



2015 ANNUAL REPORT TO CONGRESS ON THE

Dodd-Frank Whistleblower Program



U. S. SECURITIES AND EXCHANGE COMMISSION

D I S C L A I M E R

This is a report of the Staff of the U.S. Securities and Exchange Commission. The Commission has expressed no view regarding the analysis, findings, or conclusions contained herein.

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MESSAGE FROM THE CHIEF OF THE OFFICE OF THE WHISTLEBLOWER

The Commission has paid more than \$54 million to 22 whistleblowers since the Commission's new whistleblower rules went into effect in August 2011. In Fiscal Year 2015 alone, more than \$37 million was paid to reward whistleblowers for their provision of original information that led to a successful Commission enforcement action with monetary sanctions totaling over \$1 million. We are honored by Chair Mary Jo White's characterization of the whistleblower program as "a success," which "we will work hard at the SEC to build on" in the coming years.¹

One of the primary activities of the SEC's Office of the Whistleblower ("OWB" or "the Office") is to evaluate whistleblower award claims and to make recommendations as to whether claimants satisfy the eligibility requirements for receiving an award. Since the beginning of the program, the Commission and Claims Review Staff have issued Final Orders or Preliminary Determinations with respect to over 390 claims for award. Although a significant number of claims have been fully resolved by Final Order of the Commission or addressed via Preliminary Determination, the number of whistleblower award claims received by OWB has continued to increase. In Fiscal Year 2015, OWB received more than 120 whistleblower award claims, representing a significant increase compared to prior years. We believe this uptick in whistleblower award claims is attributable to the increased public awareness of the SEC's whistleblower program and in response to the tens of millions of dollars that have been paid to whistleblowers under the program.

Increased public awareness of the program also has led to a substantial growth in the number of whistleblower tips. The number of whistleblower tips received by the Commission has increased each year of the program's operation. In Fiscal Year 2015, we received nearly 4,000 whistleblower tips, a 30% increase over the number of tips received in Fiscal Year 2012, the first year for which we have full-year data. Many of the tips have led staff in the SEC's Division of Enforcement ("Enforcement") to open an investigation or are being considered in connection with an existing investigation.

In addition to managing the awards program, OWB is actively involved with Enforcement staff in helping to ensure that individuals feel secure in reporting wrongdoing to the Commission, without fear of reprisal from their employers. During Fiscal Year 2015, the Commission took several important actions aimed at protecting whistleblowers from unlawful retaliation by their employers or attempts to interfere with their ability to report to, and cooperate with, the agency.

For the first time, in April 2015, the Commission brought charges under Rule 21F-17(a) against a company for including language in confidentiality agreements that impeded whistleblowers from reporting to the Commission. Rule 21F-17(a) provides that no person may take any action to impede an individual from reporting information about wrongdoing to the Commission. This includes, for example, by enforcing or threatening



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¹ Remarks by Chair Mary Jo White, Ray Garrett, Jr. Corporate and Securities Law Institute-Northwestern University School of Law, Chicago, Illinois (April 30, 2015) (hereinafter, "Chair Remarks").

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Year 2012.”

to enforce a confidentiality agreement with respect to such reporting. The confidentiality agreements used by the company in the case prohibited employees from discussing the substance of interviews they gave in internal investigations without the approval of the company’s legal department. Assessing confidentiality agreements for compliance with Rule 21F-17(a) will continue to be a top priority for OWB into Fiscal Year 2016.

In issuing the final whistleblower rules, the Commission included a rule to clarify that the employment retaliation protections provided by the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act” or “Dodd-Frank”) apply not only to individuals who report wrongdoing to the SEC but also to employees who, among other things, report potential securities law violations internally to their employers. Several courts, however, have narrowly interpreted the Dodd-Frank anti-retaliation provisions and limited protection only to those individuals who report to the Commission.

In response, the Commission has filed numerous *amicus curiae* briefs on this issue in federal district court and appeals court matters. In addition, in August 2015, the Commission issued interpretive guidance clarifying that the Dodd-Frank anti-retaliation provisions apply to individuals who report information of possible securities law violations irrespective of whether they report such information internally or to the Commission.² Most recently, in September 2015, the Second Circuit Court of Appeals in *Berman v. Neo@Ogilvy LLC*, deferred to the agency’s position that employees who report securities law violations to their employers, regardless of whether they also separately report to the Commission, are protected by the Dodd-Frank anti-retaliation provisions.

In Fiscal Year 2015, the Commission also issued an award of 30%, the statutory maximum, to a whistleblower who provided original information that led to the Commission’s first successful anti-retaliation enforcement action under the Dodd-Frank Act. After reporting information of potential wrongdoing to the Commission, the whistleblower’s employer engaged in a series of retaliatory behaviors against the whistleblower. In authorizing a maximum award, the Commission found its law enforcement interest to be compelling given the previous findings of unlawful retaliation against the whistleblower.

These actions reflect the firm position the Commission has taken to protect whistleblowers from employment retaliation or actions that impede their ability to report to and cooperate with Commission staff. “We want whistleblowers—and their employers—to know that employees are free to come forward without fear of reprisals.”³

2 The interpretive guidance can be found on OWB’s webpage at <http://www.sec.gov/whistleblower>.

3 Chair Remarks.

By protecting the confidentiality of individuals who report to the Commission pursuant to the whistleblower 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 be "a game changer"⁴ in the enforcement of the federal securities laws and the protection of investors and the marketplace.

OWB encourages anyone who believes they have information concerning a potential securities law violation to submit the tip via the online portal on OWB's webpage (<http://www.sec.gov/whistleblower>) or by submitting a Form TCR, also located on OWB's webpage, by mail or fax. If whistleblowers 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. All messages will be returned within 24 business hours.



Sean X. McKessy
Chief, Office of the Whistleblower
November 16, 2015

“We want
 whistleblowers—and
 their employers—to
 know that employees
 are free to come
 forward without fear
 of reprisals.”

⁴ *Id.*

HISTORY AND PURPOSE

The Dodd-Frank Act⁵ amended the Securities Exchange Act of 1934 (the “Exchange Act”)⁶ by, among other things, adding Section 21F,⁷ 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.⁸

Awards are required to be made in an amount equal to 10 to 30% 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 would be paid.

The Commission established OWB, a separate office within the SEC’s Division of 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 (the “Whistleblower Rules”)⁹ 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.¹⁰

The whistleblower program was designed to complement, rather than replace, existing corporate compliance programs. While it provides incentives for insiders and others with information about unlawful conduct to come forward, it also encourages them to work within their company’s own compliance structure, if appropriate.¹¹

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:

- 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;

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

6 15 U.S.C. § 78a *et seq.*

7 *Id.* § 78u-6.

8 “Related actions” is defined at 17 C.F.R. § 240.21F-3.

9 *Id.* §§ 21F-1–21F-17.

10 15 U.S.C. § 78u-6(h)(1); 17 C.F.R. § 240.21F-2(b).

11 *See id.* §§ 21F-4(b)(7), 21F-6(a)(4), 21F-6(b)(3).

- 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 Fiscal Year 2015, 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 Fiscal Year 2015 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. Sean X. McKessy is the Chief of the Office and Jane A. Norberg is the Office's Deputy Chief. In addition to Mr. McKessy and Ms. Norberg, OWB was staffed during the past fiscal year by ten attorneys,¹² five paralegals, and an administrative assistant. Two additional attorneys will be joining OWB at the beginning of the next fiscal year. Below is an overview of OWB's primary responsibilities and activities over the past fiscal year.

“...one area of focus for OWB was whether employers were using confidentiality, severance, and other kinds of agreements to interfere with an individual's ability to report potential wrongdoing to the SEC.”

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 what OWB does 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 tip he or she provided to the Commission and what was ultimately charged in the enforcement matter.

OWB staff attempts to track investigations where a whistleblower has provided information or assistance to Enforcement staff. 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 often contacts 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 confer with relevant Enforcement or Exam staff to understand in more detail the contribution of the claimant, if any. OWB then makes recommendations to the Claims Review Staff, 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 Fiscal Year 2015, please refer to pages 10-14 of this report.

Reviewing Restrictive Agreements

During Fiscal Year 2015, one area of focus for OWB was whether employers were using confidentiality, severance, and other kinds of agreements to interfere with an individual's 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...

¹² One attorney recently joined the Office near the end of Fiscal Year 2015.

with respect to such communications.”¹³ On April 1, 2015, the Commission brought its first enforcement action, against KBR Inc., finding that restrictive language in confidentiality agreements violated this rule.¹⁴ OWB continues to actively work with Enforcement staff to identify and investigate practices in the use of confidentiality and other kinds of agreements that may violate Rule 21F-17(a). We will continue to focus on agreements that have language that reasonably could have the effect of impeding whistleblowers from reporting securities violations to the Commission.

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 whistleblower anti-retaliation protections under the Dodd-Frank Act. As discussed in last year’s report, the Commission brought its first anti-retaliation case against an employer in June 2014. OWB continues to work with Enforcement staff on identifying potential anti-retaliation enforcement actions. OWB also monitors federal court cases involving the anti-retaliation provisions of the Dodd-Frank Act and the Sarbanes-Oxley Act of 2002.¹⁵ Finally, OWB works with the SEC’s Office of the General Counsel, which has 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. For more information about these activities, please see pages 19-20.

Intake of Whistleblower Tips

The Commission developed its Tips, Complaints, and Referrals Intake and Resolution System (“TCR System”), an internal database, to serve as a central repository for all tips and complaints, as well as referrals from other government agencies or self-regulatory organizations, that are received by the Commission. Exchange Act Rule 21F-9 provides whistleblowers the option of either submitting their tips directly into the TCR System through the Commission’s online portal, or by mailing or faxing a hard-copy Form TCR to OWB. This procedure assists 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 those cases where whistleblowers elect to send in a Form TCR, OWB manually enters it 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 21-24.

13 17 C.F.R. § 240.21F-17(a).

14 For a full discussion of the enforcement action against KBR Inc., please refer to page 19.

15 18 U.S.C. § 1514A.

Communications with Whistleblowers

The Office 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 that has been 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 box. If we are not able to leave a message because the individual's name is not identified or if it appears to be a shared voicemail box, OWB attorneys make two additional attempts to contact the individual.

During Fiscal Year 2015, the Office returned over 2,801 phone calls from members of the public. Many of the calls the Office receives relate to how the caller should submit a tip in order to be eligible for an award; concerns about 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; or focus on 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, the Office 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 discovering and stopping fraudulent schemes early. As more individuals have become aware of the program, we have received, in turn, more award claims.

In Fiscal Year 2015, OWB staff participated in over 20 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 on legal panels and in other forums with other federal agencies that have similar whistleblower programs, including the Department of Labor, the Department of Justice, 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 includes videos that provide an overview of the program and information about how tips, complaints and referrals are handled. The website also 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.

“During Fiscal Year 2015, the Office returned over 2,801 phone calls from members of the public.”

Training and Assistance to Commission Staff

OWB serves as the principal point of contact for all Commission staff on any whistleblower-related question or issue. Therefore, in addition to participating in external communications about the program, we also provide training to Commission staff who may be in a position to interact with a whistleblower or who may receive information from a whistleblower.

During Fiscal Year 2015, we continued to provide training on the whistleblower program for Enforcement staff, both in the Home Office as well as in several of the Regional Offices. We educated new Enforcement staff regarding the whistleblower program. We also provided whistleblower training to staff in other Divisions and Offices who may find themselves on the receiving end of whistleblower information during the course of an examination.

CLAIMS FOR WHISTLEBLOWER AWARDS

Whistleblower Awards

During Fiscal Year 2015, the Commission and Claims Review Staff issued Final Orders or Preliminary Determinations addressing over 150 whistleblower award claims. Final Orders or Preliminary Determinations have been issued for more than 390 award claims since the beginning of the program.

In Fiscal Year 2015, the Commission paid more than \$37 million out of the Investor Protection Fund to eight whistleblowers.¹⁶ Each of these whistleblowers provided new information of which the agency was not aware that either led to the opening of the investigation or significantly contributed to the successful enforcement action. Below is an overview of each of those awards.

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Over \$30 Million Paid to One Whistleblower

As discussed in last year’s report, in September 2014, the Commission authorized an award of more than \$30 million to a whistleblower who provided original information that led to a successful enforcement action.¹⁷ This award represented the Commission’s highest award to date under the whistleblower program.

Although the Commission’s Final Order approving the award was issued near the end of Fiscal Year 2014, the actual payment of the award to this whistleblower from the Investor Protection Fund occurred at the beginning of Fiscal Year 2015. The whistleblower’s information also led to successful related actions, and the whistleblower received additional payments during Fiscal Year 2015 based on amounts collected in those related actions.

Maximum Award for Whistleblower in First Anti-Retaliation Case

On April 28, 2015, the Commission announced a maximum whistleblower award payment of 30% of amounts collected in connection with *In the Matter of Paradigm Capital Management, Inc. and Candace King Weir*, File No. 3-15930 (June 16, 2014), the Commission’s first anti-retaliation case.¹⁸ The whistleblower received over \$600,000 for providing key original information that led to the success of the Commission action. In determining the award percentage, the Commission considered the substantial evidence that the whistleblower suffered unique hardships as a result of reporting, and also found its law enforcement interest to be compelling given the previous findings of unlawful retaliation against the whistleblower.

The Commission charged Paradigm with retaliating against the whistleblower after the firm learned that the whistleblower reported potential misconduct to the Commission. According to the Commission’s Order, Paradigm immediately engaged in a series of retaliatory actions against the whistleblower including removing the whistleblower from the whistleblower’s then-current position, tasking the whistleblower with investigating the very conduct the whistleblower reported to the Commission, changing the

¹⁶ After the close of Fiscal Year 2015, but before the filing of this annual report, the Commission issued a Final Order authorizing another whistleblower award of over \$325,000. To date, 22 individuals have received awards under the program.

¹⁷ See Order Determining Award Claim, Exchange Act Rel. No. 73174, File No. 2014-10 (Sept. 22, 2014).

¹⁸ See Order Determining Award Claim, Exchange Act Rel. No. 74826, File No. 2015-4 (Apr. 28, 2015). The name of the case was included in the Final Order and accompanying press release because such information was already in the public domain in light of the earlier enforcement action in this matter.

whistleblower's job function, stripping the whistleblower of supervisory responsibilities, and otherwise marginalizing the whistleblower.¹⁹

Substantial Harm Exception Paves Way for Award to Compliance Professional

On April 22, 2015, the Commission awarded more than a million dollars to a compliance professional who provided information that assisted the Commission in an enforcement action against the whistleblower's company.²⁰

Individuals whose principal duties involve compliance or internal audit responsibilities generally are excluded from award eligibility unless an exception applies. Here, the Commission determined the whistleblower's information was still "original information" under the Whistleblower Rules because the whistleblower "had a reasonable basis to believe that disclosure of the information to the Commission [was] necessary to prevent the relevant entity from engaging in conduct that [was] likely to cause substantial injury to the financial interest or property of the entity or investors."²¹ Although the Commission previously made an award to an individual with compliance or internal audit functions pursuant to a different exception, this was the first time the Commission utilized the "substantial injury" exception.

Over \$3 Million to Whistleblower Who Provided Information of a Complex Fraud

On July 17, 2015, the Commission announced its third-largest whistleblower award to a company insider whose information assisted the Commission in cracking a complex fraudulent scheme and also led to related actions.²² The whistleblower's information was specific and detailed and comprehensively laid out the fraudulent scheme, which would have been very difficult to detect in the absence of the whistleblower's information. The whistleblower received an award exceeding \$3 million.

Former Company Officer Receives Award After Company Fails to Take Action

On March 2, 2015, the Commission made a half-million dollar award to a former company officer who reported original, high-quality information about a securities violation that resulted in a Commission enforcement action with sanctions exceeding \$1 million.²³

Officers, directors, trustees, or partners who learn about a fraud through another employee reporting the misconduct generally are not eligible for an award under the Commission's whistleblower program. However, there is an exception in the Whistleblower Rules to this exclusion that makes an officer eligible if he or she reports the information to the Commission more than 120 days after other responsible compliance personnel possessed the information and failed to adequately address the issue. This award was the first Commission whistleblower award to an officer under these circumstances.

¹⁹ See *In the Matter of Paradigm Capital Mgmt., Inc. and Candace King Weir*, Exchange Act Rel. No. 72393, File No. 3-15930 (June 16, 2014).

²⁰ See Order Determining Award Claim, Exchange Act Rel. No. 74781, File No. 2015-2 (Apr. 22, 2015).

²¹ *Id.* at n.1, citing 17 C.F.R. § 240.21F-4(b)(4)(v)(A).

²² See Order Determining Award Claim, Exchange Act Rel. No. 75477, File No. 2015-5 (July 17, 2015).

²³ See Order Determining Award Claim, Exchange Act Rel. No. 74404, File No. 2015-1 (Mar. 2, 2015).

Award to Foreign Nationals Who Jointly Reported Information

On September 28, 2015, the Commission issued an award of 20% to two foreign nationals who jointly reported information that caused Enforcement staff to open the investigation in the underlying action.²⁴ One claimant received an award of 11% while the other claimant received an award of 9%, based on the level of assistance each provided to Commission staff. The Commission has made awards in three other matters where two or more individuals provided their information jointly to the Commission. Additionally, this is the third matter in which the Commission has made an award to a whistleblower living or residing outside of the United States, demonstrating the global scope of the agency's whistleblower program.

Near Maximum Award to Whistleblower

On September 29, 2015, the Commission issued a Final Order authorizing an award of 28% to a whistleblower who voluntarily provided original information to the agency that led to the successful enforcement of the underlying covered action.²⁵

Most recently, on November 4, 2015, the Commission issued a Final Order authorizing an award payment of over \$325,000 to a whistleblower who provided detailed information that caused Enforcement staff to open the investigation in the underlying action.²⁶ This most recent award, which occurred after the close of the Fiscal Year, but before the date of this report, brings the total number of whistleblowers receiving an award under the Commission's whistleblower program to 22.

Process for Reviewing Applications for Awards

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.²⁷ During Fiscal Year 2015, OWB posted 139 NoCAs, and since the program's inception, has posted 709 NoCAs to its website.

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.²⁸ In addition, whistleblowers may sign up to receive an update via email every time the list of NoCAs on OWB's website is updated. Once a NoCA is posted, individuals have 90 calendar days to apply for an award by submitting a completed Form WB-APP to OWB by the claim due date listed for that action.²⁹

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

²⁴ See Order Determining Award Claim, Exchange Act Rel. No. 76000, File No. 2015-7 (Sept. 28, 2015).

²⁵ See Order Determining Award Claim, Exchange Act Rel. No. 76025, File No. 2015-8 (Sept. 29, 2015).

²⁶ See Order Determining Award Claim, Exchange Act Rel. No. 76338, File No. 2016-1 (Nov. 4, 2015).

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

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

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

²⁹ 17 C.F.R. §§ 240.21F-10(a), (b).

closely with Enforcement staff responsible for the relevant action, as well as other Commission staff that may have had interaction 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 as to whether the applicant should receive an award, and if so, the percentage of the award.

The Claims Review Staff, designated by the Director of Enforcement, considers OWB's recommendation in accordance with the criteria set forth in the Dodd-Frank Act and the Whistleblower Rules. The Claims Review Staff currently is comprised of five 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 allowed or denied and, if allowed, setting forth the proposed award percentage amount.³⁰

If a claim is denied and the applicant does not object within the statutory time period, then the Preliminary Determination of the Claims Review Staff becomes the Final Order of the Commission. However, an applicant can submit a written request within 30 calendar days for a copy of the record that formed the basis of the Claims Review Staff's decision. As a precondition to receiving a copy of the record, OWB requires claimants and their counsel, if represented, to execute a standard confidentiality agreement limiting the use of such materials to the claims review process.³¹ Whistleblowers also can seek reconsideration with OWB by submitting a written response 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 the whistleblower's review.³² After considering any requests for reconsideration, the Claims Review Staff issues a Proposed Final Determination, and the matter is forwarded to the Commission for its decision.³³

All Preliminary Determinations of the Claims Review Staff that involve an award of money are forwarded to the Commission for consideration as Proposed Final Determinations irrespective of whether the applicant objected to the Preliminary Determination.³⁴

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. In the event a Commissioner requests a review, the Commission reviews the record that the Claims Review Staff relied upon in making its determination and issues its Final Order.³⁵

³⁰ *Id.* § 21F-10(d).

³¹ 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."

³² 17 C.F.R. § 240.21F-10(e).

³³ *Id.* §§ 21F-10(g), (h).

³⁴ *Id.* §§ 21F-10(f), (h).

³⁵ *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).

Because of the built-in time periods required under the Whistleblower Rules discussed above, there is a minimum of seven months between when a claimant may submit his or her application for award and when a final determination may be made with respect to that claim if an applicant exercises his or her reconsideration and appeal rights. Furthermore, several of the recent award determinations involved novel legal issues. For instance, one issue of first impression related to the circumstances under which officers and directors and compliance and internal audit personnel may be eligible for whistleblower awards. Consideration of these novel legal issues increases the time it takes to process a claim. The number of claimants applying for an award in connection with a covered action also affects the time it takes to process a claim, and the submission of a frivolous claim may delay the issuance of an award to a legitimate claimant.

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

“...there is a minimum of seven months between when a claimant may submit his or her application for award and when a final determination may be made...”

Curbing Abuses in the Program

As discussed in last year's Annual Report, on May 12, 2014, a Final Order of the Commission was issued denying an individual's claims for awards in connection with 143 different NoCAs.³⁶ The Order found that the individual was ineligible for an award in those matters or in any future covered or related action. The Commission previously denied 53 claims for awards submitted by this individual.

On August 5, 2015, a Final Order of the Commission was issued denying another individual's claims in connection with 25 NoCAs and also finding the claimant ineligible for an award in any other pending or future covered or related actions.³⁷ The claimant knowingly and willfully made false, fictitious, and fraudulent statements and representations to the Commission over the course of several years.³⁸ This individual's claims for award failed to include even a remote factual nexus to the covered actions for which the individual applied. OWB staff repeatedly explained to the claimant the rules governing the whistleblower program and the deficiencies of the claimant's submissions. The claimant, however, refused to withdraw any of the award claims. Further, the claimant's submission of frivolous claims harmed the rights of legitimate whistleblowers and hindered the Commission's implementation of the whistleblower program by, among other things, delaying the Commission's ability to finalize meritorious awards to other claimants and consuming significant staff resources.

³⁶ See Final Order (May 12, 2014), available at <http://www.sec.gov/about/offices/owb/owb-final-orders.shtml>.

³⁷ See Final Order (Aug. 5, 2015), available at <http://www.sec.gov/about/offices/owb/owb-final-orders.shtml>.

³⁸ See 17 C.F.R. § 240.21F-8(c)(7).

Significant Legal Decision—Award Denial

In order for a claimant to be eligible for an award, the claimant must have provided the Commission with “original information,” which is defined in the Whistleblower Rules, in part, as information that is provided to the Commission for the first time after July 21, 2010.³⁹ Therefore, if a claimant provided a tip to the Commission before Dodd-Frank’s enactment, the claimant’s information will not satisfy the definition of “original information,” and the claim will be denied.

On March 11, 2015, the Second Circuit Court of Appeals upheld the Commission’s denial of an award claim in *Stryker v. SEC*.⁴⁰ The Commission had denied the claimant’s award application because the claimant’s information that purportedly “led to” the success of the enforcement action was provided to the Commission *before* Congress passed the Dodd-Frank Act, which created the whistleblower program.

In reaching its decision, the Court examined the relevant statutory language and concluded that the Commission’s interpretation was reasonable and consistent with the Dodd-Frank Act. Ultimately, the Court, applying “*Chevron* deference,”⁴¹ affirmed the Commission’s Order denying the award.

This decision is notable because it was the first and—to date—only judicial opinion to address a Commission Final Order denying a whistleblower award claim.

³⁹ *Id.* § 21F-4(b)(iv).

⁴⁰ 780 F.3d 163 (2d Cir. 2015).

⁴¹ See *Chevron, U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843 & n.11 (1984).

PROFILES OF WHISTLEBLOWER AWARD RECIPIENTS

The Dodd-Frank Act prohibits the Commission or 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. In some cases, this may include redacting the caption of the enforcement action upon which the award is based.

“...awards have been made to 22 individuals in connection with 16 covered actions, as well as in connection with several related actions.”

Consistent with our practice of maintaining whistleblower confidentiality as provided for in the Dodd-Frank Act—but in an effort to provide more transparency—the following 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, awards have been made to 22 individuals in connection with 16 covered actions, as well as in connection with several related actions. There are commonalities among 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 pointed to 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. The alleged misconduct was relatively current or ongoing.

An individual may be eligible to receive an award where his or her information leads to a successful enforcement action, meaning 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. Roughly one-half of the whistleblowers who have received awards under the program provided original information that caused Enforcement staff to open an investigation, while the other half 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, additional successful claims, or successful claims against additional individuals or entities.⁴²

There is no requirement under the Whistleblower Rules that an individual must be a current or former employee to be eligible for an award. However, to date, almost half of the award recipients were current or former employees of the company on which they reported information of wrongdoing. Of the award recipients who were current

⁴² Securities Whistleblower Incentives and Protections, 76 Fed. Reg. 34,300, 34,325 (June 13, 2011).

or former employees, approximately 80% 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 a related industry, or had a personal relationship with the alleged wrongdoer.

A whistleblower may choose to submit his or her tip anonymously to the Commission, if represented by counsel. Approximately 20% of the individuals who have received awards under the program submitted their information anonymously to the Commission through counsel. Certain of those whistleblowers thereafter identified themselves to Enforcement staff during the course of the investigations. Whistleblowers must identify themselves when they apply for an award to allow OWB to assess whether they satisfy the criteria for receiving an award under the Whistleblower Rules. Even at the time of an award, however, their identity is not made available to the public.

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 financial 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, and false pricing information, among other types of misconduct.

Under the Whistleblower Rules, individuals are permitted to jointly submit a tip to the Commission. Four of the cases in which an award payment was made involved two or more whistleblowers jointly submitting information and materials to the Commission. In these cases, each whistleblower received a percentage of the amounts collected in the SEC enforcement action or related action, based on his or her level of contribution and assistance to the case.

Individuals who provide information that leads to successful SEC actions resulting in monetary judgments 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. Seven of the award recipients have received payments based, in part, on collections made in other actions.

The award recipients hail from several different parts of the country, and some award recipients are foreign nationals residing outside of the United States.

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, as well as negative, factors that the Commission and

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

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. The absence of any negative factors does not mean that the whistleblower will be issued an award at or near the top of the 30% statutory maximum. This is because the whistleblower's level of assistance or the significance of the information may not have been that substantial.

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. To date, the Commission has not addressed the first two of these factors in any award determinations. Approximately 20% of the awards made to date were reduced because of an unreasonable reporting delay. Whether the delay occurred before or after the creation of the whistleblower program has affected how the Commission has weighed the reporting delay. For instance, in connection with two award claims where the period of delay straddled the Dodd-Frank Act, the Commission determined, in its discretion, not to weigh the reporting delay as heavily as it might have done had the delay occurred entirely after the whistleblower program's creation.⁴³ In connection with the most recent whistleblower award, the Commission found it significant that the delay, while relatively limited in duration, was unreasonable in light of the incentives and protections now afforded to whistleblowers under the Commission's whistleblower program.⁴⁴ Delay in reporting is particularly problematic where the securities violations continue and the ill-gotten gains of the wrongdoing increase after the whistleblower learns of the misconduct and does nothing to report the activity internally, to another regulator, or to the Commission.

⁴³ See Order Determining Award Claim, Exchange Act Rel. No. 75477, File No. 2015-5, at 2 n.3 (July 17, 2015); Order Determining Award Claim, Exchange Act Rel. No. 73174, File No. 2014-10, at 3 n.5 (Sept. 22, 2014).

⁴⁴ See Order Determining Award Claim, Exchange Act Rel. No. 76338, File No. 2016-1 (Nov. 4, 2015).

PRESERVING WHISTLEBLOWERS' RIGHTS TO REPORT TO THE COMMISSION AND SHIELDING WHISTLEBLOWERS 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 Fiscal Year 2015 and will continue to be a focus 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.”⁴⁵

On April 1, 2015, 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). The Commission found that Houston-based global technology and engineering firm KBR Inc. required witnesses in certain internal investigation interviews—including those involving allegations of possible securities law violations—to sign confidentiality statements with language warning that they could face discipline and even be terminated if they discussed the matters with outside parties without the prior approval of KBR’s legal department. The Commission found that, although it was unaware of any instances in which (i) a KBR employee was in fact prevented from communicating directly with Commission staff about potential securities law violations, or (ii) KBR took action to enforce the form confidentiality agreement or otherwise prevent such communications, the language found in the form confidentiality statement impeded such communications by prohibiting employees from discussing the substance of their interview without clearance from KBR’s law department under penalty of disciplinary action including termination of employment. This language undermined the purpose of Section 21F and Rule 21F-17(a), which is to “encourag[e] individuals to report to the Commission.”⁴⁶

KBR agreed to pay a \$130,000 penalty to settle the Commission’s charges and the company voluntarily amended its confidentiality statements by adding language making clear that employees are free to report possible violations to the Commission and other federal agencies without KBR’s approval and without fear of retaliation.

Protection for Internal Reporting

Section 21F(h)(1) of the Exchange Act, promulgated by Section 922 of the Dodd-Frank Act, prohibits employers from retaliating against individuals in the terms and conditions of their employment when they engage in whistleblowing activities. The Dodd-Frank Act expressly prohibits employment retaliation against individuals for reporting securities law violations and provides that individuals who have experienced such retaliation may pursue a private cause of action in the federal courts.

“On April 1, 2015, 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).”

45 17 C.F.R. § 240.21F-17(a).

46 Securities Whistleblower Incentives and Protections, 76 Fed. Reg. 34,300, 34,352 (June 13, 2011).

“...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.”

When the Commission issued the Whistleblower Rules in 2011, it clarified that the Dodd-Frank employment retaliation protections apply not just when individuals report potential securities law violations directly to the SEC but also when they, among other things, report internally at public companies.⁴⁷

In *Asadi v. G.E. Energy (USA), LLC*, however, the Fifth Circuit interpreted Dodd-Frank as limiting employment retaliation protection only to those individuals who report securities law violations directly to the Commission.⁴⁸

Following *Asadi*, the Commission has filed *amicus curiae* briefs in private retaliation lawsuits to urge district courts and courts of appeal 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.⁴⁹ 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 if they report internally, they will be less likely to do so, which could undermine the important role that public companies’ internal compliance programs play in helping the Commission prevent, detect, and stop securities law violations.

On August 4, 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. That is, individuals can make reports regarding 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 yet reported to the Commission in the manner required to qualify for an award under the Whistleblower Rules.⁵⁰

Most recently, the Second Circuit in *Berman v. Neo@Ogilvy LLC*,⁵¹ 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. 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.

47 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.* § 21F-2(b)(1)(ii).

48 720 F.3d 620 (5th Cir. 2013).

49 See, e.g., *Beacom v. Oracle Am., Inc.*, No. 15-1729 (*amicus* brief filed with 8th Cir. on Aug. 18, 2015); *Berman v. Neo@Ogilvy LLC*, 2015 WL 5254916 (2d Cir. Sept. 10, 2015) (*amicus* brief filed before appellate decision); *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); *Davies v. Broadcom Corp.*, 2015 WL 5545513 (C.D. Cal. Sept. 8, 2015) (*amicus* brief filed before district court decision); *Wiggins v. ING U.S., Inc.*, 2015 WL 3771646 (D. Conn. June 17, 2015) (same).

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

51 No. 14-cv-4626, 2015 WL 5254916 (2d Cir. Sept. 10, 2015), available at <http://www.sec.gov/whistleblower>

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.⁵² Whistleblowers who use the online portal to submit a complaint receive a computer-generated confirmation receipt with a TCR submission number. For those who submit hard-copy TCRs by mail or fax, OWB sends an acknowledgement letter, which includes a TCR submission number, or a deficiency letter. 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.

Increase in Whistleblower Tips

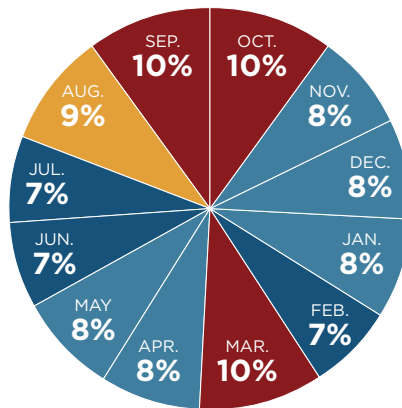
For each year that the whistleblower program has been in operation, the Commission has received an increasing number of whistleblower tips. Since August 2011, the Commission has received a total of 14,116 whistleblower tips, and in Fiscal Year 2015 alone, received almost 4,000 whistleblower TCRs.⁵³

The table below shows the number of whistleblower tips received by the Commission on a yearly basis since the inception of the whistleblower program:

FY2011 ⁵⁴	FY2012	FY2013	FY2014	FY2015
334	3,001	3,238	3,620	3,923

As reflected in the table, the number of whistleblower tips received by the Commission has increased each year the program has been in operation. From Fiscal Year 2012, the first year for which we have full-year data, to Fiscal Year 2015, the number of whistleblower tips received by the Commission has grown more than 30%.

The graphic shows by percentage the number of whistleblower tips the Commission received on a monthly basis during Fiscal Year 2015. As reflected in the chart, the volume of tips remained relatively steady throughout the year, with the highest number of whistleblower tips being received during the months of March, August, September and October.



“For each year that the whistleblower program has been in operation, the Commission has received an increasing number of whistleblower tips.”

⁵² 17 C.F.R. § 240.21F-9(a).

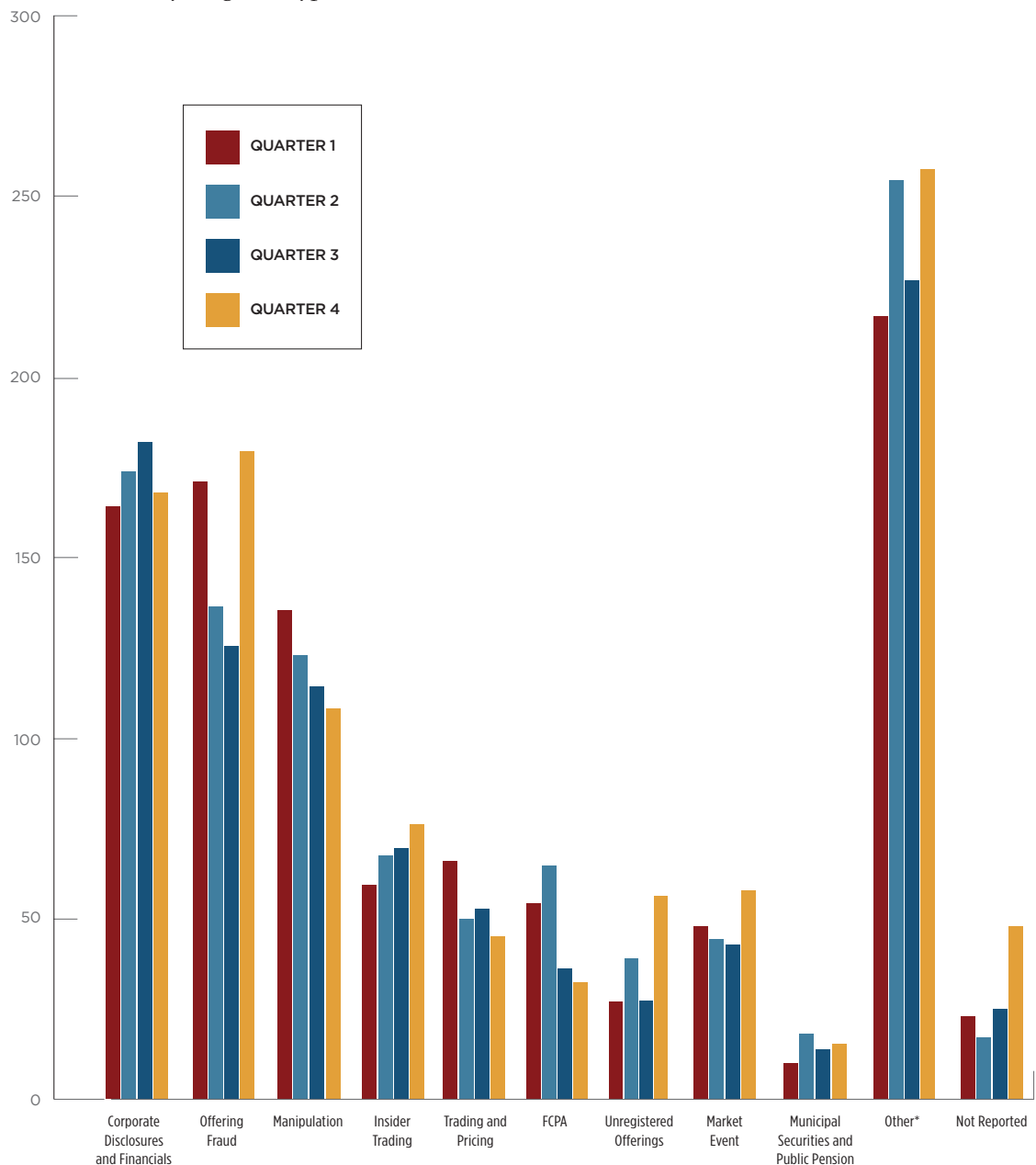
⁵³ The Commission also receives TCRs from individuals who do not wish, or are not eligible, to be considered for an award under the whistleblower program. The data in this report is limited to those TCRs that include the required whistleblower declaration and does not reflect all TCRs received by the Commission during the fiscal year.

⁵⁴ Because the Whistleblower Rules became effective August 12, 2011, only 7 weeks of whistleblower data is available for Fiscal Year 2011.

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 Fiscal Year 2015, the most common complaint categories reported by whistleblowers included Corporate Disclosures and Financials (17.5%), Offering Fraud (15.6%), and Manipulation (12.3%).⁵⁵

The chart below reflects the number of whistleblower tips received in Fiscal Year 2015 by allegation type:⁵⁶



⁵⁵ This breakdown reflects the categories selected by whistleblowers and, thus, the data represents the whistleblower’s own characterization of the violation type.

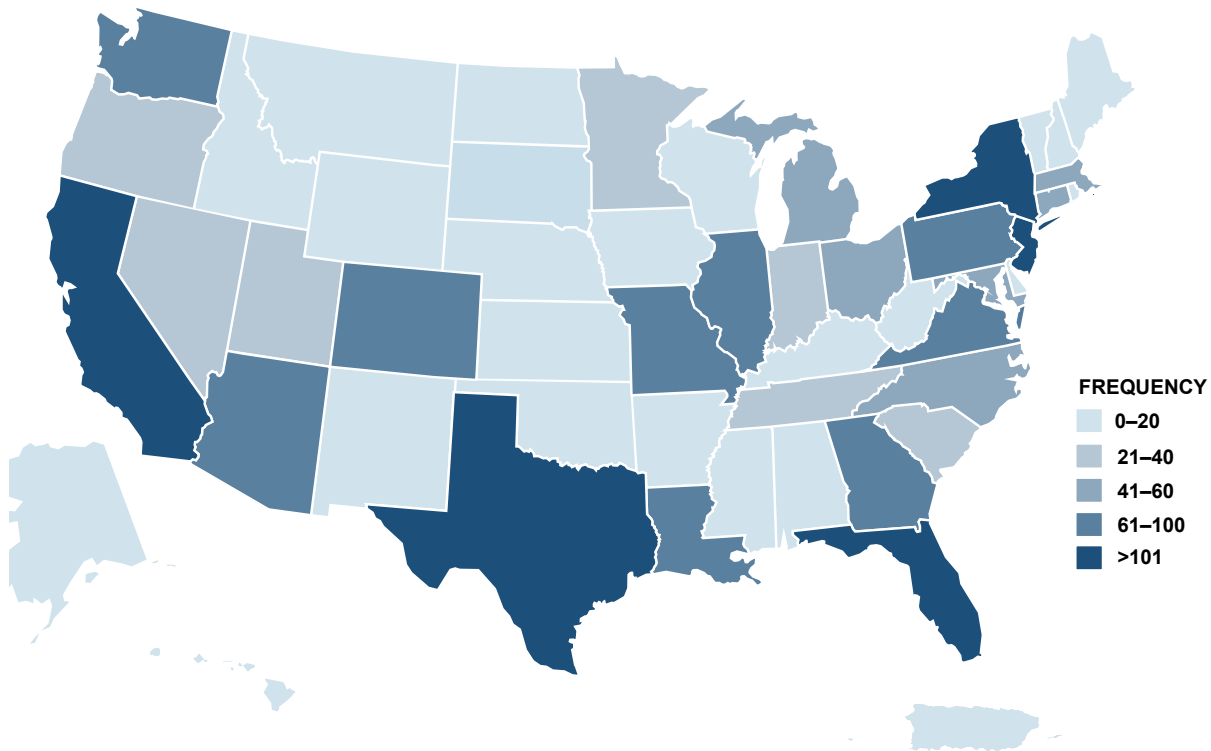
⁵⁶ The category of “Other” indicates that the submitter identified the whistleblower TCR as not fitting into any allegation category that is listed on the questionnaire.

The types of securities violations reported by whistleblowers has remained generally consistent over the last four 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 2012 through 2015.

Geographic Origin of Whistleblower Tips

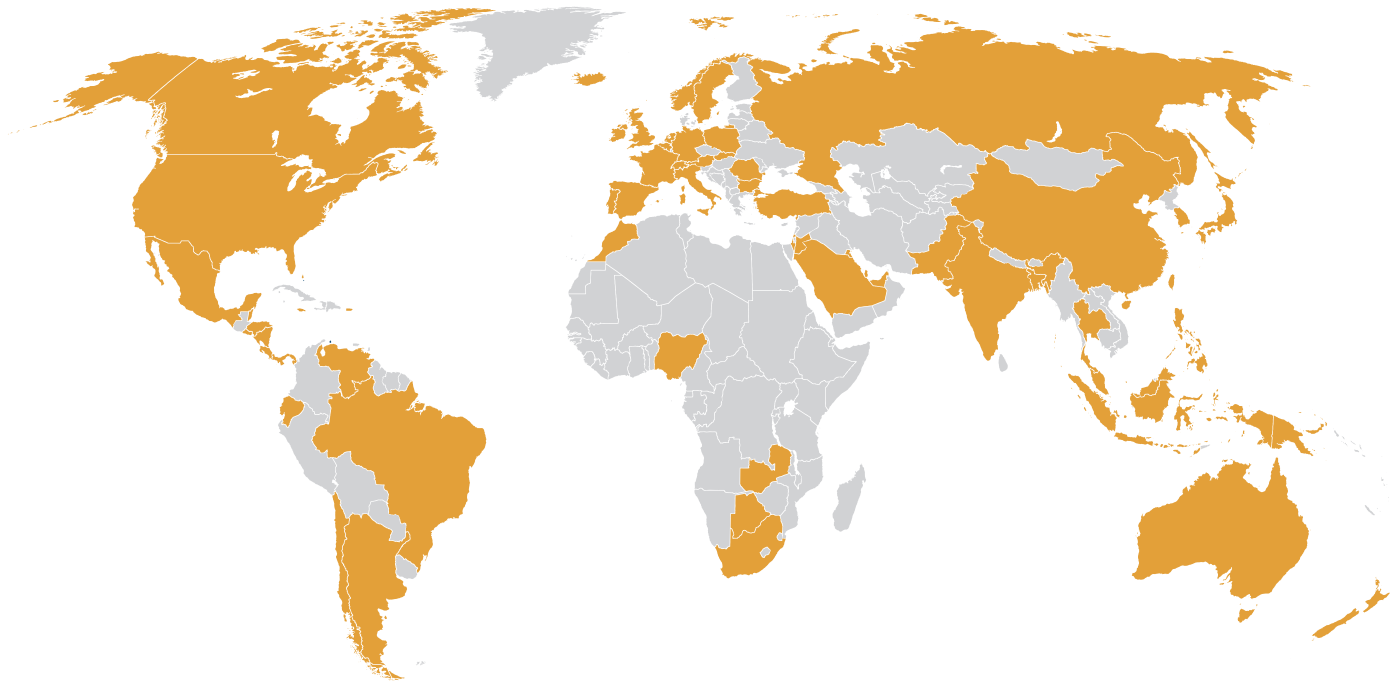
Through OWB's extensive outreach efforts to publicize and promote the Commission's whistleblower program, the Commission continues to receive whistleblower submissions from individuals throughout the United States, as well as internationally.

During Fiscal Year 2015, the Commission received whistleblower submissions from individuals in all 50 states, as well as from the District of Columbia and the U.S. territories of Puerto Rico and the U.S. Virgin Islands, as reflected in the map below. California, New York, Texas, Florida, and New Jersey yielded the highest number of whistleblower tips in Fiscal Year 2015.



Since the beginning of the whistleblower program, the Commission has received whistleblower tips from individuals in 95 countries outside the United States. In Fiscal Year 2015 alone, the Commission received whistleblower submissions from individuals in 61 foreign countries. After the United States, OWB received the highest number of whistleblower tips in Fiscal Year 2015 from individuals in the United Kingdom, Canada, the People's Republic of China, India, and Australia. The map below reflects all countries in which whistleblower tips originated during Fiscal Year 2015.

Appendices B and C to this report provide more specific information concerning the sources of domestic and foreign whistleblower tips that the Commission received during Fiscal Year 2015.



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 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 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. Tips that could benefit from the specific expertise of another Division or Office within the Commission generally are 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 substantially contributes to an ongoing or active investigation. Tips also may prompt the Commission to commence an examination of a regulated entity or a review of securities filings, 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 700 matters in which a whistleblower’s tip has caused a Matter Under Inquiry or investigation to be opened or which have been forwarded to Enforcement staff for review and consideration in connection with an ongoing investigation. However, not all of these matters will result in an enforcement action, or an enforcement action where the required threshold of over \$1 million in monetary sanctions will be ordered.

In general, the more specific, credible, and timely a whistleblower tip, the more likely it is that the tip will be forwarded to Enforcement 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 more likely not 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, we refer the tip to the other agency in accordance with our confidentiality requirements under the statute.

“OWB currently is tracking over 700 matters in which a whistleblower’s tip has caused a Matter Under Inquiry or investigation to be opened or which have been forwarded to Enforcement staff...”

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 Form TCR in hard copy by mail or fax, OWB enters this information into the TCR System so it can be evaluated by OMI.⁵⁷ 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.

⁵⁷ 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.⁵⁸ Also, the Fund is used to finance the operations of the suggestion program of the SEC’s Office of Inspector General.⁵⁹ 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.⁶⁰

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 Fiscal Year 2015.

	FY 2015
Balance of Fund at beginning of fiscal year	\$437,795,774.92
Amounts deposited into or credited to Fund during fiscal year	\$0.00 ⁶¹
Amount of earnings on investments during fiscal year	\$866,897.87
Amount paid from Fund during fiscal year to whistleblowers	(\$37,950,871.36)
Amount disbursed to Office of the Inspector General during fiscal year	(\$18,711.87)
Balance of Fund at end of the fiscal year	\$400,693,089.56

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 submitted separately to Congress.

⁵⁸ Section 21F(g)(2)(A) of the Exchange Act, 15 U.S.C. § 78u-6(g)(2)(A).

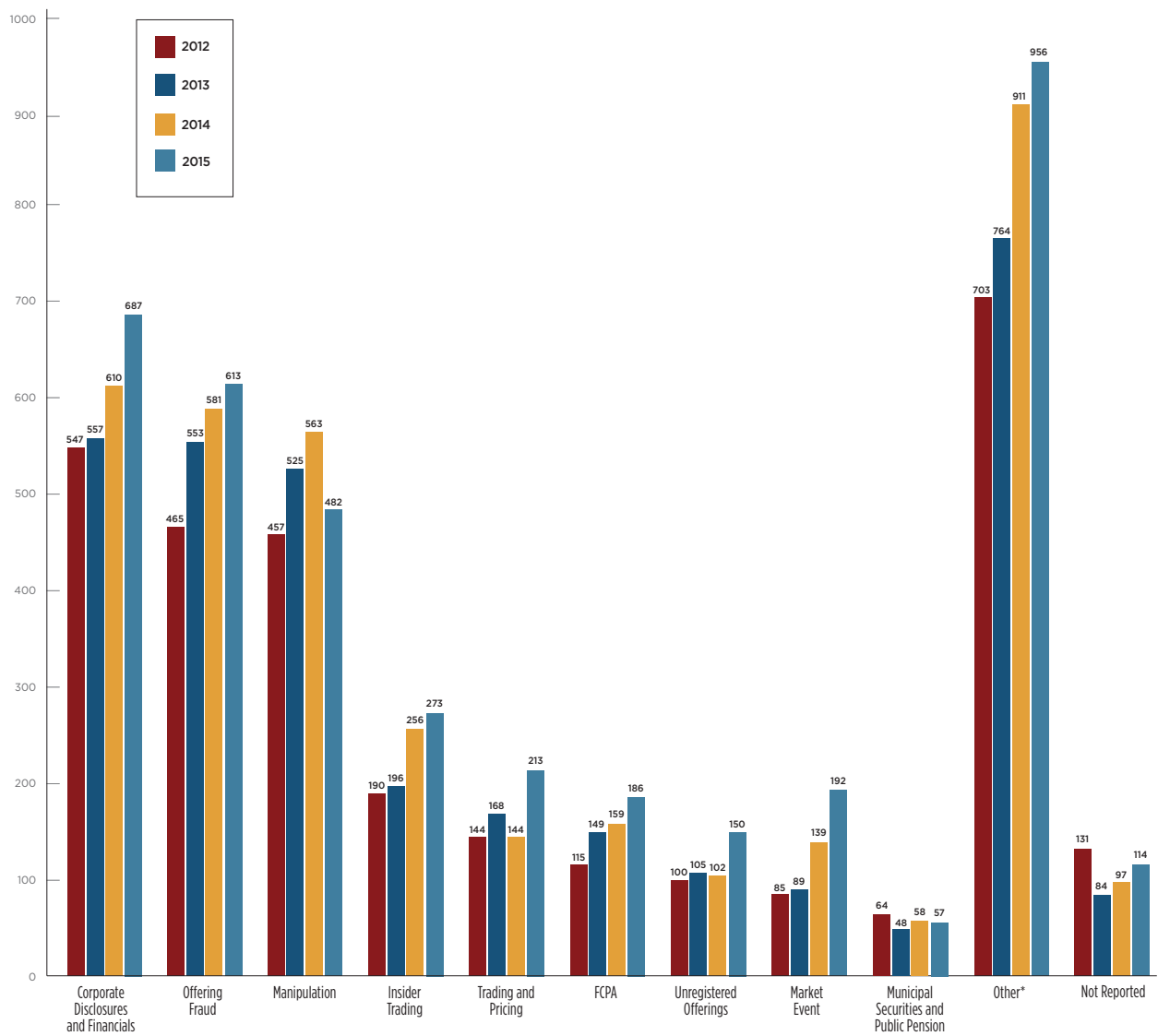
⁵⁹ Section 21F(g)(2)(B) of the Exchange Act provides that the Fund shall be available to the Commission for “funding the activities of the Inspector General of the Commission under section 4(i).” 15 U.S.C. § 78u-6(g)(2)(B). The Office of the General Counsel has interpreted Section 21F(g)(2)(B) to refer to Section 4D of the Exchange Act, which establishes the Inspector General’s suggestion program. Subsection (e) of 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).

⁶⁰ Section 4D(a) of the Exchange Act, *Id.* § 78d-4(a).

⁶¹ 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).

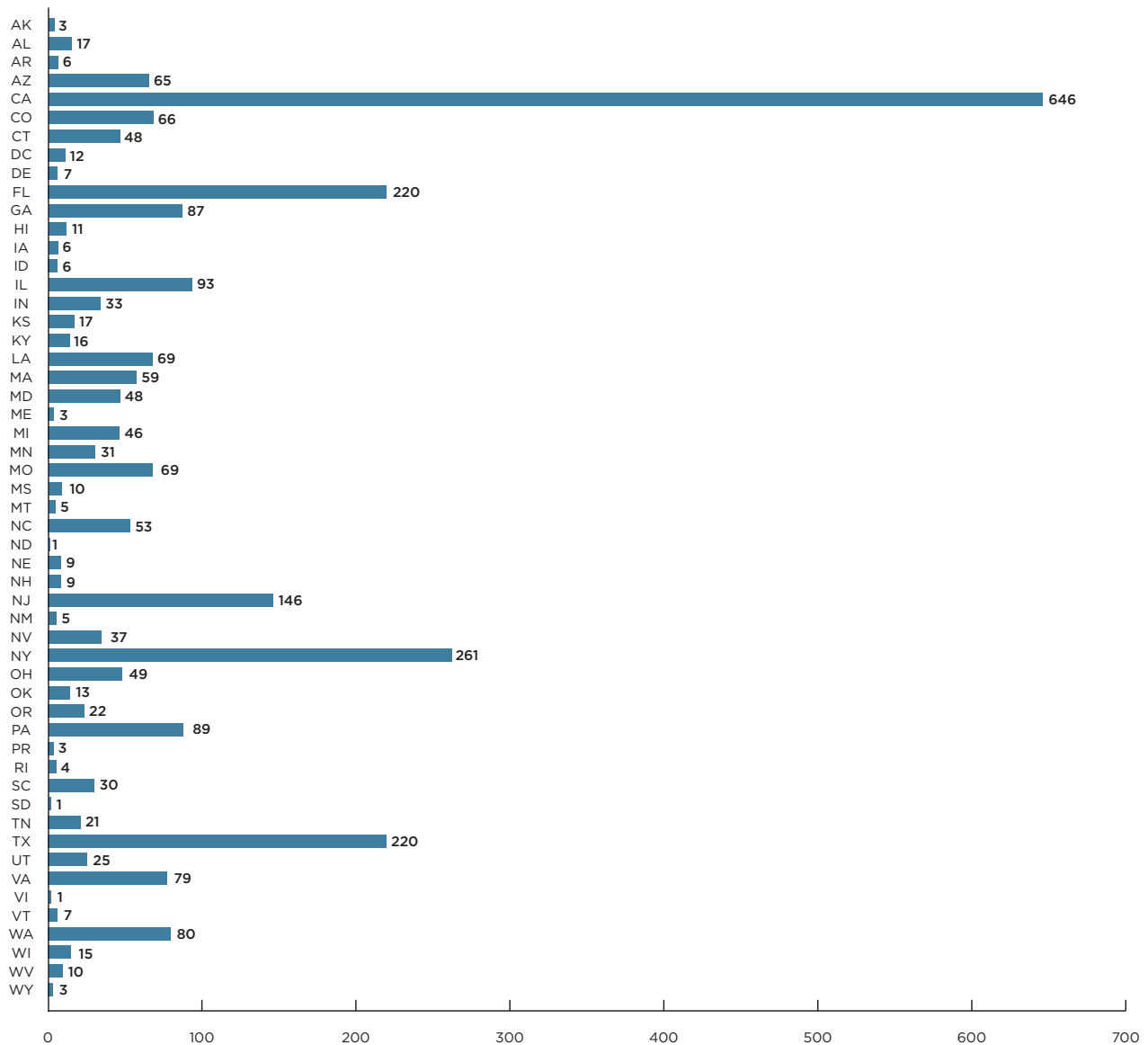
APPENDIX A

WHISTLEBLOWER TIPS BY ALLEGATION TYPE COMPARISON OF FISCAL YEARS 2012, 2013, 2014, AND 2015



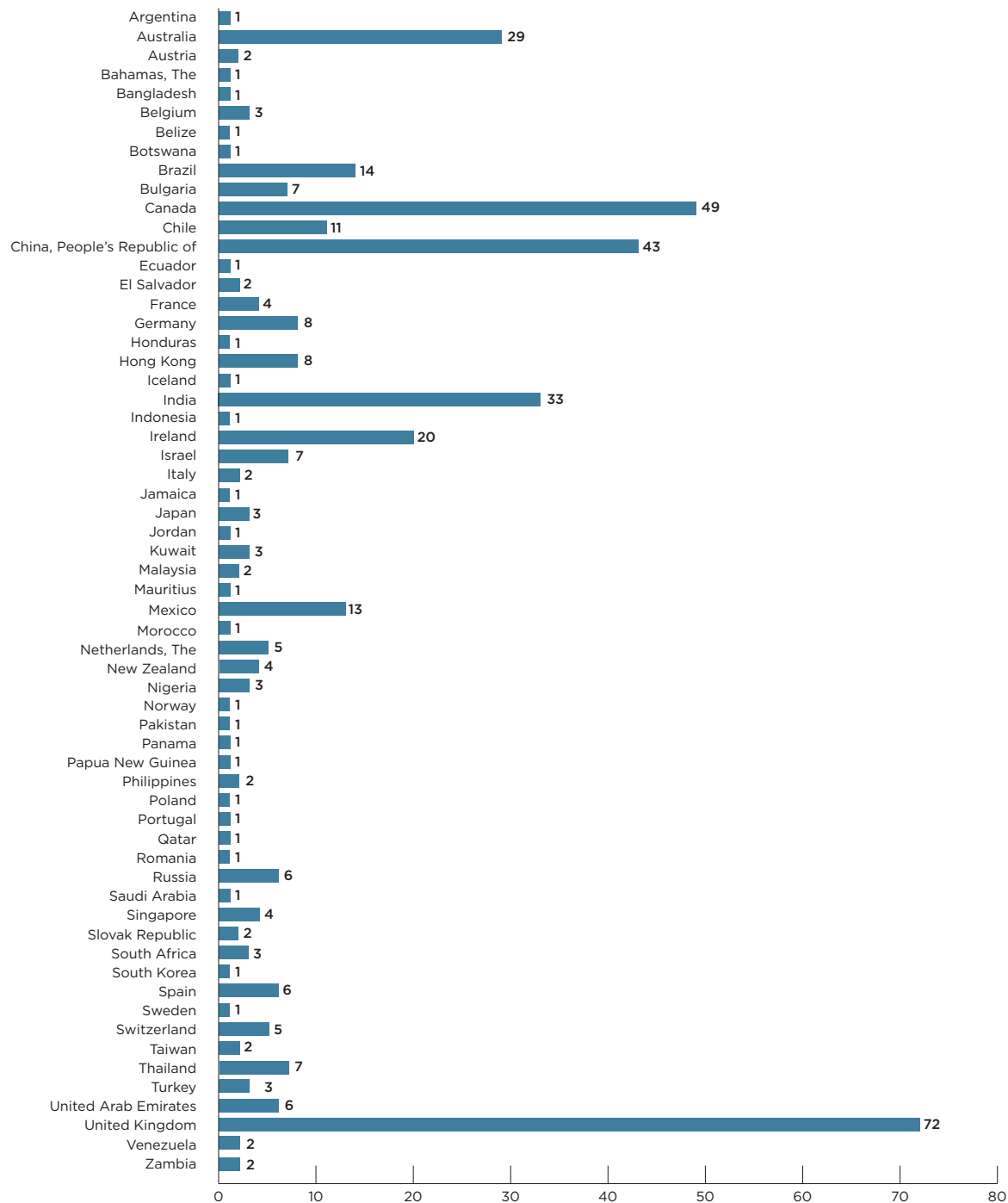
* "Other" indicates that the submitter has identified their WB TCR as not fitting into any allegation category that is listed on the questionnaire.

APPENDIX B
WHISTLEBLOWER TIPS RECEIVED BY GEOGRAPHIC LOCATION
UNITED STATES AND ITS TERRITORIES
FISCAL YEAR 2015*



*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 Fiscal Year 2015. 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 Fiscal Year 2015 was 2892, which constitutes approximately 70% of the individuals participating in the Commission's whistleblower program for this period. Additionally, 822 individuals constituting approximately 20% of the total number of persons participating in the Commission's whistleblower program for Fiscal Year 2015 submitted WB TCRs without any foreign or domestic geographical categorization or submitted them anonymously through counsel.

APPENDIX C
WHISTLEBLOWER TIPS RECEIVED BY
GEOGRAPHIC LOCATION INTERNATIONAL
FISCAL YEAR 2015*



*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 Fiscal Year 2015. The total number of persons submitting WB TCRs from abroad during Fiscal Year 2015 was 421, which constitutes approximately 10% of the individuals participating in the Commission's whistleblower program for this period.

