

SEC Annual Report on Whistleblower Program Highlights Record-Setting 10-Year Anniversary

November 19, 2020

On November 16, 2020, the U.S. Securities and Exchange Commission's (the "SEC" or the "Commission") Office of the Whistleblower (the "OWB") submitted its annual report to Congress on the status of the SEC's whistleblower program.¹ Fiscal Year 2020 marked a historic and record-setting year for the program in numerous ways, including with respect to the number of whistleblower tips received and processed, number of awards granted and the total dollar value of individual awards issued. This year's report stands in marked contrast to last year's report, where the OWB saw a decline in the number of whistleblower complaints received for the first time since the program's inception in 2011. While FY 2019 saw the number of whistleblower claims appearing to level off, this year's statistics suggest a renewed vigor and activity in the program. Indeed, in a statement accompanying the report, OWB Chief Jane Norberg noted that "[w]e hope the awards made in FY 2020 continue to incentivize whistleblowers to come forward and report specific, timely, and credible information to the Commission, which in turn enhances the agency's ability to detect wrongdoing and protect investors and the marketplace."

Whistleblower Tips and Awards. This year, the whistleblower program crossed the \$500 million mark milestone to reach \$562 million in total whistleblower awards since the inception of the program. Significantly, \$175 million of that total was awarded in FY 2020 alone. FY 2020 also brought the highest number of award recipients in the program's history—39 individuals. The awards made in FY 2020 represent 31% of total dollars awarded to all whistleblowers and 37% of individual award recipients since the program began. As in FY 2019, two individual awards comprised the overwhelming majority of the year's payouts, reflecting the two largest single awards in the program's history: \$50 million on June 4, 2020 and \$114 million on October 22, 2020. Quantity of tips was also at an all-time high in FY 2020; the Commission received more than 6,900 whistleblower tips, the highest number of tips in any given year. That number reflects a 31% increase from 2018, the second-highest tip year, and a 130% increase since the beginning of the program.

¹ SEC, 2020 Annual Report to Congress Whistleblower Program (hereinafter, the "Report"), [https://www.sec.gov/files/2020 Annual Report_0.pdf](https://www.sec.gov/files/2020%20Annual%20Report_0.pdf).

In FY 2020, the tips received by the SEC made the following types of allegations:²

- Corporate disclosures and financials – 1,710 tips (25% of all tips received)
- Offering fraud – 1,078 tips (16%)
- Manipulation – 942 tips (14%)
- Insider trading – 369 tips (5%)
- Initial coin offering and cryptocurrencies – 345 tips (5%)
- Trading and pricing – 300 tips (4%)
- FCPA – 208 tips (3%)
- Unregistered offerings – 137 tips (2%)
- Market event – 96 tips (1%)
- Municipal securities and public pension – 37 tips (<1%)

As compared to FY 2019, the OWB in FY 2020 received: a 54% increase in corporate disclosures and financials tips; a 56% increase in offering fraud tips; a 76% increase in manipulation tips; a 66% increase in insider trading tips; a 63% increase in initial coin offering and cryptocurrencies tips; a 49% increase in trading and pricing tips; and nearly the same number of FCPA tips. In FY 2019, the SEC included a large “other” category where the submitter identified the complaint as not fitting into any of the categories, which remained relatively constant in FY 2020 with an increase of about 100 for a total of approximately 1700 tips. In FY 2020, the SEC added initial coin offerings to the cryptocurrency category, which was its own separate category in FY 2019.

The increase in tips related to corporate disclosures and financials corresponds with the SEC Division of Enforcement’s continued focus on revenue recognition, impairment accounting, disclosures and non-GAAP reporting, all the subject of enforcement actions in the past two years.³

² The most tips received were under the “other” category (1,689 tips), which means the tipster did not select one of the available categories.

³ See Debevoise & Plimpton, Accounting & Reporting Enforcement Round-Up (Oct. 2019), <https://www.debevoise.com/insights/publications/2019/10/accounting-and-financial-reporting-round-up>.

As with the past several years, tips came from every state in the United States, the District of Columbia, Puerto Rico and the Virgin Islands, as well as internationally, where 11% of tips originated in 78 foreign countries, with the highest number coming from Canada (91), the United Kingdom (84) and China (67). Germany, which ranked second in highest number of tips received in FY 2019, has since become eclipsed by Colombia, Chile and Australia.⁴

Whistleblower Protection. Echoing last year's report, the FY 2020 Report references the Commission's actions to protect would-be whistleblowers by enforcing the anti-retaliation and anti-interference provisions of Dodd-Frank. As in FY 2019, the Report notes that advancing anti-retaliation protections and combating efforts to impede reporting remain a high priority for the OWB, though, in the current year, the SEC did not bring any enforcement actions charging retaliation.

Conclusion. FY 2020 was a record-setting year for the SEC whistleblower program, also marking the program's ten-year anniversary and reversing what appeared to be a trend of declining whistleblower complaints and awards from FY 2019 and FY 2018. Consistent with expectations, the SEC continues to rely on whistleblower tips as an important source for investigations and enforcement actions. Looking forward, record-setting large individual awards in FY 2020 and a new administration likely to pursue a more aggressive enforcement agenda suggest FY 2021 may be another busy year for the whistleblower program.

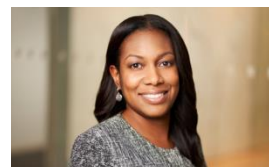
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Kara Brockmeyer
Partner, Washington, D.C.
+1 202 383 8120
kbrockmeyer@debevoise.com



Andrew J. Ceresney
Partner, New York
+1 212 909 6947
aceresney@debevoise.com



Arian M. June
Partner, Washington, D.C.
+1 202 383 8053
ajune@debevoise.com

⁴ This may be partially attributed to a chilling effect created by the Second Circuit's denial of compelling whistleblower awards for an investigation into Deutsche Bank AG. See *Kilgour v. SEC*, 2d Cir., No. 18-01124 (Nov. 8, 2019).



Robert B. Kaplan
Partner, Washington, D.C.
+1 202 383 8060
rbkaplan@debevoise.com



Julie M. Riewe
Partner, Washington, D.C.
+1 202 383 8070
jriewe@debevoise.com



Jonathan R. Tuttle
Partner, Washington, D.C.
+1 202 383 8124
jrtuttle@debevoise.com



Mary Jo White
Partner, New York
+1 212 909 6260
mjwhite@debevoise.com



Ada Fernandez Johnson
Counsel, Washington, D.C.
+1 202 383 8036
afjohnson@debevoise.com



Michael P. Geraltowski
Law Clerk, Washington, D.C.
+1 202 383 8209
mpgeraltowski@debevoise.com