

SEC Whistleblower Office Announces Results for FY 2022

Agency’s Program Tops \$1.3 Billion in Awards since Inception; Rapid Growth in Tips and Awards Continues

November 15, 2022

Fiscal Year (FY) 2022 continued to build on the record-breaking success of FY 2021 for the U.S. Securities and Exchange Commission’s Whistleblower Program. In FY 2022, the Commission awarded approximately \$229 million in 103 awards, making FY 2022 the Commission’s second highest year in terms of dollar amounts and number of awards. Since the beginning of the program, the SEC has paid more than \$1.3 billion in 328 awards to individuals for providing information that led to the success of SEC and other agencies’ enforcement actions.¹ Whistleblowers have played a critical role in the SEC’s enforcement efforts in protecting investors and the marketplace. Enforcement actions brought using information from meritorious whistleblowers have resulted in orders for more than \$6.3 billion in total monetary sanctions, including more than \$4.0 billion in disgorgement of ill-gotten gains and interest, of which more than \$1.5 billion has been, or is scheduled to be, returned to harmed investors.

The Commission also received a record high number of whistleblower tips alleging wrongdoing. In FY 2022, the Commission received over 12,300 whistleblower tips—the largest number of whistleblower tips received in a fiscal year.

“The significant increase in the number of whistleblower tips and awards since the program’s inception shows that the program, with its enhanced confidentiality protections, is effectively incentivizing whistleblowers to make the often difficult decision to come forward with information about potential securities-law violations,” said Creola Kelly, Chief of the Office of the Whistleblower (OWB). “Regardless of whether a whistleblower is a corporate insider, a main street investor, or an unrepresented claimant, the Commission vigorously safeguards their identity while rewarding eligible individuals who identify bad actors in our markets.”

Claims for Awards

In FY 2022, the Commission granted awards in 70 Covered Actions including the following noteworthy claims:²

- **Whistleblowers saw something and said something.** For example, in one matter, the Commission awarded joint whistleblowers who provided key documents to the staff and provided information to help the staff understand the company’s business practices. In

¹ For purposes of determining the total number of awards, we are separately counting joint whistleblowers and whistleblowers who received awards in multiple covered actions.

² In FY 2022, the Commission also issued awards in connection with eight related actions pursuant to Exchange Act Rule 21F-11.

that same matter, the Commission also awarded another group of joint whistleblowers who provided first-hand accounts of the company's wrongdoing.³

- **Compliance officer who acted when their company would not.**⁴ While the Whistleblower Rules generally prohibit awards based on information learned by compliance officers performing their duties,⁵ the Commission found that a compliance officer met an exception whereby the whistleblower reported internally and waited at least 120 days before reporting concerns to the Commission.⁶
- **Outsider providing independent analysis.**⁷ The Commission awarded an outsider unaffiliated with the respondent entity based upon information developed through the outsider's unusual effort and intensive research over the course of many weeks. Based on that detailed analysis of publicly available information, the outsider revealed allegations that were not previously known to Enforcement staff.
- **Whistleblower who expeditiously submitted TCR after learning of the requirement receives more than \$5 million.**⁸ Under Rule 21F-9(e), adopted as part of the 2020 Whistleblower Rule Amendments, the Commission waived initial noncompliance with the TCR-submission requirement and issued an award to an unrepresented whistleblower who submitted a TCR within 30 days of learning of the requirement.
- **Denied claimant who made false statements to the Commission.**⁹ The Commission found that, although an individual had provided information that caused the staff to open an investigation, the individual made materially false statements both during the staff's investigation and in the individual's application for a whistleblower award.¹⁰ The Commission emphasized that it expects that "individuals interacting with Enforcement staff and the whistleblower award program be transparent and honest in their dealings with the Commission."

³ Order Determining Whistleblower Award, Exchange Act Release No. 94789, File No. 2022-53 (Apr. 25, 2022).

⁴ Order Determining Whistleblower Award, Exchange Act Release No. 94736, File No. 2022-48 (Apr. 18, 2022).

⁵ Exchange Act Rule 21F-4(b)(iii)(B). In prior fiscal years, the Commission has made awards to other whistleblowers who held compliance or internal audit roles because they met exceptions to the prohibition stated in Rule 21F-4(b)(v). *See, e.g.*, Order Determining Whistleblower Award, Exchange Act Release No. 92778, File No. 2022-74 (Aug. 27, 2021) (awards to three individuals who held compliance roles); Order Determining Whistleblower Award, Exchange Act Release No. 90656, File No. 2021-15 (Dec. 14, 2020) (award to whistleblower who held internal audit role).

⁶ Exchange Act Rule 21F-4(b)(v)(C).

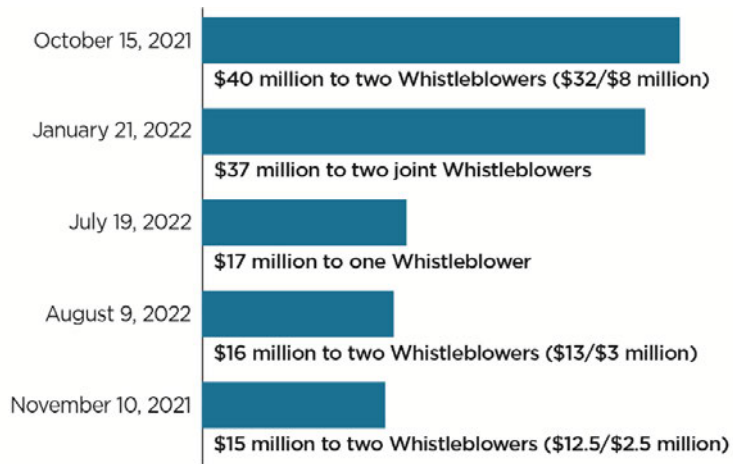
⁷ Order Determining Whistleblower Award, Exchange Act Release No. 94860, File No. 2022-55 (May 6, 2022).

⁸ Order Determining Whistleblower Award, Exchange Act Release No. 95384, File No. 2022-68 (July 28, 2022).

⁹ Order Determining Whistleblower Award, Exchange Act Release No. 95486, File No. 2022-74 (Aug. 12, 2022).

¹⁰ Rule 21F-8(c)(7) states that a claimant seeking a whistleblower award is not eligible to be considered for an award if the Commission "finds that, in [claimant's] whistleblower submission, [or claimant's] other dealings with the Commission (including [claimant's] dealings beyond the whistleblower program and covered action) . . . [claimant] knowingly and willfully made any materially false, fictitious, or fraudulent statement or representation."

Top Five Awards of FY 2022



Determining Award Percentages

The Whistleblower Rule Amendments that became effective in December 2020 created a presumption of a maximum 30% award in certain circumstances where the maximum award would not exceed \$5 million. The Commission ordered a maximum aggregate award pursuant to the presumption for more than 90% of the awards issued in FY 2022.

Although the presumption of a maximum award will apply to most awards, the Commission determines the appropriate award percentage based on the factors in Rules 21F-6(a) and (b) if the 30% presumption does not apply and in apportioning an award between meritorious claimants.¹¹

- **Positive Factors that Increase an Award:**
 - **Significance of the information.** This factor is a critical driver of the award percentage and in certain circumstances could be the most important factor when apportioning award amounts between two or more meritorious whistleblowers. In FY 2022, the Commission made awards in 14 Covered Actions that included two or more independent whistleblowers (that is, not joint whistleblowers), and the apportionment of awards in those matters often focused on the relative significance and timing of the whistleblowers' submissions.
 - **Assistance provided by the whistleblowers.** Whistleblower assistance can come at any stage of an investigation and can include helping staff decipher complex transactions, identifying key witnesses, documents or other sources of information, and communicating with staff and certain other authorities when appropriate. Whistleblowers may also provide assistance during the litigation phase of an enforcement action.

¹¹ For a more detailed overview of the award process, please see OWB's annual report for FY 2021, which is available on OWB's website at <https://www.sec.gov/whistleblower/resources>.

- **Law enforcement interest.** The law enforcement interest may be high when the whistleblower provides information about ongoing violations that are harming investors, such as misappropriation of investor funds, or about securities violations occurring abroad, which may be more difficult for Commission staff to detect or to gather evidence about without a whistleblower’s cooperation.
- **Participation in internal compliance or reporting systems.** While claimants are not required to report internally, their award percentage may be increased if they do so.
- **Negative Factors that Decrease an Award**
 - **Unreasonable reporting delay.** In FY 2022, the Commission reduced the award percentage of eight whistleblowers who unreasonably delayed in reporting. The Commission continues to emphasize the importance of timely reporting, which allows the Commission to act quickly to protect investors, gather evidence before it becomes harder to access, and ensure that remediation for misconduct is not time-barred.
 - **Culpability.** The Commission reduced three awards in FY 2022 for the whistleblowers’ participation in or benefit from the underlying misconduct. In two of these matters, the Commission also found that the whistleblowers had unreasonably delayed in reporting.
 - **Interference with internal reporting systems.** No award was reduced in FY 2022 on account of this factor.

Recent Rulemaking

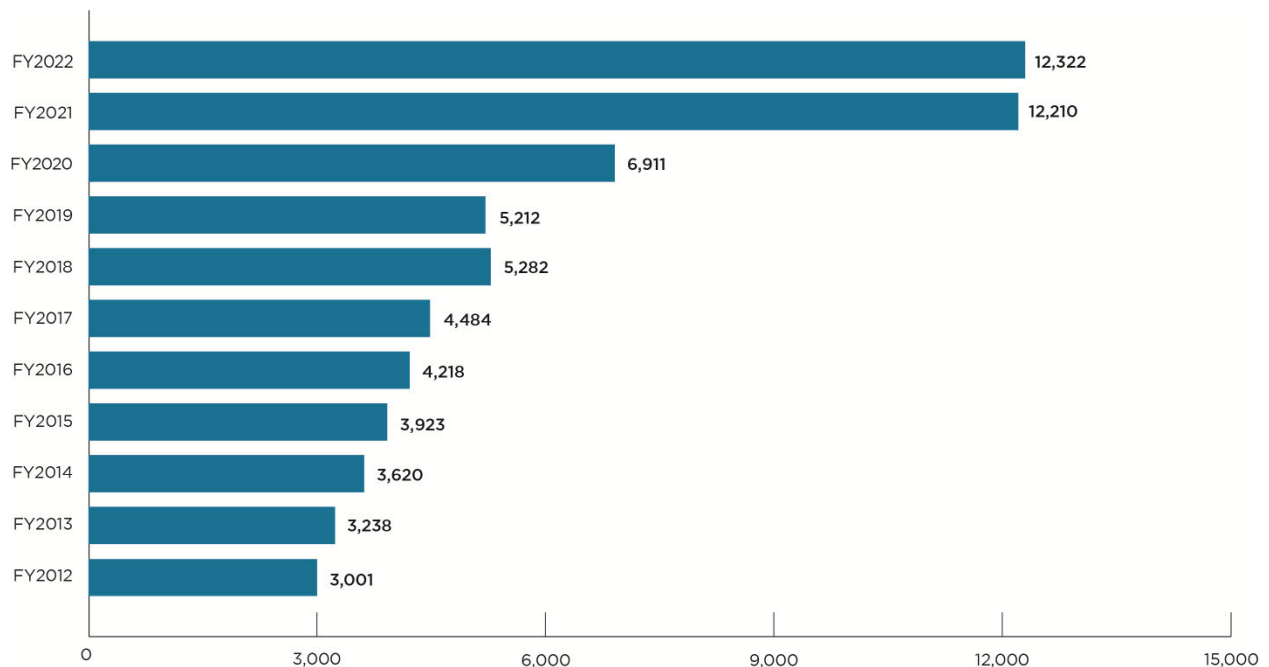
In FY 2022, the Commission also adopted two amendments to the rules governing the Whistleblower Program.¹² The first rule change allows the Commission to pay whistleblower awards for certain actions brought by other entities, including designated federal agencies, in cases where those awards might otherwise be paid under the other entity’s whistleblower program. The Commission will make an award on the other action if the other agency’s whistleblower program is not comparable to the Commission’s or if the total amount awarded could not exceed \$5 million. To be clear, as was true before the rule amendment, only whistleblowers who are eligible for an award in connection with an SEC enforcement action may receive an award in a “related action,” and whistleblowers cannot receive awards under both the SEC’s and the other agency’s programs for the same action. The revision to Rule 21F-6 affirms the Commission’s statutory authority to consider the dollar amount of a potential award for the

¹² Whistleblower Program Rules, Release No. 34-9560 (Aug. 26, 2022). These amendments became effective on October 3, 2022.

purpose of increasing the award amount, and states that the Commission will not use its statutory authority to consider the dollar amount of a potential award for the purpose of decreasing an award.¹³ These amendments help ensure that whistleblowers are both incentivized and appropriately rewarded for their efforts in reporting potential violations of the law to the Commission.

Increase in Whistleblower Tips

In FY 2022, the Commission received over 12,300 whistleblower tips—the largest number of whistleblower tips received in a fiscal year—which represented a slight increase over FY 2021. The table below shows the number of whistleblower tips received by the Commission on a yearly basis since the inception of the Whistleblower Program.¹⁴



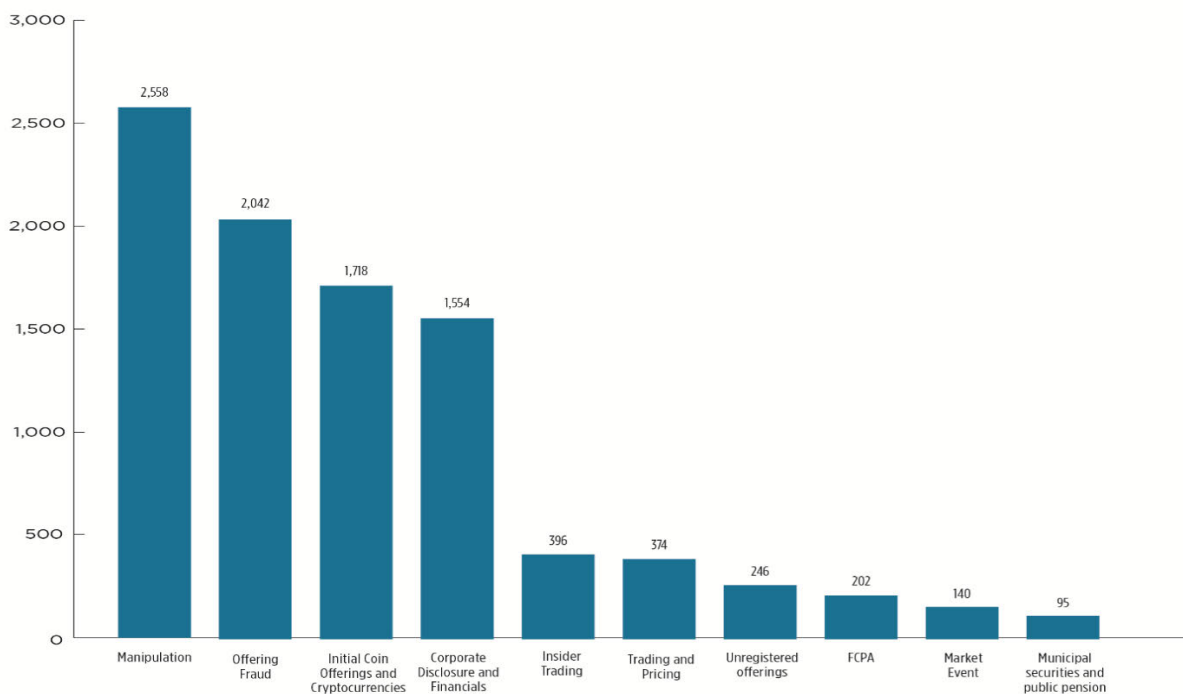
- **Nature of Whistleblower Allegations**

Whether submitting tips on a hard-copy Form TCR or through the online portal, whistleblowers are asked to identify the nature of their complaint allegations. The record high number of tips the Commission received in FY 2022 includes a variety of alleged misconduct. The most common complaint categories reported by whistleblowers were Manipulation (21%), Offering Fraud (17%), Initial Coin Offerings and Cryptocurrencies (14%), and Corporate

¹³ The Final Rule and a fact sheet discussing the amendments are available on the SEC’s website at <https://www.sec.gov/news/press-release/2022-151>.

¹⁴ The Commission also receives tips from individuals who do not wish to be part of the Whistleblower Program. The data in this report is limited to whistleblower tips and does not reflect all tips or complaints received by the Commission during the fiscal year.

Disclosures and Financials (13%).¹⁵ The following graph reflects the number of whistleblower tips received in FY 2022 by allegation category.¹⁶



Finally, the Whistleblower Program has become fundamentally international in character, with tips received from all over the world. In FY 2022, the foreign countries from which the highest number of tips originated were Canada, the United Kingdom, Germany, China, Mexico, and Brazil. Domestically, the states from which the highest number of tips originated were Florida, South Carolina, California, Texas, and New York.

Impeding Reporting to the Commission and Retaliation

The Dodd-Frank Act allows the Commission to bring actions against any person, including a company, for impeding an individual’s ability to report potential securities-related misconduct to the Commission.¹⁷ To date, the Commission has brought sixteen such actions against companies and individuals, including two in FY 2022. In addition, in FY 2022 the Commission was granted summary judgment on a Rule 21F-17 claim in an action filed in 2019.

¹⁵ This breakdown reflects the categories selected by whistleblowers and, thus, the data represents the whistleblower’s own characterization of the violation category.

¹⁶ There were also almost 3,000 whistleblower tips where the whistleblower TCR was identified as not falling into any listed allegation category.

¹⁷ Exchange Act Rule 21F-17(a).

- **The Brink’s Company charged and penalized for requiring certain employees to sign restrictive confidentiality agreements.**¹⁸ The Commission found that Brink’s Company required certain employees to sign confidentiality agreements prohibiting the disclosure of any financial or business information to third-parties without an exemption for whistleblowers to report to the Commission. The Commission further found that shortly after the Commission instituted its first Rule 21F-17 action in 2015, Brink’s Company modified its confidentiality agreement by adding a \$75,000 liquidated damages provision for violations of the agreement.
- **Co-Founder of technology company charged and penalized for impeding employee from communicating with the Commission regarding potential misconduct.**¹⁹ The Commission found that when an employee raised concerns that the company was overstating its numbers of paying customers, the company’s co-founder and his supervisor took steps to remove the employee’s access to company IT systems while making it appear it was done in error.
- **Court grants summary judgment to the Commission in Rule 21F-17 litigation.**²⁰ In November 2021, in *SEC v. Collector’s Coffee, Inc.* the district court granted summary judgment to the Commission, finding that defendants violated Rule 21F-17 by conditioning the return of investor money on the investors’ signing agreements that prohibited them from reporting potential securities-law violations to law enforcement.

OWB assists investigative and examinations staff in identifying practices in the use of confidentiality and other kinds of agreements that interfere with individuals’ abilities to report potential wrongdoing to the Commission. OWB continues to support enforcement investigations involving whistleblowers who suffered retaliation after reporting securities violations to the Commission.

Investor Protection Fund

Section 922 of Dodd-Frank established the Investor Protection Fund (Fund) to provide funding for the Commission’s whistleblower award program, including the payment of awards in related actions.²¹ No money has been taken or withheld from harmed investors to pay whistleblower awards. As required by statute, all payments are made out of the Fund, which is financed entirely through monetary sanctions paid to the SEC by securities law violators. The

¹⁸ See SEC Charges the Brink’s Company with Violating Whistleblower Protection Rule, <https://www.sec.gov/enforce/34-95138-s> (June 22, 2022).

¹⁹ See SEC Charges Co-Founder of Technology Company for Violating Whistleblower Protection Rule, <https://www.sec.gov/enforce/34-94703-s> (Apr. 12, 2022).

²⁰ *SEC v. Collector’s Coffee*, 19 Civ. 4355 (VM), 2021 U.S. Dist. LEXIS 22216,| 2021 WL 5360440 (S.D.N.Y. Nov. 17, 2021).

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

Fund also is used to finance the operations of the SEC’s Office of Inspector General to improve work efficiency and productivity.²²

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 2022.

| | FY 2022 |
|---|--------------------|
| Balance of Fund at beginning of fiscal year | \$144,441,949.35 |
| Unavailable amounts from FY 2021 available during fiscal year ²³ | \$25,885,756.00 |
| Amounts deposited into or credited to Fund during fiscal year | \$387,168,256.79 |
| Amounts of interest receipts from investments during fiscal year | \$2,666,925.27 |
| Amount of receipts during the fiscal year that are unavailable ²⁴ | (\$22,220,606.00) |
| Amounts paid from Fund during fiscal year to whistleblowers | (\$287,212,185.03) |
| Amounts estimated to be paid from Fund during fiscal year to whistleblowers ²⁵ | \$55,681,160.13 |
| Amount disbursed to Office of the Inspector General during fiscal year | (\$43,462.61) |
| Balance of Fund at end of fiscal year | \$306,367,793.90 |

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

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

* * *

OWB maintains a hotline to respond to questions about the program. Individuals may leave messages on the hotline by calling (202) 551-4790. Calls are typically returned by

²² 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).”

²³ Amounts relate to available resources temporarily reduced during the fiscal year as a result of the Budget Control Act of 2011. These amounts become available at the beginning of the following fiscal year.

²⁴ *Id.*

²⁵ The positive number in this line reflects the lower awards payable balance as of September 30, 2022, compared to the awards payable balance at the end of FY 2021.

OWB staff within three business days. In FY 2022, OWB returned more than 2,500 calls from the public.

To report a potential securities law violation or for general information about the program, please visit OWB's webpage at www.sec.gov/whistleblower.