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# **U.S. Securities and Exchange Commission**

## **Annual Report on the Dodd-Frank Whistleblower Program**

**Fiscal Year 2012**

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**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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**November 2012**

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## I. Introduction

Section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”),<sup>1</sup> amended the Securities Exchange Act of 1934 (the “Exchange Act”)<sup>2</sup> by, among other things, adding Section 21F,<sup>3</sup> 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 the imposition of monetary sanctions over \$1,000,000, and certain successful related actions. Awards are required to be made in the amount of 10% to 30% of the monetary sanctions collected. Awards will be paid from the Commission’s Investor Protection Fund (the “Fund”). In addition, § 924(d) of the Dodd-Frank Act directs the Commission to establish a separate office within the Commission to administer and to effectuate the whistleblower program.

Section 924(d) of the Dodd-Frank Act requires the Commission’s Office of the Whistleblower (the “Office” or “OWB”) to report annually to Congress on OWB’s activities, whistleblower complaints, and the response of the Commission to such complaints. In addition, Exchange Act § 21F(g)(5) 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;
- the amounts deposited into or credited to the Fund during the preceding fiscal year;

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<sup>1</sup> Pub. L. No. 111-203, § 922(a), 124 Stat 1841 (2010).

<sup>2</sup> 15 U.S.C. § 78a *et seq.*

<sup>3</sup> 15 U.S.C. § 78u-6.

- 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 Dodd-Frank Act § 924(d) and Exchange Act § 21F(g)(5). Parts II, III, and IV of this report primarily address the requirements of Dodd-Frank Act § 924(d), and Parts V and VI of this report, along with the financial statements of the Investor Protection Fund that are included in the Commission’s annual Agency Financial Report, primarily address the requirements of Exchange Act § 21F(g)(5).

## **II. Activities of The Office of The Whistleblower**

Section 924(d) of the Dodd-Frank Act directs the Commission to establish a separate office within the Commission to administer and to enforce the provisions of Exchange Act § 21F. On February 18, 2011, the Commission announced the appointment of Sean X. McKessy to head OWB in the Division of Enforcement (“Enforcement”).<sup>4</sup> On January 17, 2012, the Commission named Jane A. Norberg as the Office’s Deputy Chief.<sup>5</sup> In addition to Mr. McKessy and Ms. Norberg, the Office is currently staffed by eight attorneys, three paralegals, and one program support specialist.<sup>6</sup>

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<sup>4</sup> <http://www.sec.gov/news/press/2011/2011-47.htm>.

<sup>5</sup> <http://www.sec.gov/news/press/2012/2012-10.htm>.

<sup>6</sup> Additionally, as of the date of this report, the Office has extended an offer to one additional attorney who is expected to join OWB shortly.

Since its establishment, OWB has focused primarily on establishing the office and implementing the whistleblower program. During Fiscal Year 2012, the Office's activities included the following:

- Communicating with whistleblowers who have sent tips, additional information, claims for awards, and other correspondence to OWB. OWB also meets with whistleblowers, potential whistleblowers and their counsel, and consults with the staff in Enforcement to provide guidance to whistleblowers and their counsel concerning expectations and follow up;
- Reviewing and processing applications for awards;
- Working with staff in Enforcement to identify and track all enforcement cases potentially involving a whistleblower to assist in the documentation of the whistleblower's information and cooperation in anticipation of an eventual claim for award;
- Maintaining and updating the OWB website to better inform the public about the whistleblower program ([www.sec.gov/whistleblower](http://www.sec.gov/whistleblower)). The website includes two videos by Mr. McKessy providing 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, notices of covered actions, links to helpful resources, and answers to frequently asked questions;
- Supporting the initiative of the Residential Mortgage Backed Securities (RMBS) Fraud Working Group, a working group of the Financial Fraud Enforcement Task Force established by President Obama in November 2009, by establishing an online link to the OWB website from the member agencies of the RMBS Fraud Working Group for the public to submit tips and complaints about possible illegal activity in the offering and sale of residential mortgage-backed securities. The OWB website was also updated in connection with this initiative to include a page providing an overview of the RMBS Fraud Working Group and a direct link to report RMBS fraud. OWB further supported the initiative by helping to implement procedures, consistent with the confidentiality requirements of Exchange Act § 21F(h)(2), to permit the Enforcement staff to share whistleblower tips with the member agencies of the RMBS Fraud Working Group;
- Providing extensive training on the Dodd-Frank Act and the Commission's implementing rules (the "Final Rules")<sup>7</sup> to the Commission's staff. This included in-person training and educational sessions in seven of the eleven Regional Offices, video-linked training to the entire Enforcement staff, as well as training in the Home Office;

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<sup>7</sup> 240 C.F.R. § 21F-1 through 21F-17.

- Establishing and implementing internal policies, procedures, and protocols;
- Manning a publicly-available whistleblower hotline for members of the public to call with questions about the program. OWB attorneys return all calls within 24 business hours. During the 2012 fiscal year, the Office returned over 3,050 phone calls from members of the public;<sup>8</sup>
- Reviewing and entering whistleblower tips received by mail and fax into the Commission’s Tips, Complaints, and Referrals System (the “TCR System”);
- Conferring with regulators from other agencies’ whistleblower offices, including the Internal Revenue Service, Commodity Futures Trading Commission, Department of Justice, and Department of Labor (OSHA), to discuss best practices and experiences;
- Publicizing the program actively through participation in webinars, media interviews, presentations, press releases, and other public communications;<sup>9</sup> and
- Providing ongoing guidance to Commission staff regarding various aspects of the program, including the development of internal policies for the handling of confidential whistleblower identifying information.

### **III. Whistleblower Tips Received During Fiscal Year 2012**

The Final Rules specify that individuals who would like to be considered for a whistleblower award must submit their tip to OWB on Form-TCR either via facsimile or mail or via the Commission’s online TCR questionnaire portal. All whistleblower tips received by the Commission are entered into the TCR System, the Commission’s centralized database for the prioritization, assignment, and tracking of TCRs received from the public.

In Fiscal Year 2012, 3,001 whistleblower TCRs were received. Appendix A lists, by subject matter and month, the number of whistleblower tips received during the 2012 fiscal year. The most common complaint categories reported by whistleblowers were Corporate Disclosures and

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<sup>8</sup> Since the hotline was established in May 2011, the Office returned approximately 3,700 phone calls from members of the public through the end of the 2012 fiscal year.

<sup>9</sup> See, e.g., <http://www.sec.gov/news/press/2012/2012-162.htm>.

Financials (18.2%), Offering Fraud (15.5%), and Manipulation (15.2%).<sup>10</sup> The Commission received whistleblower submissions from individuals in all 50 states, the District of Columbia and the U.S. territory of Puerto Rico, as well as 49 countries outside the United States. Appendices B and C set forth tabular presentations of the sources of foreign and domestic whistleblower tips.

#### **IV. Processing of Whistleblower Tips During Fiscal Year 2012**

OWB currently leverages the resources and expertise of the Commission's Office of Market Intelligence ("OMI") to evaluate incoming whistleblower TCRs and to assign specific, timely, and credible TCRs to members of the Enforcement staff for further investigation.

During the evaluation process, both staff and supervisors in OMI examine each tip to identify those that are sufficiently specific, timely, and credible to warrant the further allocation of Commission resources. Tips that relate to an existing investigation are generally forwarded to the staff working the existing matter. Tips that could benefit from the specific expertise of another Division or Office within the Commission are generally forwarded to staff in that Division or Office for further analysis. When appropriate, tips that fall within the jurisdiction of another federal or state agency are forwarded to the Commission contact at that agency, provided this can be done consistent with the confidentiality requirements of Exchange Act § 21F(h)(2). Tips that relate to the financial affairs of an individual investor or a discrete investor group, and that are determined not to be strong candidates for further expenditure of the Commission's investigative resources, are usually forwarded to the Office of Investor Education and Advocacy ("OIEA"). Comments or questions about agency practice or the federal securities laws are also forwarded to OIEA.

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<sup>10</sup> 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.

OWB supports the tip allocation and investigative processes in several ways. When whistleblowers submit tips on Form TCR in hard copy via mail or fax, OWB enters this information into the TCR System so it can be evaluated.<sup>11</sup> During the evaluation process, OWB may assist by contacting the whistleblower to obtain additional information, or may participate in the qualitative assessment of the best course of action to take in response to a whistleblower tip. During an investigation, OWB is available as needed to serve as a liaison between the whistleblower (and his or her counsel) and investigative staff. On occasion, OWB arranges meetings between whistleblowers and subject matter experts on the Enforcement staff to assist in better understanding the whistleblowers' submissions and developing the facts of specific cases. OWB staff also communicates frequently with Enforcement staff with respect to the timely documentation of information regarding the staff's interactions with whistleblowers, the value of the information provided by whistleblowers, and the assistance provided by whistleblowers as the potential securities law violation is being investigated.

## **V. Whistleblower Incentive Awards Made During Fiscal Year 2012**

OWB posts a Notice of Covered Action 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. Once a Notice of Covered Action 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.

Timely submitted applications are reviewed by the staff designated by the Director of Enforcement ("Claims Review Staff") in accordance with the criteria set forth in the Dodd-Frank

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<sup>11</sup> Tips that are submitted by whistleblowers through the Commission's online Tips, Complaints and Referrals questionnaire are automatically forwarded to OMI for evaluation.



Act and Final Rules. The Claims Review Staff is currently comprised of four senior officers in Enforcement and a senior attorney in the Office of the General Counsel. To assist the Claims Review Staff in its review, OWB prepares a binder of relevant documents and a recommendation concerning the appropriate disposition of the award claim. The Claims Review Staff then makes a Preliminary Determination setting forth its assessment as to whether the claim should be allowed or denied and, if allowed, setting forth the proposed award percentage amount. If a claim is denied and the applicant does not object, then the Preliminary Determination of the Claims Review Staff becomes the Final Order of the Commission. However, an applicant can ask for reconsideration of the Preliminary Determination, in which event the Claims Review Staff considers the issues and grounds advanced in the applicant's response, along with any supporting documentation provided. After this additional review, the Claims Review Staff issues a Proposed Final Determination, and the matter is forwarded to the Commission for its decision. In addition, all Preliminary Determinations of the Claims Review Staff that involve an award of money are forwarded to the Commission as Proposed Final Determinations irrespective of whether the applicant objected to the Preliminary Determination. These procedures ensure that all claims for which a monetary award is recommended and all preliminary denials of claims to which the applicant objects are put before the Commission for final decision. Within 30 days of receiving notice of the Proposed Final Determination, any Commissioner may request that the Proposed Final Determination be reviewed by the full Commission. If no Commissioner requests such a review within the 30-day period, then the Proposed Final Determination will become 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 determinations and issues its Final Order.

During Fiscal Year 2012, the Commission made its first award under the whistleblower program. On August 21, 2012, a whistleblower who had helped the Commission stop an ongoing multi-million dollar fraud received an award of 30 percent -- the maximum percentage payout allowed by law -- of the amount collected in the Commission's enforcement action against the perpetrators of the scheme.<sup>12</sup> The award recipient in this matter submitted a tip concerning the fraud and then provided documents and other significant information that allowed the Commission's investigation to move at an accelerated pace and ultimately led to the filing of an emergency action in federal court to prevent the defendants from ensnaring additional victims and further dissipating investor funds.<sup>13</sup> The whistleblower's assistance led to the court ordering more than \$1 million in sanctions, of which approximately \$150,000 had been collected by the end of the fiscal year. In accordance with the 30 percent award determination, on August 21, 2012, the whistleblower was paid nearly \$50,000. Motions for additional judgments are currently pending before the court and any additional collections or increase in the sanctions ordered and collected will increase the amount paid to the whistleblower.<sup>14</sup> As noted below, whistleblowers receive their awards from the Securities and Exchange Commission Investor Protection Fund ("Fund") established pursuant to Section 922 of the Dodd-Frank Act.

During the 2012 fiscal year, OWB posted 143 Notices of Covered Action for enforcement judgments and orders issued during the applicable period that included the imposition of sanctions

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<sup>12</sup> Exchange Act Release No. 67698 (Aug. 21, 2012). The Commission also denied a claim from a second individual seeking an award in this same matter because the information provided did not lead or significantly contribute to the Commission's successful enforcement action, as required under the Dodd-Frank Act and the Final Rules for a whistleblower award.

<sup>13</sup> The statutory obligation under the Dodd-Frank Act to protect the identity of whistleblowers under the program precludes us from providing additional details as to the whistleblower who was paid and the covered action to which payment related.

<sup>14</sup> An additional payment of over \$500 was made to the whistleblower in September, 2012, representing 30 percent of additional sanctions collected in connection with the case.

exceeding the statutory threshold of \$1 million.<sup>15</sup> OWB is continuing to review and process applications for awards received during the 2012 fiscal year.

## **VI. 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.<sup>16</sup> In addition, the Fund is used to finance the operations of the SEC Office of the Inspector General's suggestion program.<sup>17</sup> The suggestion program is intended for the receipt of suggestions from Commission employees for improvements in the work efficiency, effectiveness, and productivity, and use of resources at the Commission, as well as allegations by Commission employees of waste, abuse, misconduct, or mismanagement within the Commission.<sup>18</sup>

The following table provides certain of the information required by Exchange Act § 21F(g)(5) for the 2012 fiscal year (October 1, 2011 through September 30, 2012). As of

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<sup>15</sup> By posting a Notice of Covered Action for a particular case, the Commission is not making any determinations either that (i) a whistleblower tip, complaint or referral led to the Commission opening an investigation or filing an action with respect to the case or (ii) an award to a whistleblower will be paid in connection with the case.

<sup>16</sup> See Exchange Act §21F(g)(2)(A).

<sup>17</sup> See Exchange Act §21F(g)(2)(B), which provides that the Fund shall be available to the Commission for "funding the activities of the Inspector General of the Commission under section 4(i)." The 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."

<sup>18</sup> See Exchange Act §4D(a).

September 30, 2012, the Fund was fully funded, with an ending balance of \$453,429,825.58.

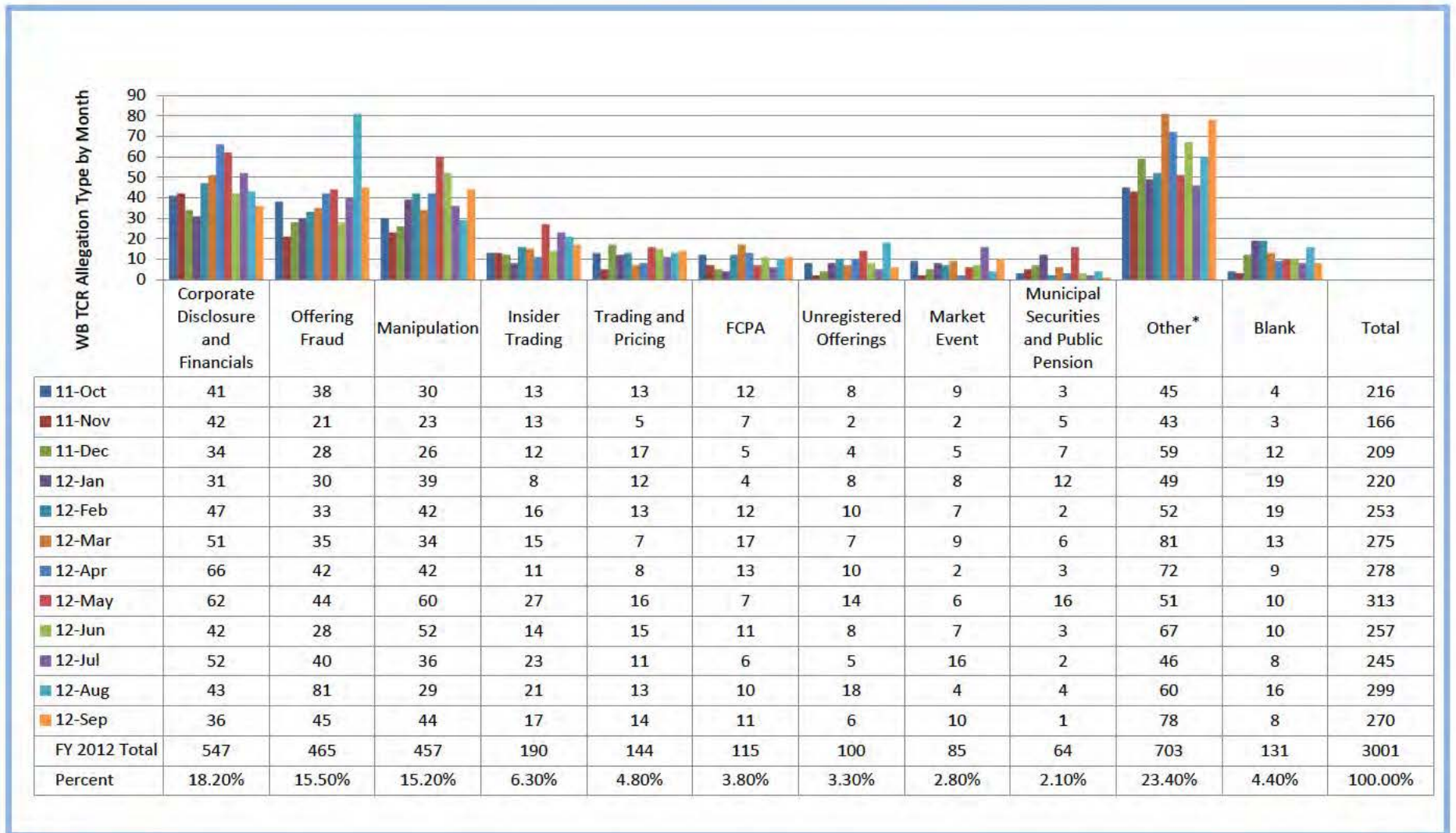
	<b>FY 2012</b>
Balance of Fund at beginning of fiscal year	\$452,788,043.74
Amounts deposited into or credited to Fund during fiscal year	\$0.00 <sup>19</sup>
Amount of earnings on investments during fiscal year	\$757,248.07
Amount paid from Fund during fiscal year to whistleblowers	(\$45,739.16)
Amount disbursed to Office of the Inspector General during fiscal year	(\$69,727.07)
Balance of Fund at end of the fiscal year	\$453,429,825.58

The audited financial statements for the Fund, including a balance sheet, income statement, and cash flow analysis are included in the Commission’s Agency Financial Report, separately submitted to Congress and accessible at <http://www.sec.gov/about/secafr2012.shtml>.

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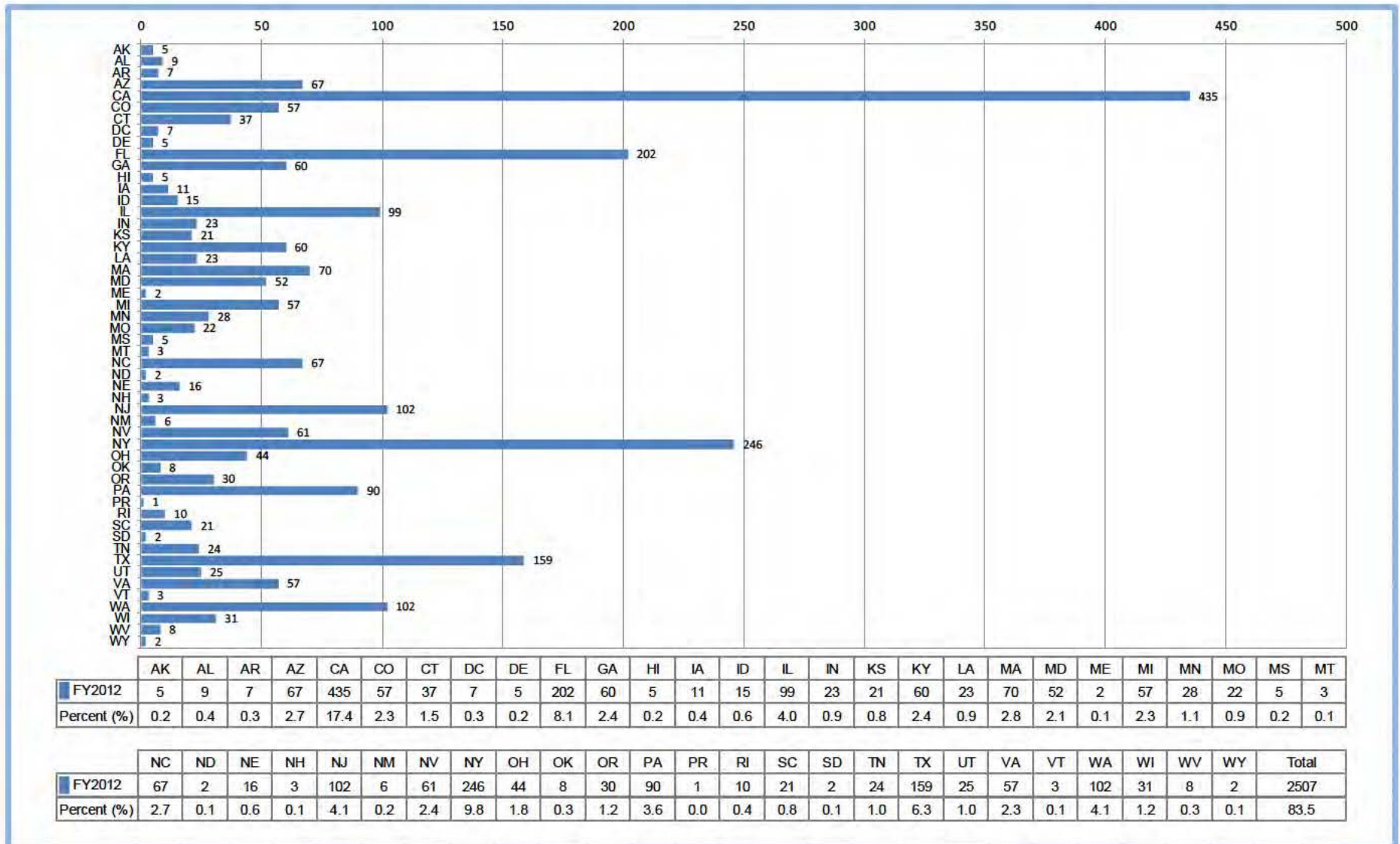
<sup>19</sup> Pursuant to Exchange Act § 21F(g)(3), no monetary sanctions are deposited into or credited to the Fund if the balance of the Fund exceeds certain thresholds at the time the monetary sanctions are collected.

## Appendix A: Whistleblower Tips by Allegation Type – Fiscal Year 2012



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

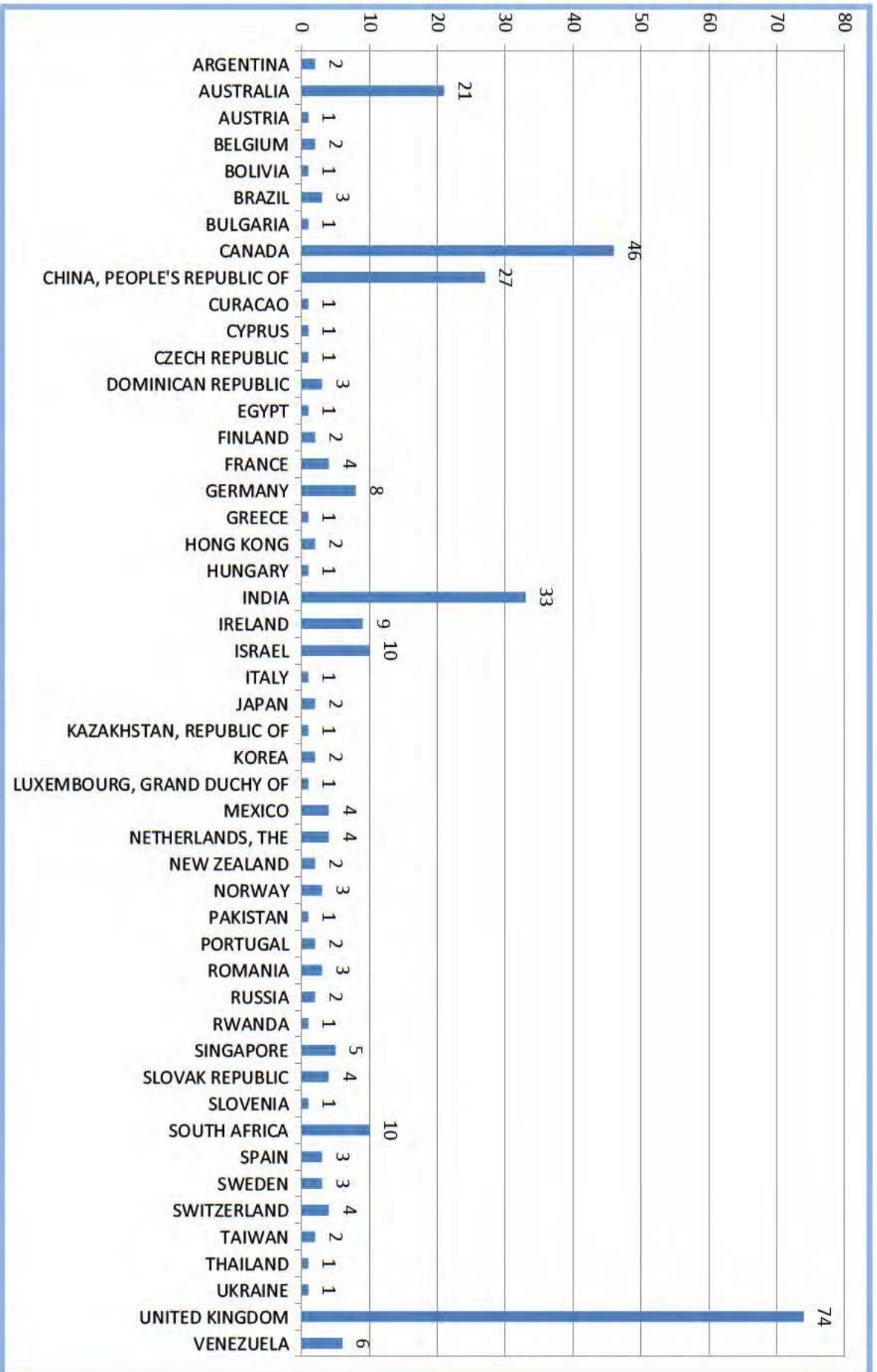
Appendix B: Whistleblower Tips Received by Geographic Location – United States and its Territories – Fiscal Year 2012\*



\* The total number of WB TCRs originating within the United States and its territories for Fiscal Year 2012 was **2507**, which constitutes 83.5% of total WB TCRs received for this period. Additionally, **170** WB TCRs constituting 5.7% of total WB TCRs received for Fiscal Year 2012 were submitted without any foreign or domestic geographical categorization.



Appendix C: Whistleblower Tips Received by Geographic Location – International – Fiscal Year 2012\*



\* The total number of WB TCRs originating from abroad for Fiscal Year 2012 was 324, which constitutes 10.8% of total WB TCRs received for this period.