in disgorgement of ill-gotten gains and interest. Not only has the whistleblower program provided whistleblowers with protections and financial rewards, but it has also bolstered the agency's enforcement efforts and aided harmed investors.

We believe that awareness of the program has grown tremendously over the years, as we have continued to experience a consistent increase in the number of whistleblower tips received. In FY 2016, we received over 4,200 tips, which is a more than 40 percent increase in whistleblower tips since FY 2012, the first year for which we have full-year data. We believe that the continued payment of significant awards, like those made this past year, will continue to incentivize company insiders, market participants, and others with knowledge of potential securities law violations to come forward and report their information to the agency.

FY 2016 witnessed significant and ground-breaking enforcement activity on the whistleblower protection front, with the agency bringing charges against a company

[1] Unless specifically stated otherwise in this report, the statistics contained herein are current through September 30, 2016, the end of Fiscal Year 2016.

for retaliating against an employee for reporting a possible securities law violation and charges against multiple companies for impeding their employees' ability to report to the SEC through severance agreements and other practices.

"Strong enforcement of the anti-retaliation protections is a critical component of the SEC's whistleblower program."

The Commission brought a first-of-its-kind enforcement action in September 2016, when it brought a stand-alone whistleblower retaliation case against casino-gaming company, International Game Technology (IGT). The company agreed to pay a half-million dollar penalty for firing an employee with several years of positive performance reviews because the employee had reported to senior management and the SEC that the company's financial statements might be distorted. As this case demonstrates, strong enforcement of the anti-retaliation protections is a critical component of the SEC's whistleblower program.

In September 2016, the Commission filed an action against Anheuser-Busch InBev SA/NV, in which the company agreed to settle charges that it violated Exchange Act Rule 21F-17(a), among other violations, by entering into a separation agreement that stopped an employee from continuing to voluntarily communicate with the SEC due to a substantial financial penalty that would be imposed for violating strict non-disclosure terms. As this case demonstrates, companies simply cannot impede their employees' ability to report wrongdoing to the agency through threats of financial punishment.

In August 2016, the SEC also instituted proceedings against two companies for stand-alone violations of Rule 21F-17(a). An Atlanta-based buildings product distributor, BlueLinx Holdings, Inc., settled charges that it violated the securities laws by using severance agreements that required outgoing employees to waive their rights to monetary recovery in the event they filed a charge or complaint with the SEC or other federal agencies. The company agreed to pay a $265,000 penalty. In another case, California-based health insurance provider, Health Net, Inc., agreed to pay a $340,000 penalty for illegally using severance agreements that required outgoing employees to waive their ability to obtain monetary awards from the SEC's whistleblower program. As these cases demonstrate, companies cannot end-run the SEC's whistleblower program by requiring employees to forego potential whistleblower awards as a condition to receiving their severance payments.

Finally, in June 2016, Merrill Lynch agreed to pay $415 million and admit wrongdoing to settle charges that the firm violated the customer protection rule. Additionally, Merrill Lynch settled charges for violating Rule 21F-17(a) by using language in severance agreements that operated to impede employees from voluntarily providing information to the SEC.

Assessing confidentiality, severance, and other kinds of agreements that may stifle a would-be whistleblower from reporting his or her information to the agency and that strip away the very incentives Congress intended for the program will continue to be a

top priority for the SEC's Office of the Whistleblower (OWB or the Office). Identifying fact patterns of retaliation, such as that in the IGT case, will also continue to be a focus for OWB in the upcoming fiscal year to ensure that whistleblowers feel comfortable reporting wrongdoing without fear of repercussions.

To help promote the agency's whistleblower program and establish a line of communication with the public, OWB operates a whistleblower hotline where would-be whistleblowers, their attorneys, or other members of the public with questions about the program may call and leave a message. During FY 2016, we returned over 3,121 calls from members of the public, exceeding the number of calls returned last fiscal year. Since May 2011 when the hotline was established, OWB has returned over 15,413 calls to the public.

We encourage those who believe they have information concerning a potential securities law violation to submit a tip via the online portal on OWB's webpage (http://www.sec.gov/whistleblower) or by submitting a Form TCR, also available on OWB's webpage, by mail or fax. If individuals or their counsel have any questions about the program, including questions about how or whether to submit a tip to the Commission, we encourage them to call OWB's whistleblower hotline at (202) 551-4790.

Because of the key features of the whistleblower program—protecting the confidentiality of individuals who report through the program, taking action against employers who retaliate against or interfere with their employees' ability to report wrongdoing to the agency, and awarding whistleblowers whose information leads to successful enforcement actions—we expect that the Commission will continue to receive high-quality tips that can be leveraged to detect and halt fraud earlier and more effectively. We anticipate that the whistleblower program will continue to positively impact SEC enforcement of the federal securities laws, as well as bolster the agency's mission of protection of investors and the market.

"We anticipate that the whistleblower program will continue to positively impact SEC enforcement of the federal securities laws..."

JANE NORBERG
Chief, Office of the Whistleblower
November 15, 2016

HISTORY AND PURPOSE

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act or Dodd-Frank)[2] amended the Securities Exchange Act of 1934 (Exchange Act)[3] by, among other things, adopting Section 21F,[4] 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.[5]

Awards are required to be made in an amount equal to 10 percent to 30 percent of the monetary sanctions collected. 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), out of which eligible whistleblowers are paid.

The Commission established OWB, a separate office within the SEC's Division of Enforcement (Enforcement), to administer and effectuate the whistleblower program. It is OWB's mission to administer a vigorous whistleblower program that will help the Commission identify and halt frauds early and quickly to minimize investor losses.

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

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

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

2 Pub. L. No. 111-203, § 922(a), 124 Stat. 1841 (2010).
3 15 U.S.C. § 78a *et seq*.
4 *Id*. § 78u-6.
5 "Related actions" is defined at 17 C.F.R. §§ 240.21F-3.
6 17 C.F.R. §§ 240.21F-1 through 21F-17.
7 15 U.S.C. § 78u-6(h)(1); 17 C.F.R. § 240.21F-2(b).
8 *Securities Whistleblower Incentives and Protections*, 76 Fed. Reg. 34,300, 34,359 n.450 (June 13, 2011).
9 *See id*. §§ 21F-4(b)(7), (a)(4), (b)(3).

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

This report has been prepared by OWB to satisfy the reporting obligations of Section 924(d) of the Dodd-Frank Act and Section 21F(g)(5) of the Exchange Act. The sections in this report addressing the activities of OWB, the whistleblower tips received during FY 2016, and the processing of those whistleblower tips primarily address the requirements of Section 924(d) of the Dodd-Frank Act. The sections in this report addressing the Fund and whistleblower incentive awards made during FY 2016 primarily address the requirements of Section 21F(g)(5) of the Exchange Act.

ACTIVITIES OF THE OFFICE OF THE WHISTLEBLOWER

Section 924(d) of the Dodd-Frank Act directed the Commission to establish a separate office within the Commission to administer and to enforce the provisions of Section 21F of the Exchange Act. Jane Norberg, the Office's first Deputy Chief, was named Chief of OWB in September 2016. Ms. Norberg's appointment followed the departure of Sean X. McKessy, who left the Commission in July 2016 after presiding over the Office for the past five years. In the past fiscal year, OWB also was staffed by eleven attorneys, five paralegals, and an administrative assistant. Below is an overview of OWB's primary responsibilities and activities over the past fiscal year.

Assessment of Award Applications

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

OWB posts a Notice of Covered Action (NoCA) on its website for every Commission enforcement action that results in monetary sanctions of over $1 million. Anyone who believes that they are entitled to a whistleblower award may submit an application in response to a posted NoCA. Before submitting an application, however, a whistleblower should check to make sure that there is a nexus between the whistleblower tip he or she provided to the Commission and what was ultimately charged in the enforcement matter.

"OWB staff tracks investigations where a whistleblower has provided information or assistance to Enforcement."

OWB staff tracks investigations where a whistleblower has provided information or assistance to Enforcement. This case-tracking initiative is intended to help OWB know which cases may involve a potential award payout. Although it is ultimately a whistleblower's responsibility to make a timely application for an award, OWB may contact whistleblowers who have been actively working with Enforcement staff to confirm they are aware of the NoCA posting and applicable deadline for submitting a claim for award.

After receiving an application for an award, OWB attorneys assess the application and the eligibility of the claimant and confer with relevant Enforcement or Office of Compliance, Inspections, and Exams staff to understand in more detail the contribution of the claimant, if any. OWB then makes recommendations to the Claims Review Staff, currently comprised of five senior members of Enforcement, as to award eligibility. For a fuller explanation of how applications for awards are processed at the Commission, as well as what awards were made during FY 2016, please refer to pages 10-16 of this report.

Reviewing Restrictive Agreements

During FY 2016, one area of focus for OWB was addressing whether employers were using confidentiality, severance, and other kinds of agreements, or engaging in other practices, to interfere with individuals' ability to report potential wrongdoing to the SEC. Exchange Act Rule 21F-17(a) provides that "[n]o person may take any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement . . . with respect to such communications."[10] In FY 2016, the Commission brought charges against multiple companies for violating Rule 21F-17(a). OWB continues to work closely with investigative staff to identify and investigate practices in the use of confidentiality and other kinds of agreements, or other actions, that may violate Rule 21F-17(a). For more information about these activities, please see pages 19-20.

"In FY 2016, the Commission brought charges against multiple companies for violating Rule 21F-17(a)."

Advancing Anti-Retaliation Protections

OWB identifies and monitors whistleblower complaints alleging retaliation by employers or former employers in response to the employee's reporting of possible securities law violations internally or to the Commission. The Commission has authority to enforce all the provisions of the Exchange Act, including the anti-retaliation provisions of the Dodd-Frank Act. In FY 2016, the Commission brought its first stand-alone whistleblower retaliation case since the Dodd-Frank Act authorized the agency to bring such charges. Bringing retaliation cases illustrates the high priority placed on ensuring a safe environment for whistleblowers. OWB continues to work with Enforcement staff on identifying cases where companies take reprisals for whistleblowing efforts and which may be appropriate for enforcement action.

OWB also monitors federal court cases involving the anti-retaliation provisions of the Dodd-Frank Act and the Sarbanes-Oxley Act.[11] Finally, OWB works with the SEC's Office of General Counsel, which has filed *amicus* briefs and appeared in federal courts around the country in support of the Commission's position that the anti-retaliation provisions of the Dodd-Frank Act protect individuals who report internally to their companies as well as those who report directly to the Commission.[12] For more information about these activities, please see pages 21-22.

10 17 C.F.R. § 240.21F-17(a).
11 18 U.S.C. § 1514A.
12 The SEC's interpretive guidance regarding internal reporting may be found on OWB's webpage, http://www.sec.gov/about/offices/owb/owb-resources.shtml, and also has been published in the Federal Register at 80 Fed. Reg. 47,829 (Aug. 10, 2015).

Intake of Whistleblower Tips

The Commission created an internal database called the Tips, Complaints, and Referrals Intake and Resolution System (TCR System) to serve as a central repository for all tips and complaints received by the Commission, as well as referrals from self-regulatory organizations and other government agencies. Exchange Act Rule 21F-9 provides whistleblowers the option to submit tips either electronically through an online portal that feeds directly into the TCR System or by mailing or faxing a hard-copy Form TCR directed to OWB. This flexibility supports whistleblowers who may not have ready access to a computer or who, for other reasons, may prefer to submit their information in hard copy. In cases where whistleblowers elect to submit a hard-copy Form TCR, OWB manually enters the tip into the TCR System so that it can be appropriately reviewed, assigned, and tracked in the same manner as tips received through the online portal. For more information on the number and types of tips received, please refer to pages 23-26.

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 leave messages on the hotline, which are returned by OWB attorneys within 24 business hours. To protect the identity of whistleblowers, OWB will not leave return messages unless the caller's name is clearly and fully identified on the caller's voicemail message. If OWB is unable to leave a message because the individual's name is not identified or if it appears to be a shared voicemail system, OWB attorneys make two additional attempts to contact the individual.

"During FY 2016, the Office returned over 3,121 phone calls from members of the public."

During FY 2016, the Office returned over 3,121 phone calls from members of the public. Many of the calls OWB receives relate to how the caller should submit a tip to be eligible for an award, how the Commission will maintain the confidentiality of a whistleblower's identity, requests for information on the investigative process or tracking an individual's complaint status, and whether the SEC is the appropriate agency to handle the caller's tip.

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

Public Outreach and Education

One of the Office's primary goals is to increase public awareness of the Commission's whistleblower program. As part of that outreach effort, OWB has actively participated in numerous webinars, media interviews, presentations, press releases, and other public communications. By raising awareness of the program, we hope to receive an even greater number of high-quality tips that can assist the Commission in more quickly discovering and stopping fraudulent schemes and other securities laws violations. As more individuals have become aware of the program, we have received more tips, as well as award claims.

In FY 2016, OWB staff participated in many public engagements aimed at promoting and educating the public concerning the Commission's whistleblower program. The Office's target audience generally includes potential whistleblowers, whistleblower counsel, and corporate compliance counsel and professionals. In an effort to increase the visibility of the Commission's whistleblower program, the Office has participated in legal panels and other forums with other federal agencies that have similar whistleblower programs, including a recent panel with staff from the Commodity Futures Trading Commission and the Internal Revenue Service.

We also aim to promote and educate the public about our program through OWB's website (www.sec.gov/whistleblower). The website contains detailed information about the program, copies of the forms required to submit a tip or claim an award, a listing of enforcement actions for which a claim for award may be made, links to helpful resources, and answers to frequently asked questions.

CLAIMS FOR AWARDS

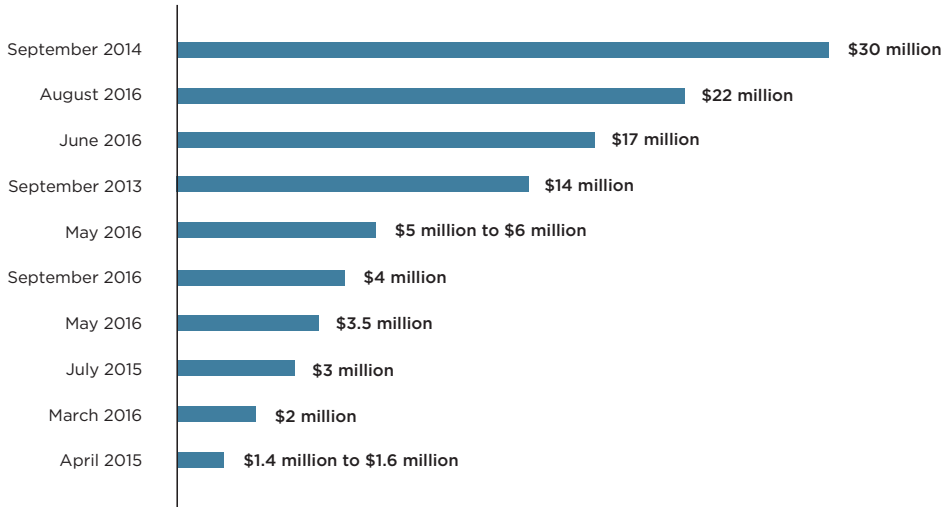
Whistleblower Awards Made in FY 2016

In FY 2016, the Commission awarded more than $57 million to 13 whistleblowers, each of whom provided new information of which the agency was previously unaware that either led to the opening of the investigation or significantly contributed to the successful enforcement action. In total, the SEC has issued more than $111 million in awards to 34 whistleblowers since the program's establishment in August 2011.

Below are the top ten highest awards made under the SEC's whistleblower program, each exceeding $1 million.

TOP 10 SEC WHISTLEBLOWER AWARDS

Since the program's inception, the SEC has awarded $111 million to 34 whistleblowers.



As reflected in the graph, six of the ten largest whistleblower awards were made by the Commission during FY 2016. The more than $30 million award issued by the Commission in September 2014 remains the highest award made to date under the program.[13]

13 *See* Order Determining Award Claim, Exchange Act Rel. No. 73174, File No. 2014-10 (Sept. 22, 2014).

The following is an overview of SEC whistleblower awards during FY 2016.

Second-Highest Award of Over $22 Million

On August 30, 2016, the Commission authorized an award of more than $22 million to a company insider who provided information about a well-hidden securities violation that would have been unlikely to have been detected but for the whistleblower's information.[14] This was the second-highest award made under the SEC's whistleblower program.

Third-Highest Award of More Than $17 Million

On June 9, 2016, the Commission issued an award of more than $17 million to a former company employee whose detailed tip substantially advanced the agency's investigation and ultimate enforcement action.[15] The information and assistance provided by the whistleblower enabled the investigative staff to conserve time and resources and gather strong evidence supporting the Commission's case. This was the Commission's third-highest whistleblower award.

More Than $5 Million Award for Tip that Uncovered Difficult-to-Detect Securities Violations

On May 17, 2016, the Commission issued an award that is expected to yield a total payout between $5-6 million to a former company insider whose detailed tip led the agency to uncover securities violations that would have been nearly impossible for it to detect but for the whistleblower's information.[16]

More Than $4 Million Award

On September 20, 2016, the Commission announced an award of more than $4 million to a whistleblower whose original information alerted the agency to a fraud.[17] With this award, the SEC's whistleblower awards in FY 2016 totaled more than $57 million—exceeding the amount of all awards made in prior fiscal years combined.

More Than $3.5 Million Award for Bolstering Ongoing Investigation

On May 13, 2016, the Commission announced an award of more than $3.5 million to a company employee whose tip bolstered an ongoing investigation with additional evidence of wrongdoing that strengthened the SEC's case.[18] Whistleblowers can receive an award not only when their tip initiates an investigation, but also when they provide new information or documentation that significantly contributes to an existing investigation. This particular whistleblower's tip substantially strengthened the agency's ongoing case and increased the SEC's leverage during settlement negotiations with the company.

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14 *See* Order Determining Award Claim, Exchange Act Rel. No. 78719, File No. 2016-16 (Aug. 30, 2016); SEC Press Rel. No. 2016-172,"$22 Million Whistleblower Award for Company Insider Who Helped Uncover Fraud."

15 *See* Order Determining Award Claim, Exchange Act Rel. No. 78025, File No. 2016-13 (June 9, 2016); SEC Press Rel. No. 2016-114, "SEC Issues $17 Million Whistleblower Award."

16 *See* Order Determining Award Claim, Exchange Act Rel. No. 77843, File No. 2016-10 (May 17, 2016); SEC Press Rel. No. 2016-91, "SEC Awards More Than $5 Million to Whistleblower."

17 *See* Order Determining Award Claim, Exchange Act Rel. No. 78881, File No. 2016-17 (Sept. 20, 2016); SEC Press Rel. No. 2016-188, "SEC Issues $4 Million Whistleblower Award."

18 *See* Order Determining Award Claim, Exchange Act Rel. No. 77833, File No. 2016-9 (May 13, 2016); SEC Press Rel. No. 2016-88, "Whistleblower Earns $3.5 Million Award for Bolstering Ongoing Investigation."

Nearly $2 Million Award to Three Whistleblowers

On March 8, 2016, the SEC awarded nearly $2 million to three whistleblowers.[19] The largest of the three awards went to a whistleblower who voluntarily provided original information that prompted the agency to open the investigation. That whistleblower, who received approximately $1.8 million, continued to provide valuable information throughout the investigation. The other two whistleblowers jointly received payment of over $130,000 for providing information after the investigation started. In determining the appropriate award percentages, the SEC considered the relative contribution of each of the claimants to the successful enforcement action.

Industry Expert Received More Than $700,000 for Detailed Analysis

On January 15, 2016, the SEC announced an award of more than $700,000 to a company outsider who conducted a detailed analysis that led to a successful SEC enforcement action.[20] This award reflected the fact that the voluntary submission of high-quality analysis by industry experts can be just as valuable as first-hand knowledge of wrongdoing by company insiders.

Two Whistleblowers Jointly Awarded More Than $450,000

On May 20, 2016, the SEC issued a joint award of more than $450,000 to two individuals for a tip that led the agency to open a corporate accounting investigation and for their assistance once the investigation was underway.[21] These whistleblowers not only provided valuable tips that helped open the investigation, but they also provided valuable assistance as the investigation proceeded. The SEC's whistleblower program rewards those who continue to provide helpful and meaningful assistance throughout the process of bringing an enforcement action.

SEC Whistleblower Award of More Than $325,000

On November 4, 2015, the Commission awarded a former employee of an investment firm $325,000 for providing specific and detailed information that caused staff to open the investigation.[22] The whistleblower provided a detailed description of the misconduct and specifically identified individuals responsible for the wrongdoing. The whistleblower, however, waited until after leaving the company to report the information to the SEC.

Unreasonable reporting delay is a negative factor that may decrease an award percentage. The Commission found that the whistleblower's delay, while limited in duration, was unreasonable in light of the incentives and protections now afforded to whistleblowers under the Commission's whistleblower program. Also of significance, the great majority of the total disgorgement ordered in the underlying enforcement matter was attributable to the misconduct that occurred after the whistleblower learned about the misconduct and before reporting the information to the Commission, with a

19 *See* Order Determining Award Claim, Exchange Act Rel. No. 77322, File No. 2016-4 (Mar. 8, 2016); SEC Press Rel. No. 2016-41, "SEC Awarding Nearly $2 Million to Three Whistleblowers."
20 *See* Order Determining Award Claim, Exchange Act Rel. No. 76921, File No. 2016-2 (Jan. 15, 2016); SEC Press Rel. No. 2016-10, "SEC Awards Whistleblower More Than $700,000 for Detailed Analysis."
21 *See* Order Determining Award Claim, Exchange Act Rel. No. 77873, File No. 2016-11 (May 20, 2016); SEC Press Rel. No. 2016-94, "Two Individuals Share Whistleblower Award of More Than $450,000."
22 *See* Order Determining Award Claim, Exchange Act Rel. No. 76338, File No. 2016-1 (Nov. 4, 2015); SEC Press Rel. No. 2015-252, "SEC Announces Whistleblower Award of More Than $325,000."

resulting increase in the monetary sanctions upon which the whistleblower's award was based. Delayed reporting is particularly problematic where the securities violations are ongoing and the ill-gotten gains of the wrongdoing increase after the whistleblower has learned of the misconduct and yet delays reporting the activity internally, to another regulator, or to the Commission. Further, delayed reporting can potentially result in wrongdoers squandering ill-gotten gains that belong to investors or other innocent third parties and may negatively impact the Commission's ability to prosecute an enforcement action.

Whistleblower's Tip Leads to Successful Commission and Related Criminal Actions

On April 5, 2016, the Commission awarded a whistleblower more than $275,000 in connection with a detailed tip that helped lead to the successful enforcement of a Commission action as well as a related criminal action.[23] The amount of the award, however, was offset by monetary obligations unpaid from a final judgment entered against the whistleblower in another unrelated matter.

Overview of Award Process

Before a whistleblower receives payment of an award, there are a number of pre-conditions that must be met before an award may be issued or payment made. The diagram below provides a snapshot of the overall process, from the filing of the whistleblower tip to payment of the whistleblower award. As reflected, the time between the submission of a whistleblower tip and when an individual may receive an award payment can be several years, particularly where the underlying investigation is especially complex, where there are multiple, competing award claims, or where there are claims for related actions.

23 *See* Order Determining Award Claim, Exchange Act Rel. No. 77530, File No. 2016-7 (Apr. 5, 2016).

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

NoCA Posted

The Office posts on its website a NoCA for each Commission enforcement action where a final judgment or order, by itself or together with other prior judgments or orders in the same action issued after July 21, 2010, results in monetary sanctions exceeding $1 million.[24] During FY 2016, OWB posted 178 NoCAs.

OWB announces on Twitter each time a new group of NoCAs is posted to its website, and sends email alerts to GovDelivery when the NoCA listing is updated.[25] In addition, 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 website is updated. OWB typically posts new NoCAs on its website at the end of each month.

Award Claim Submitted

Once a NoCA is posted, individuals have 90 calendar days to apply for an award by submitting a completed Form WB-APP to OWB.[26] Although OWB may make courtesy calls to those whistleblowers or their counsel whom we know have been actively working with Enforcement staff to inform them of the NoCA posting, it is the whistleblower's responsibility to make a timely application for award. As such, we encourage whistleblowers and their counsel to regularly review the monthly NoCA postings or to sign up to receive emails to alert them as to when new NoCAs are posted.

Award Claim Reviewed

OWB attorneys evaluate each application for a whistleblower award, often tracking prior correspondence between the claimant and the Commission and analyzing intra-agency databases to understand the origin of the case and what tips or other correspondence the claimant may have submitted to the Commission. OWB works closely with investigative staff responsible for the relevant action, as well as other Commission staff who may have interacted with the claimant, to understand the contribution or involvement the applicant may have had in the matter.

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

Preliminary Determination 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 the Dodd-Frank Act and the Whistleblower Rules. The Claims Review Staff currently is composed of five senior officers in Enforcement, including the Director of Enforcement.

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24 OWB posts a NoCA for every enforcement action that results in monetary sanctions exceeding $1 million. By posting a NoCA for a particular case, the Commission is not making a determination either that a whistleblower tip, complaint or referral led to the Commission opening an investigation or filing an action with respect to the case or that an award to a whistleblower will be paid in connection with the case.

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

26 17 C.F.R. §§ 240. 21F-10(a), (b).

The Claims Review Staff then issues a Preliminary Determination setting forth its assessment of whether the claim should be allowed or denied and, if allowed, setting forth the proposed award percentage amount.[27]

Award percentages are based on the particular facts and circumstances of each case, and are not based on any hard-set mathematical formula. However, the Whistleblower Rules outline a number of positive and negative factors that the Commission and Claims Review Staff may consider in assessing an individual's award percentage. Factors that may increase an award percentage include the significance of the information provided by the whistleblower, the level of assistance provided by the whistleblower, the law enforcement interests at stake, and whether the whistleblower reported the violation internally through his or her firm's internal reporting channels or mechanisms. Factors that may decrease an award percentage include whether the whistleblower was culpable or involved in the underlying misconduct, interfered with internal compliance systems, or unreasonably delayed in reporting the violation to the Commission.

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

Record and Reconsideration Requested

An applicant can submit a written request within 30 calendar days of the date of the Preliminary Determination asking for a copy of the record that formed the basis of the Claims Review Staff's decision as to the applicant's claim for award. As a precondition to receiving a copy of the record, OWB requires claimants and their counsel, if represented, to execute a confidentiality agreement limiting the use of such materials to the claims review process.[28] A claimant also has 30 calendar days to request a meeting with OWB, which OWB may grant at its discretion.

Claimants can 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.[29] If a claim is denied and the applicant does not object within the time period prescribed under the Whistleblower Rules, then the Preliminary Determination of the Claims Review Staff becomes the Final Order of the Commission.

Final Order Issued

After considering any requests for reconsideration, the Claims Review Staff issues a Proposed Final Determination, and the matter is submitted to the Commission for its decision.[30]

All Preliminary Determinations of the Claims Review Staff that involve an award of money are submitted to the Commission for consideration as Proposed Final Determinations irrespective of whether the applicant objected to the Preliminary Determination.[31]

27 *Id.* § 21F-10(d).
28 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."
29 17 C.F.R. § 240.21F-10(e).
30 *Id.* §§ 21F-10(g), (h).
31 *Id.* §§ 21F-10(f), (h).

Within 30 days of receiving notice of the Proposed Final Determination, any Commissioner may request that the Proposed Final Determination be reviewed by the Commission. If no Commissioner requests such a review within the 30-day period, then the Proposed Final Determination becomes the Final Order of the Commission. Claimants who are issued a denial have a right to appeal the Commission's Final Order within 30 days of issuance to the United States Court of Appeals for the District of Columbia Circuit, or to the circuit where the aggrieved person resides or has his or her principal place of business.[32]

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

There are a number of factors that may affect the length of time it takes for OWB to review an award claim and for the Commission to issue a Final Order. Our Office works closely with Enforcement investigative staff, staff of the Commission's Office of General Counsel, and other Commission divisions and offices, as appropriate, to conduct a thorough analysis of each claim for award that the Commission receives. These efforts are designed to provide each claimant with a fair review and to promote Commission award determinations that are sound both factually and legally. Therefore, the number of claimants applying for an award in connection with a covered action affects the time it takes to process a claim. In connection with one NoCA, for example, OWB received sixteen claims for award. The presence of novel issues, or the need to supplement the record with additional information from the claimant, may also lengthen the time it takes to process a claim. There may also be a delay when there is 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.

32 *Id.* § 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 Rule 21F-13(a) of the Whistleblower Rules, 17 C.F.R. § 240.21F-13(a).

PROFILES OF AWARD RECIPIENTS

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

Consistent with our practice of maintaining whistleblower confidentiality as provided for by the Dodd-Frank Act—but in an effort to provide more transparency—this section provides certain information on an aggregate basis regarding whistleblowers who have received awards under the program, while still protecting the identity of any particular individual.

Since the beginning of the whistleblower program, the Commission has issued awards to 34 individuals in connection with 26 covered actions, as well as in connection with several related actions. There are commonalities among many of the tips or complaints that were submitted by these successful whistleblowers. The information provided by each award recipient was specific, in that the whistleblower identified particular individuals involved in the fraud, or provided specific documents that substantiated their allegations or explained where such documents could be located. In some instances, the whistleblower identified specific financial transactions that evidenced the fraud, or provided detailed assessment of the wrongdoing. The misconduct was relatively recent or ongoing at the time it was reported to the Commission.

An individual may be eligible to receive an award where his or her information leads to a successful enforcement action, meaning generally that the original information either caused an examination or investigation to open or the original information significantly contributed to a successful enforcement action where the matter was already under examination or investigation. Almost 60 percent of the whistleblowers who have received awards under the program provided original information that caused Enforcement staff to open an investigation, while the remaining 40 percent received awards because their original information significantly contributed to an existing investigation. In assessing whether information significantly contributed to an enforcement action, the Commission will consider such factors as whether the information allowed the agency to bring the action in significantly less time or with fewer resources, and whether it supported additional successful charges, or successful claims against additional individuals or entities.[33]

> "Protecting whistleblower confidentiality is an integral component of the whistleblower program."

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

There is no requirement under the Whistleblower Rules that an individual be an employee or other insider to be eligible for an award. However, to date, almost 65 percent of the award recipients were insiders of the entity on which they reported information of wrongdoing to the SEC. This percentage has grown. Last year, we reported that approximately half of the award winners were insiders. Of the award recipients who were current or former employees of the entity, approximately 80 percent raised their concerns internally to their supervisors or compliance personnel, or understood that their supervisor or relevant compliance personnel knew of the violations, before reporting their information of wrongdoing to the Commission.

Individuals may obtain information of possible wrongdoing through other channels. The remaining award recipients obtained their information because they were either investors who had been victims of the fraud, professionals working in the same or related industry, or individuals who had a personal relationship with the wrongdoer.

Whistleblowers are not required to be represented by counsel unless they choose to file their tips with the Commission anonymously. Approximately half of the award recipients were represented by counsel when they initially submitted their tips to the agency. Certain of the individuals who were not represented by counsel at the time they submitted their tip subsequently retained counsel during the course of the investigation or during the whistleblower award application process (although retaining counsel is not required to file for a whistleblower award). Almost one quarter of the award recipients submitted their information anonymously to the Commission through counsel.

"Almost 65 percent of the award recipients were insiders of the entity on which they reported information of wrongdoing to the SEC."

Several of the cases in which a whistleblower received an award concerned firms involved in the financial services industry, with some involving broker-dealers or investment advisers. A number of the award recipients reported information to the Commission concerning suspected Ponzi-like schemes. Other award recipients provided tips to the Commission relating to false or misleading statements in a company's offering memoranda or marketing materials, false pricing information, accounting irregularities, and internal controls violations, among other types of misconduct.

Under the Whistleblower Rules, individuals are permitted to jointly submit a tip to the Commission. Five of the cases in which an award payment was made involved two or more whistleblowers jointly submitting information and materials to the Commission.

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

The award recipients hail from several different parts of the United States and eight of the award recipients were foreign nationals at the time they submitted their tips to the Commission, including the recipient of the program's highest award to date.

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

As noted above, protecting whistleblowers' rights to report possible securities law violations to the Commission, and protecting whistleblowers from retaliation, was a focus for OWB in FY 2016 and will continue to be a priority in the coming fiscal year.

Restrictive Agreements

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."[34]

In the previous fiscal year, the Commission brought its first enforcement action against a company for its use of confidentiality agreements that impeded whistleblowers in violation of Rule 21F-17(a).[35] In FY 2016, the Commission advanced its enforcement efforts in this area, bringing additional significant actions aimed at protecting the rights of whistleblowers to report freely to the agency.

On June 23, 2016, in connection with the SEC's administrative settlement with Merrill Lynch for violations of the customer protection rule, the Commission also charged Merrill Lynch with violating Rule 21F-17(a) by using language in severance agreements that operated to impede employees from voluntarily providing information to the SEC.[36] For example, after the adoption of Rule 21F-17, the company used language in a severance agreement with departing employees based on a standard template that prohibited them from disclosing any aspect of the company's confidential information or trade secrets to any outside person or entity except pursuant to formal legal processes or unless the former employee first obtained the written approval of an authorized company representative. Further, in 2014, the company added a clause to its form severance agreement advising departing employees that the severance agreement did not prohibit initiating communications directly with the Commission or other authorities, but limiting the types of information that could be conveyed to information relating to the severance agreement itself or "its underlying facts and circumstances." In accepting the settlement, the Commission considered Merrill Lynch's remedial acts, including revising the language in its form severance agreements so that information beyond the underlying facts and circumstances of those agreements can be conveyed to the Commission and other regulatory authorities. The updated language states that, subject to applicable privileges, nothing in the agreements prohibits employees from voluntarily communicating with the SEC regarding suspected violations of law. Merrill Lynch also now provides employees with notice of their whistleblower rights as part of mandatory annual training.

"In FY 2016, the Commission advanced its enforcement efforts in this area, bringing additional significant actions aimed at protecting the rights of whistleblowers to report freely to the agency."

34 17 C.F.R. § 240.21F-17(a).
35 *In the Matter of KBR, Inc.*, Rel. No. 74619, File No. 3-16466 (Apr. 1, 2015).
36 *In the Matter of Merrill Lynch, Pierce, Fenner & Smith Incorporated and Merrill Lynch Professional Clearing Corp.*, Rel. No. 78141, File No. 3-17312 (June 23, 2016).

On August 10, 2016, the Commission instituted proceedings against BlueLinx Holdings, Inc. for violating Rule 21F-17(a). BlueLinx, an Atlanta-based building products distributor, used severance agreements that required outgoing employees to waive their rights to monetary recovery should they file a complaint with the SEC or other federal agency.[37] BlueLinx added the monetary recovery prohibition to all of its severance agreements in mid-2013, nearly two years after the SEC's adoption of Rule 21F-17(a). BlueLinx agreed to pay a $265,000 civil penalty and to amend its severance agreements to make clear that employees may report possible securities violations to the SEC without the company's prior approval and without having to forfeit any resulting whistleblower award. BlueLinx also agreed to make reasonable efforts to contact former employees who had executed severance agreements after August 12, 2011, to notify them that BlueLinx does not prohibit former employees from providing information to the SEC or from accepting SEC whistleblower awards.

On August 16, 2016, the Commission instituted another stand-alone action for violating Rule 21F-17(a). Health Net, Inc., a California-based health insurance provider, unlawfully used severance agreements that required outgoing employees to waive their ability to obtain monetary awards from the SEC's whistleblower program as a condition of receiving severance payments and other consideration from the company.[38] Health Net added the provision in August 2011 after the SEC adopted Rule 21F-17(a). Health Net removed the SEC-specific language from its severance agreements in June 2013, but nonetheless retained restrictive language that required an employee to waive any right to individual monetary recovery in any proceeding brought based on any communication by the employee with any federal, state or local government agency or department. Health Net amended the agreements to strike all such restrictive language in 2015. Health Net agreed to pay a $340,000 civil penalty and to contact former employees who had signed the severance agreements to inform them that they are not prohibited from seeking and obtaining a whistleblower award from the Commission.

Finally, on September 28, 2016, the Commission instituted proceedings against Anheuser-Busch InBev SA/NV (ABI InBev) for violations of Rule 21F-17(a), as well as violations of the books and records and internal controls provisions of the Foreign Corrupt Practices Act.[39] The company entered into a separation agreement, including strict confidentiality provisions, with an employee who had reported internally concerns about improper payments to government officials. After signing the agreement, the employee, who had also been communicating with the Commission, stopped doing so because he believed the separation agreement prohibited such communications and that he could risk being liable to the company under the agreement for liquidated damages. Prior to the Commission's Order, AB InBev amended its separation agreements for departing employees of its United States entities to make clear that they do not prohibit the employees from reporting possible violations of law to governmental agencies. Further, as part of the settlement, ABI InBev agreed to make reasonable efforts to contact former employees of AB InBev's United States entities previously identified by the Commission staff, and provide them with a copy of the Commission's Order and a statement that ABI InBev does not prohibit former employees from contacting the Commission regarding possible violations of federal law or regulation.

37 *In the Matter of BlueLinx Holdings, Inc.*, Rel. No. 78528, File No. 3-17371 (Aug. 10, 2016).
38 *In the Matter of Health Net, Inc.*, Rel. No. 78590, File No. 3-17396 (Aug. 16, 2016).
39 *In the Matter of Anheuser-Busch InBev SA/NV*, Rel. No. 78957, File No. 3-17586 (Sept. 28, 2016).

Anti-Retaliation Enforcement

Section 21F(h)(1) of the Exchange Act, promulgated by Section 922 of the Dodd-Frank Act, prohibits employers from retaliating against whistleblowers in the terms and conditions of their employment because of their whistleblowing activities. Individuals who have experienced such retaliation may pursue a private cause of action in the federal courts. In addition, Rule 21F-2(b)(2) under the Exchange Act states that Section 21F(h)(1) is enforceable in an action or proceeding brought by the Commission.[40] This rule reflects the fact that the Commission has general enforcement authority over any violation of the Exchange Act.

"On September 29, 2016, the Commission brought its first stand-alone retaliation case under Section 21F(h)(1) of the Exchange Act."

On September 29, 2016, the Commission brought its first stand-alone retaliation case under Section 21F(h)(1) of the Exchange Act.[41] The whistleblower, a director of a division of casino gaming company International Game Technology (IGT), had received positive performance evaluations throughout his tenure with the company, including his mid-year review in 2014. Shortly after the whistleblower received a favorable 2014 mid-year review, the whistleblower raised concerns to senior managers, to the company's internal complaint hotline, and to the SEC, that IGT's publicly-reported financials may have been distorted. The whistleblower became concerned that the company's cost accounting model could result in inaccuracies in IGT's financial statements, and reported these concerns to management and the SEC. Within weeks of raising the concerns, the whistleblower was slated for termination and removed from significant work assignments. The company conducted an internal investigation into the whistleblower's allegations and determined that its reported financial statements were not inaccurate. Shortly thereafter, IGT fired the whistleblower. The Commission found that IGT's conduct violated Section 21F(h), and IGT agreed to pay a $500,000 civil penalty to settle the charges.

The SEC previously brought another retaliation enforcement action in June 2014, charging hedge fund advisory firm Paradigm Capital Management, Inc. with retaliating against its head trader for reporting prohibited principal transactions to the SEC.[42] The Commission ordered the firm to pay $2.2 million to settle the retaliation and other charges.

Protection for Internal Reporting

When the Commission issued the Whistleblower Rules in 2011, it clarified that the Dodd-Frank employment retaliation protections apply not only when individuals report potential securities law violations directly to the SEC but also when they, among other things, report internally within public companies.[43] In August 2015, the Commission released interpretive guidance clarifying the interaction of the anti-retaliation provisions and the award provisions of the Whistleblower Rules with respect to the protection of internal reporting under Dodd-Frank. As explained in the interpretive guidance,

40 240 C.F.R. § 21F-2(b)(2).
41 *In the Matter of International Game Technology*, Rel. No. 78991, File No. 3-17596 (Sept. 29, 2016).
42 *In the Matter of Paradigm Capital Management, Inc. and Candace King Weir*, Rel. No. 72393, File No. 3-15930 (June 16, 2014).
43 17 C.F.R. § 240.21F-2(b)(1). The anti-retaliation protections apply whether or not the individual satisfies the requirements to qualify for an award. *Id.* § 240.21F-2(b)(1)(ii).

individuals can report possible securities law violations internally, through their companies' respective reporting structures, and still be protected if they then suffer adverse employment consequences—even if they have not reported such information to the SEC in the manner required to qualify for an award under the Whistleblower Rules.[44]

There is a divide among the federal Courts of Appeals on whether the Dodd-Frank anti-retaliation provisions extend to individuals who report potential violations of the securities laws internally without also reporting directly to the Commission. In *Asadi v. G.E. Energy (USA), LLC*, the U.S. Court of Appeals for the Fifth Circuit interpreted Dodd-Frank as limiting employment retaliation protection only to those individuals who report securities law violations directly to the Commission.[45] By contrast, in B*erman v. Neo@Ogilvy LLC*, the U.S. Court of Appeals for the Second Circuit held that the pertinent provisions of the Dodd-Frank Act were sufficiently ambiguous to warrant the court's deference to the SEC's rule that the statute's retaliation protections apply to employees who report securities law violations to their employers, regardless of whether they also report to the Commission.[46] The Second Circuit acknowledged that its decision created a circuit split because of the Fifth Circuit's contrary decision in *Asadi*. The Second Circuit also noted the significant existing disagreement among a large number of district courts on the issue, the majority of which have deferred to the SEC's rule.

During FY 2016, as in the prior fiscal year, the Commission filed several *amicus curiae* briefs in private retaliation lawsuits to urge district courts and appellate courts to defer to the SEC's rule and hold that individuals are entitled to employment retaliation protection if they report information of a possible securities violation internally at a publicly-traded company, regardless of whether they have separately reported the information to the SEC.[47] As the SEC has explained in these *amicus* filings, ensuring that employees are protected from employment retaliation whenever they report possible securities law violations, whether internally or to the SEC, is critical to the SEC's enforcement efforts. Put simply, if individuals are not assured that they will be protected from retaliation when they report internally, they will be less likely to report internally, which could undermine the important role that internal compliance programs play in helping the Commission prevent, detect, and stop securities law violations.

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44 The SEC's interpretive guidance may be found on OWB's webpage, http://www.sec.gov/about/offices/owb/owb-resources.shtml, and also has been published in the Federal Register at 80 Fed. Reg. 47,829 (Aug. 10, 2015).

45 720 F.3d 620 (5th Cir. 2013).

46 801 F.3d 145 (2d Cir. 2015).

47 *See, e.g., Somers v. Digital Realty Trust Inc.*, No. 15-17352 (9th Cir., *amicus* filed May 25, 2016); *Verble v. Morgan Stanley Smith Barney LLC, et al.*, No. 15-6397 (6th Cir., *amicus* filed Feb. 4, 2016); *Gordon Stroh v. Saturna Capital Corp.*, 16-cv-00283-TSZ (W.D. Wash., *amicus* filed May 20, 2016); *David Danon v. The Vanguard Group, Inc.*, 15-cv-6864 (E.D. Pa., *amicus* filed Mar. 30, 2016); *see also amicus* briefs filed in FY 2015, *Beacom v. Oracle Am., Inc.*, 825 F.3d 376 (8th Cir. 2016)(*amicus* brief filed before appellate decision); *Berman v. Neo@Ogilvy LLC*, 801 F.3d 145 (2d Cir. 2015) (same); *Safarian v. Am. DG Energy, Inc.*, 2015 WL 4430837 (3d Cir. July 21, 2015) (same); *Liu Meng-Lin v. Siemens AG*, 763 F.3d 175 (2d Cir. 2014) (same); *Sandford Wadler v. Bio-rad Laboratories, Inc.*, 141 F. Supp. 3d 1005 (N.D. Cal. 2015) (*amicus* filed before district court decision); *Davies v. Broadcom Corp.*, 2015 WL 5545513 (C.D. Cal. Sept. 8, 2015) (same); *Wiggins v. ING U.S., Inc.*, 2015 WL 3771646 (D. Conn. June 17, 2015) (same).

WHISTLEBLOWER TIPS RECEIVED

The Whistleblower Rules specify that individuals who would like to be part of the whistleblower program must submit their tip via the Commission's online portal or by mailing or faxing their tip on Form TCR to OWB.[48] Whistleblowers who use the online portal to submit a complaint receive a computer-generated confirmation of receipt with a TCR submission number. For those who submit a hard-copy Form TCR by mail or fax, OWB sends an acknowledgement letter, which includes a TCR submission number, or a deficiency letter explaining that the TCR was not properly submitted under the Whistleblower Rules. All whistleblower tips related to potential securities law violations received by the Commission are entered into the TCR System and are evaluated by the Commission's Office of Market Intelligence within the Division of Enforcement.

Increase in Whistleblower Tips

For each fiscal year that the whistleblower program has been in operation, the Commission has received an increasing number of whistleblower tips. Since August 2011, the Commission has received a total of 18,334 whistleblower tips, and in FY 2016 alone, received more than 4,200 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:[49]

FY2011[50]	FY2012	FY2013	FY2014	FY2015	FY2016
334	3,001	3,238	3,620	3,923	4,218[51]

As reflected in the table, from FY 2012, the first year for which we have full-year data, to FY 2016, the number of whistleblower tips received by the Commission has grown more than 40 percent.

"The number of whistleblower tips received by the Commission has grown more than 40 percent."

48 17 C.F.R. § 240.21F-9(a).

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

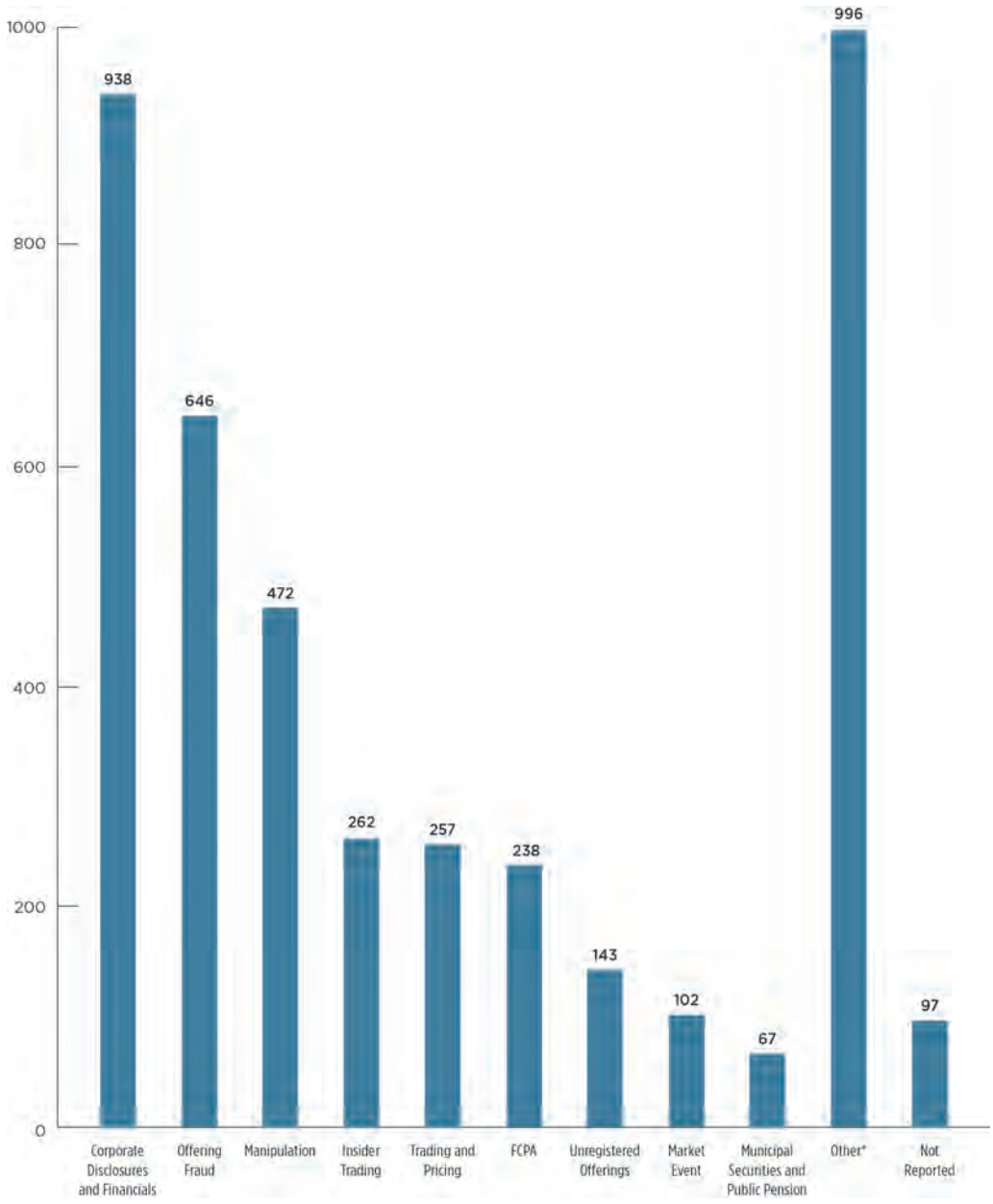
50 Because the Whistleblower Rules became effective August 12, 2011, only 7 weeks of whistleblower data is available for FY 2011.

51 During FY 2016, the Commission received an unusually high number of whistleblower tips from the same individual. This number excludes tips received from this individual.

Whistleblower Allegation Type

Whether submitting their tips on Form TCR or through the online portal, whistleblowers are asked to identify the nature of their complaint allegations. For FY 2016, the most common complaint categories reported by whistleblowers were Corporate Disclosures and Financials (22 percent), Offering Fraud (15 percent), and Manipulation (11 percent).[52]

The following graph reflects the number of whistleblower tips received in FY 2016 by allegation type:[53]



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

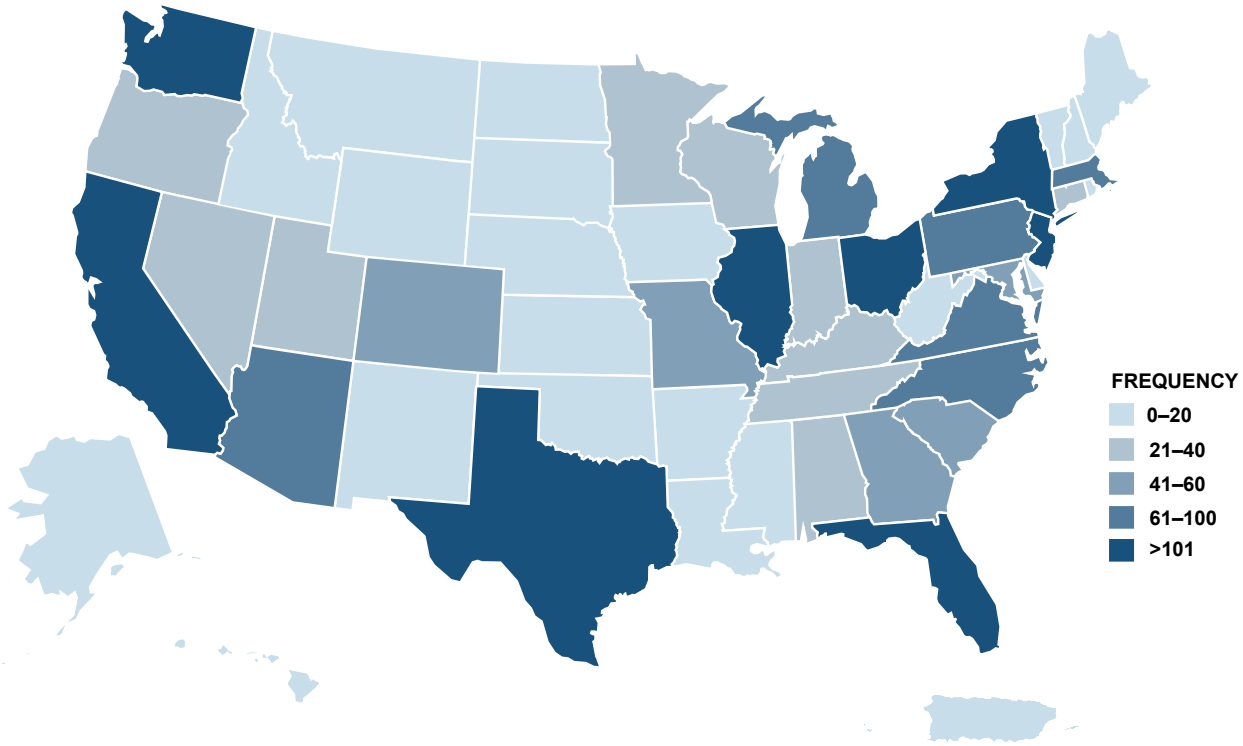
53 The category of "Other" indicates that the submitter identified the whistleblower TCR as not fitting into any allegation category that is listed on the questionnaire.

The type of securities violations reported by whistleblowers has remained generally consistent over the last five years. Since the beginning of the program, Corporate Disclosures and Financials, Offering Fraud, and Manipulation have consistently ranked as the three highest allegation types reported by whistleblowers. Appendix A to this report provides a comparison among the number of whistleblower tips by allegation type that the Commission received during Fiscal Years 2013 through 2016.

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 2016, California, New York, Florida, Ohio, and Texas yielded the highest number of whistleblower tips.



Since the beginning of the whistleblower program, the Commission has received whistleblower tips from individuals in 103 countries outside the United States. In FY 2016 alone, the Commission received whistleblower submissions from individuals in 67 foreign countries. After the United States, OWB received the highest number of whistleblower tips in FY 2016 from individuals in Canada, the United Kingdom, and Australia. The map below reflects all countries in which whistleblower tips originated during FY 2016.

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 2016.

PROCESSING OF WHISTLEBLOWER TIPS

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

TCR Evaluation

OMI reviews every TCR submitted by a whistleblower to the Commission. During the evaluation process, OMI staff examines each tip to identify those with high-quality information that warrant the additional allocation of Commission resources. When OMI determines that a complaint warrants deeper investigation, OMI staff assigns the complaint to one of the Commission's eleven regional offices, a specialty unit, or to an Enforcement group in the Home Office. Complaints that relate to an existing investigation are forwarded to the staff working on the matter. 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.

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

As noted previously, OWB actively tracks whistleblower tips that are referred to Enforcement staff for investigation or follow-up. OWB currently is tracking over 800 matters in which a whistleblower's tip has caused a Matter Under Inquiry or investigation to be opened or which have been forwarded to Enforcement staff for review and consideration in connection with an ongoing investigation. However, not all of these matters will result in an enforcement action, or an enforcement action where the required threshold of over $1 million in monetary sanctions will be ordered.

In general, the more specific, credible, and timely a whistleblower tip, the more likely it is that the tip will be forwarded to investigative staff for further follow-up or investigation. For instance, if the tip identifies individuals involved in the scheme, provides examples of particular fraudulent transactions, or points to non-public materials evidencing the fraud, the tip is more likely to be assigned to Enforcement staff for investigation. Tips that make blanket assertions or general inferences based on market events, or which do not relate to the federal securities laws are less likely to be sent to or pursued by Enforcement staff.

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

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

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

Assistance by OWB

OWB supports the tip allocation and investigative processes in several ways. When whistleblowers submit tips on a Form TCR in hard-copy by mail or fax, OWB enters the information into the TCR System so it can be evaluated by OMI.[54] During the evaluation process, OWB may assist by contacting the whistleblower to obtain additional information to help in the triage process.

After submitting an initial tip, a whistleblower is free to, and often does, submit additional information or materials to buttress the allegations. Additional information should be sent to OWB in hard-copy by mail or fax and should include the original TCR submission number. OWB then uploads the additional information into the TCR System and sends an acknowledgement letter to the whistleblower confirming receipt of the information or materials.

54 Tips submitted by whistleblowers through the Commission's online portal are automatically forwarded to OMI for evaluation.

SECURITIES AND EXCHANGE COMMISSION INVESTOR PROTECTION FUND

Section 922 of the Dodd-Frank Act established the Fund to provide funding for the Commission's whistleblower award program, including the payment of awards in related actions.[55] Also, the Fund is used to finance the operations of the suggestion program of the SEC's Office of Inspector General.[56] The suggestion program is intended for the receipt of suggestions from Commission employees for improvements in work efficiency, effectiveness, productivity, and the use of resources at the Commission, as well as allegations by Commission employees of waste, abuse, misconduct, or mismanagement within the Commission, and is operated outside of OWB.[57]

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 2016.

		FY 2016
Balance of Fund at beginning of fiscal year	$	400,693,089.56
Amounts deposited into or credited to Fund during fiscal year	$	0.00[57]
Amount of earnings on investments during fiscal year	$	2,412,788.41
Amount paid from Fund during fiscal year to whistleblowers	$	(34,945,648.43)
Amount disbursed to Office of the Inspector General during fiscal year	$	(44,222.10)
Balance of Fund at end of the fiscal year	$	368,116,007.44

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

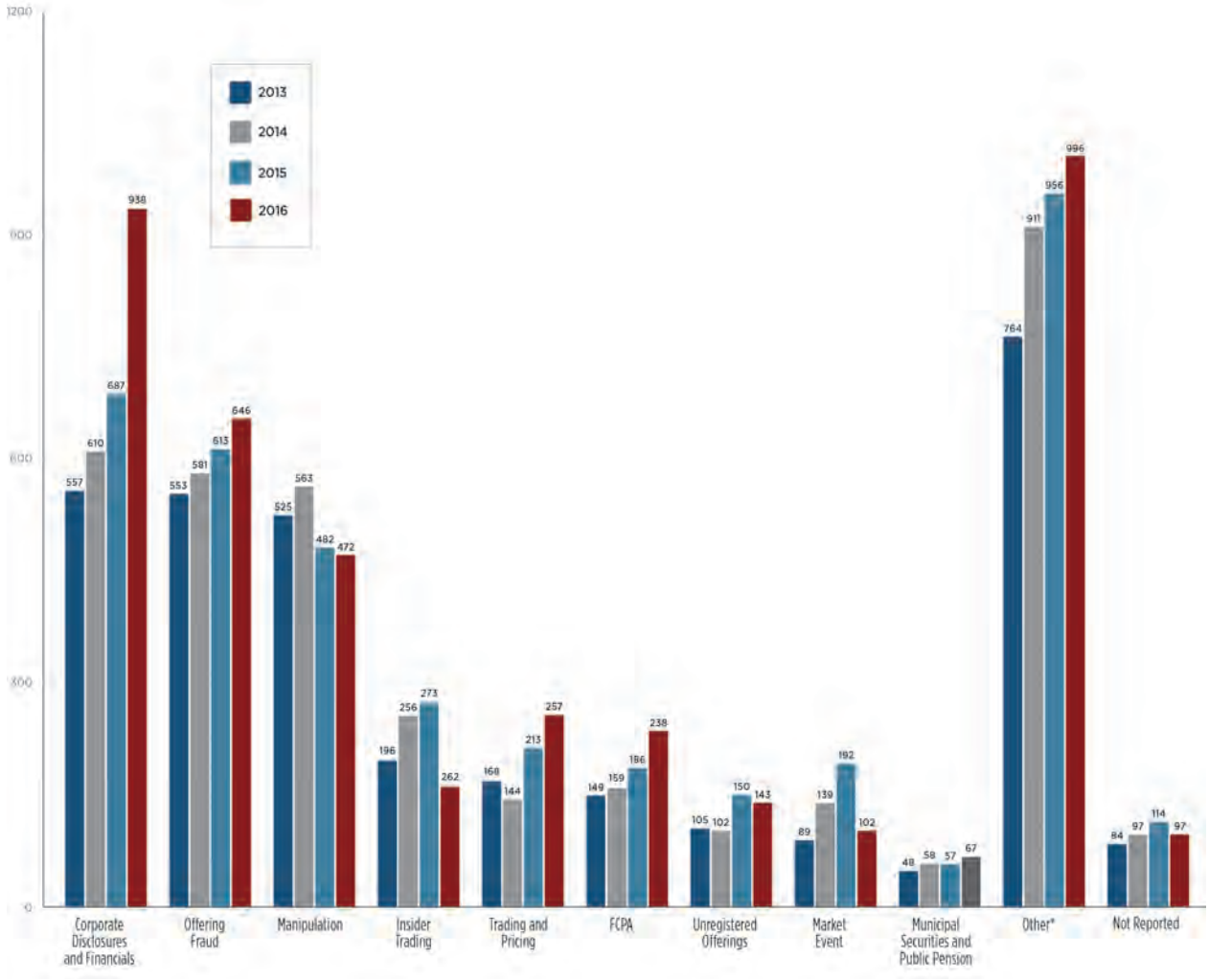
55 Section 21F(g)(2)(A) of the Exchange Act, 15 U.S.C. § 78u-6(g)(2)(A).

56 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).

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

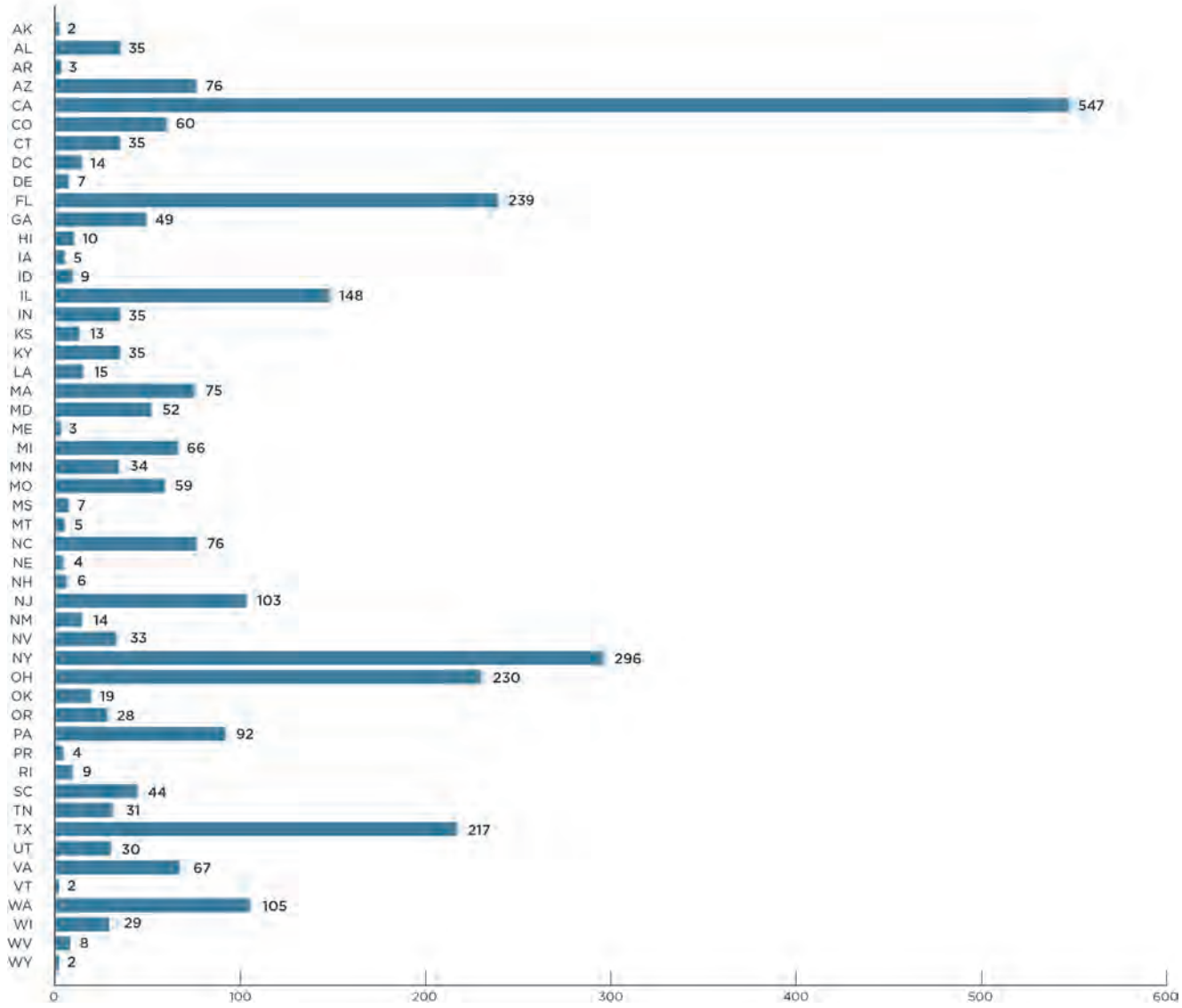
57 Pursuant to Section 21F(g)(3) of the Exchange Act, no monetary sanctions are deposited into or credited to the Fund if the balance of the Fund exceeds certain thresholds at the time the monetary sanctions are collected. *Id.* § 78u-6(g)(3).

APPENDIX A
WHISTLEBLOWER TIPS BY ALLEGATION TYPE
COMPARISON OF FISCAL YEARS 2013–2016



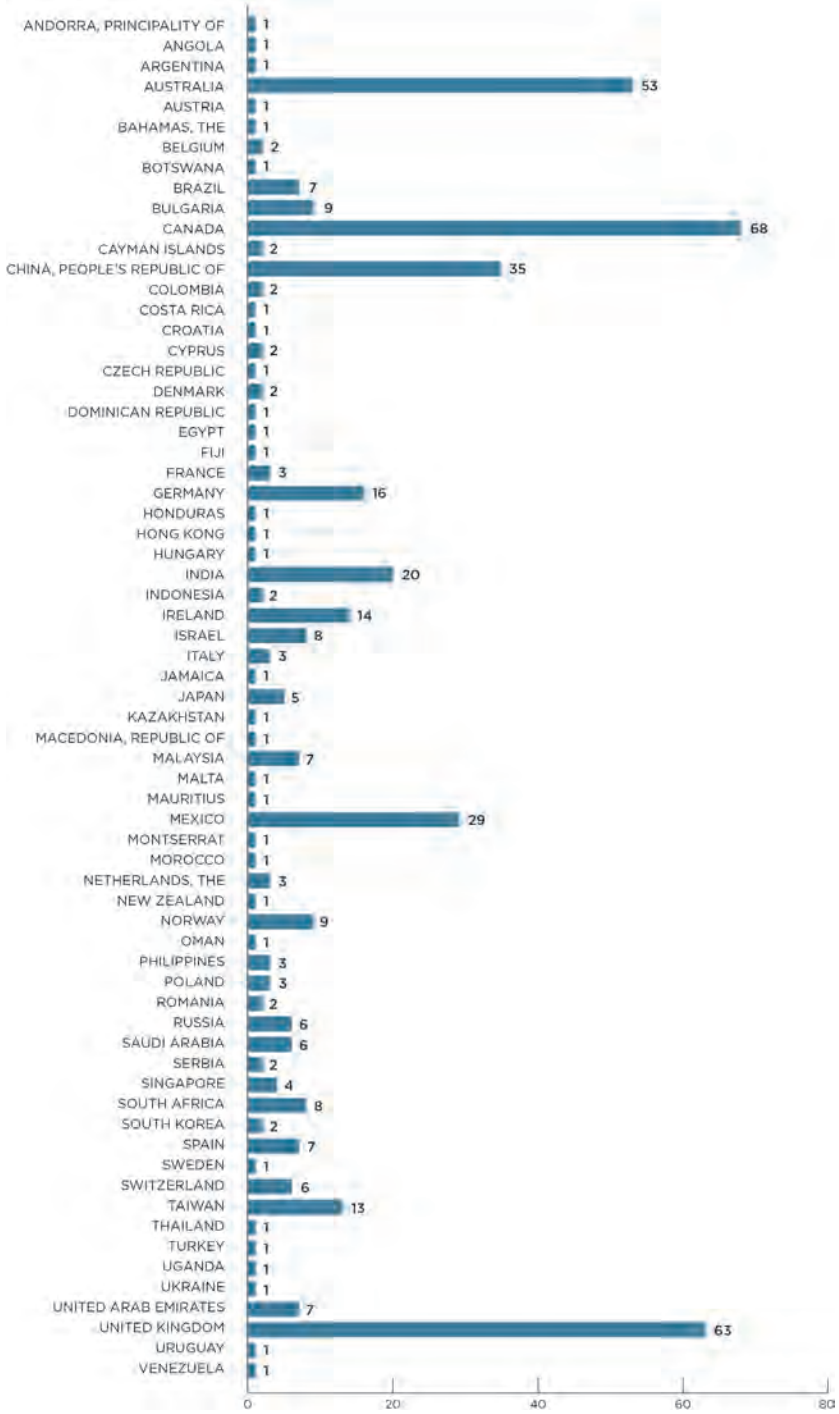
* "Other" indicates that the submitter has identified their WB TCR as not fitting into any allegation category that is listed on the questionnaire.

APPENDIX B
WHISTLEBLOWER TIPS RECEIVED BY GEOGRAPHIC LOCATION
UNITED STATES AND ITS TERRITORIES
FY 2016*



*Multiple individuals may jointly submit a TCR under the Commission's whistleblower program. Appendix B reflects the number of individuals submitting WB TCRs to the Commission within the United States or one of its territories, and not the total number of domestic WB TCRs received by the Commission during FY 2016. For example, a WB TCR that is jointly submitted by two individuals in New York and New Jersey would be reflected on Appendix B as a submission from both New York and New Jersey. The total number of persons submitting WB TCRs in the United States or one of its territories during FY 2016 was 3,087, which constitutes approximately 70 percent of the individuals participating in the Commission's whistleblower program for this period. Additionally, 902 individuals constituting approximately 20 percent of the total number of persons participating in the Commission's whistleblower program for FY 2016 submitted WB TCRs without any foreign or domestic geographical categorization or submitted them anonymously through counsel.

APPENDIX C
WHISTLEBLOWER TIPS RECEIVED BY GEOGRAPHIC LOCATION INTERNATIONAL FY 2016*



*As with domestic WB TCRs, multiple individuals from abroad may jointly submit a TCR under the Commission's whistleblower program. Appendix C reflects the number of individuals submitting WB TCRs to the Commission from abroad, and not the total number of foreign WB TCRs received by the Commission during FY 2016. The total number of persons submitting WB TCRs from abroad during FY 2016 was 464, which constitutes approximately 10 percent of the individuals participating in the Commission's whistleblower program.

OFFICE OF THE WHISTLEBLOWER

Washington, DC