

# **Navigating the Minefield of Dodd-Frank's Whistleblower Provisions (2021 Update)**

**January 18, 2022**

# Agenda

- Introduction
- Presentation
- Questions and Answers — (anonymous)
- Slides — now available on front page of Securities Docket
  - [www.securitiesdocket.com](http://www.securitiesdocket.com)
- Wrap-up

## Webcast Series

- Approximately every other week
- Check back for new webcasts on the calendar

# Today's Presenters



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# Navigating the Minefield of Dodd-Frank's Whistleblower Provisions (2021 Update)

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Securities Docket Webcast

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**PHILLIPS & COHEN LLP**

## In the Next 90 Minutes We Will Cover ...

- ✓ Dodd-Frank's Statutory Framework
- ✓ SEC Implementing Regulations
- ✓ SEC Office of the Whistleblower
- ✓ Landscape of Dodd-Frank Whistleblower Litigation
- ✓ Five Key Takeaways for the Compliance Professional



# Dodd-Frank's Statutory Framework

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# Background on the Dodd-Frank Act

**“To promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ‘too big to fail,’ to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.”**

- Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (effective July 21, 2010)
- Amended Securities Exchange Act of 1934 (“Exchange Act”)
- Seeks to address key economic issues
  - Consolidated existing and established new federal regulatory agencies to facilitate oversight of institutions with systemic risks
  - Further regulated financial markets, particularly with respect to transparency in high-risk transactions
  - Instituted consumer protection reforms
  - Encouraged reporting of perceived corporate misconduct via internal whistleblowers
    - Whistleblower incentives
    - Whistleblower protections

# Dodd-Frank's Whistleblower Incentives

## Exchange Act Section 21F (15 U.S.C. § 78u-6)

- SEC will make a financial award to “whistleblowers” who
  - “voluntarily”
    - not pursuant to pre-existing legal or contractual duty
    - before receiving a request from the SEC or other regulatory / law enforcement agency
  - provide “original information”
    - derived from whistleblower’s independent knowledge / analysis not already known to the SEC
    - provided to the SEC for first time after July 21, 2010
  - to “the Commission”
    - SEC implementing regulations prescribe procedures for submission
  - that “leads to”
    - information must either be “sufficiently specific, credible, and timely” to cause the SEC to commence / expand / reopen investigation or, where there is already ongoing investigation of subject, information must “significantly contribute[] to the success of the action”
  - a “successful enforcement [action]”
    - monetary sanctions (including penalty, disgorgement, and interest) > \$1M
    - may include sanctions imposed in criminal or regulatory actions brought by other agencies

# Dodd-Frank's Whistleblower Incentives

## Exchange Act Section 21F (15 U.S.C. § 78u-6)

- Awards range from 10-30% of monetary sanctions collected
  - Percentage determined at SEC's discretion based on:
    - Significance of information provided to success of enforcement action;
    - Degree of assistance provided;
    - Programmatic interest of the SEC in deterring violations of securities laws by providing awards to whistleblowers; and
    - Other factors the SEC may establish by rule or regulation
  - Paid out of SEC Investor Protection Fund
    - Fund credited with payments from monetary sanctions collected by SEC, except those paid into disgorgement fund or directly to victims
    - Fund balance currently ~ \$260M
    - SEC may NOT consider balance of Fund in determining size of award



# Dodd-Frank's Whistleblower Incentives

## Exchange Act Section 21F (15 U.S.C. § 78u-6)

### Statutory definition of “whistleblower”

- “The term ‘whistleblower’ means any individual who provides, or 2 or more individuals acting jointly who provide, information relating to a violation of the securities laws to the Commission, in a manner established, by rule or regulation, by the Commission”

### Statutory exclusions

- Members of certain regulatory or law enforcement agencies (e.g., FINRA)
- Persons who obtain information through performance of financial statements audit
- Persons convicted of criminal violation of law arising from same nucleus of facts underlying whistleblower report

# Dodd-Frank's Whistleblower Incentives

## Exchange Act Section 21F (15 U.S.C. § 78u-6)

- Provides federal cause of action for retaliation against “whistleblowers”
  - Employers may not take adverse employment action or discriminate against “whistleblower” because of any lawful act done by “whistleblower” in:
    - providing information to the SEC;
    - initiating, testifying in, or assisting in any investigation or administrative action of SEC based on such information; or
    - making “disclosures that are required or protected” under (1) “the Sarbanes-Oxley Act” (“SOX”); (2) “the Securities Exchange Act of 1934”; (3) 18 U.S.C. § 1513(e); or (4) “any other law, rule, or regulation subject to [SEC] jurisdiction”
- No explicit SEC-reporting requirement in anti-retaliation provisions, but 2018 Supreme Court decision, *Digital Realty Trust*, held a would-be whistleblower must report to the SEC to qualify as a “whistleblower” under the definitions section of Dodd-Frank

# SEC Implementing Regulations

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# SEC Implementing Regulations

17 C.F.R. Parts 240 / 249; SEC Rel. No. 34-64545

- One of more than 100 provisions in Dodd-Frank requiring or inviting SEC rulemaking
- Issued in final form May 25, 2011 (effective Aug. 12, 2011)
- 28 pages of rules; 305 pages including comments (vs. 8 pages of statutory text)
- Subject of extensive comment process
  - Initial proposed rules issued November 3, 2010
  - More than 6 months to finalize
  - Over 240 comment letters received from wide array of stakeholders
  - Significant focus on interplay between whistleblower program and internal company compliance processes



## Key Nuances Between Statute / Implementing Regulations

- Internal reporting vs. reporting directly to the SEC
  - SEC declined to require internal reporting before going to the SEC
  - BUT rules do provide:
    - in determining % of award, **internal reporting is positive factor** / undermining compliance system negative factor
    - for “marker” purposes, **internal reporting date will be treated as SEC reporting date**, provided whistleblower reports to the SEC within 120 days of reporting to company
- Prior to the Supreme Court’s decision in *Digital Realty Trust*, SEC Rule 21F interpreted “whistleblower” more broadly in context of anti-retaliation provisions
  - Award provisions require reporting to the SEC, but previously one could qualify as “whistleblower” under anti-retaliation provisions by reporting only internally
- The SEC has passed amendments to Rule 21F to, among other things, incorporate the holding of *Digital Realty Trust*

## Key Nuances Between Statute / Implementing Regulations

- Rules generally exclude from award-eligibility information obtained in communications subject to attorney-client privilege
- Rules provide moderate limitations on reporting by **non-lawyer compliance / internal audit personnel**, as well as **directors / officers who receive reports** via internal compliance process
  - These personnel **may become “whistleblowers”** if:
    - disclosure is necessary to **prevent** company from engaging in **misconduct likely to cause substantial injury** to its financial interests, property, or investors;
    - company has impeded investigation of alleged misconduct; or
    - **at least 120 days has elapsed since internal reporting** of pertinent information

## Effects of Recent Amendments to SEC Rule 21F

- On September 23, 2020, the SEC voted 3-2 to adopt amendments to Rule 21F, which became effective on December 7, 2020
- Establish a **uniform definition of “whistleblower”** covering only those who report to the SEC in accordance with the Supreme Court’s ruling in *Digital Realty Trust*
  - The definition applies to all aspects of Rule 21F, including the award program, heightened confidentiality requirements, and the employment anti-retaliation protections
  - Under Rule 21F, participation in the company’s internal compliance remains a positive factor SEC considers when determining the size of the award, **even though, post-Digital Realty, employees do not receive whistleblower protection unless and until they file a report to the Commission**
  - SEC noted that it “positively assessed the participation of whistleblowers who internally reported their information prior to reporting to the Commission” and that **internal reporting may increase the award percentage**
- Adopt **measures to increase efficiency of claims review process**, including: (1) a newly created rule (Rule 21F-18) which provides for a summary disposition procedure for untimely or otherwise meritless award applications; (2) another new rule (Rule 21F-8(e)) which allows the SEC to bar individuals who have made three frivolous claims
  - In FY 2021, OWB **permanently barred two serial submitters** of frivolous award claims
- Presumption of **maximum 30% award** for awards under \$5 million

## Potential Future Revisions to SEC Rule 21F

- Amendment to Rule 21F-3(b)(3) permitted SEC to consider whether another whistleblower program has a more direct and relevant connection to the related action in determining the size of the award
- SEC added language to Rule 21F-6 that allows SEC to “consider, in its direction, the dollar amount of a potential award when making an award determination”
- On August 2, 2021, SEC Chairman Gensler announced that he was **directing staff to consider revisions to Exchange Act Rule 21F**
  - Chairman Gensler noted that various members of the whistleblower community, as well as Commissioners Lee and Crenshaw, have expressed concern that two of these amendments could discourage whistleblowers from coming forward
  - No proposals for revisions have been announced to date

*‘In particular, the staff is considering whether our rules should be revised to permit the Commission to make awards for related actions that might otherwise be covered by an alternative whistleblower program that is not comparable to the SEC’s own program, and to clarify that the Commission will not lower an award based on its dollar amount’*

- SEC Chairman Gary Gensler, August 2, 2021

## Challenges to Rule 21F Amendments

- In January 2021, Jordan Thomas, a prominent whistleblower attorney filed a complaint in D.D.C. challenging two aspects of the newly adopted Rule 21F amendments:
  - First, the SEC’s clarification that it continues to have (and had before the amendment’s adoption) the discretion to consider the potential dollar amount of the final payout as a factor in calculating the award
  - Second, the SEC ruled that it will not award a whistleblower for a “related action” if another whistleblower program “has the more direct or relevant connection to the action”
  - The complaint cites concerns that the amendment introduces “greater uncertainty” and decreases the incentive for potential whistleblowers
- On August 6, 2021, parties filed a joint motion to stay the proceedings in light of Chairman Gensler’s comments directing the SEC to consider revisions to Rule 21F
- The court stayed the proceedings; a joint status report is due in early February 2022

A silver whistle on a braided rope, positioned diagonally across the center of the slide. The whistle is metallic and has a circular opening. The rope is light-colored and braided.

# SEC Office of the Whistleblower

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## SEC Office of the Whistleblower

- As part of Dodd-Frank, SEC established Office of the Whistleblower (“OWB”) within Division of Enforcement
  - Initially headed by Sean McKessy, now by Chief Nicole Creola Kelly
- OWB is staffed by 15 full-time attorneys, in addition to three attorneys assigned on temporary detail, and a number of support staff, including an accountant, paralegals, analysts, and law clerks
- Principal responsibilities include:
  - Communicating with whistleblowers regarding tips, follow-up information, and claims for awards
  - Working with Division of Enforcement staff and / or other regulatory agencies to generate and pursue investigations based on whistleblower information
  - Reviewing, processing, and making recommendations concerning applications for awards
  - Providing training on Dodd-Frank and SEC implementing rules to staff
  - Raising public awareness of the program to receive an increased number of tips that can assist the Commission in discovering and stopping fraudulent schemes early
  - Monitoring legal developments and advocating for whistleblower interests (e.g., amicus briefs, identifying “muzzle provisions” in confidentiality agreements, etc.)

## New Chief Regulator in Town

- In April 2021, Jane Norberg, former Chief of the Office of the Whistleblower, left the SEC. Ms. Norberg had been with the Office since 2012 and had served as the Chief since 2016
- On November 5, 2021, **Nicole Creola Kelly** was appointed the new Chief of the Office of the Whistleblower
- Ms. Kelly has more than 20 years of experience at the SEC, including with the Office of the Whistleblower, Office of the General Counsel, Counsel to former SEC Chair Mary Jo White and former SEC Commissioner Kara M. Stein, as well as in the Enforcement Division's Complex Financial Instruments Unit



## OWB Tips in FY 2021

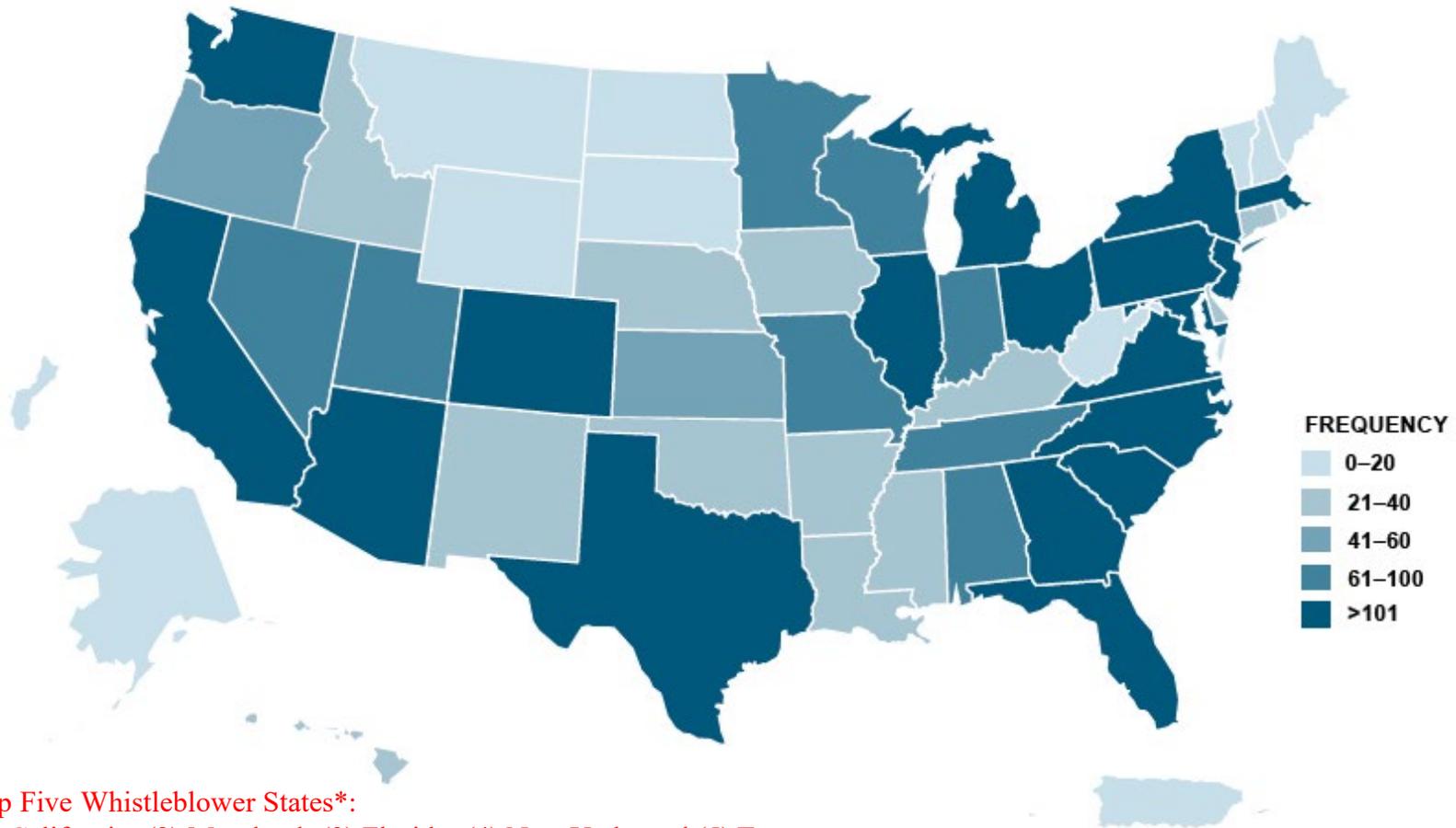
FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
3,001	3,238	3,620	3,923	4,218	4,484	5,282	5,212	6,911	<b>12,210</b>

- In FY 2021, OWB received **12,210** whistleblower tips—**up 76% from FY 2020** and nearly four times the number of tips since the first year of the Whistleblower program
- Tips came from all 50 states, District of Columbia, and 99 foreign nations
  - Highest tipping states: CA, MD, FL, NY, and TX (44% of domestic tips)
  - Highest tipping foreign nations: Canada, China, and Colombia (35% of foreign tips)
  - **One out of nine** geographically identified tips came from outside the U.S. (11%)

## OWB Tips in FY 2021 (Continued)

- Most common complaints related to manipulation (25%), corporate disclosures and financials (16%), offering fraud (16%), trading and pricing (6%), and initial coin offering and cryptocurrencies (6%)
  - Categories self-selected by whistleblowers
  - “Other” / “Not Reported” constituted 18% of all tips
  - 258 tips related to alleged FCPA violations (2%)
- 150 Notices of Covered Action for enforcement judgments & orders issued during FY 2021 that meet \$1M threshold to potentially qualify putative whistleblowers for award (up from 105 in 2020)

## U.S. Map of FY 2021 Whistleblower Tips



Top Five Whistleblower States\*:

(1) California; (2) Maryland; (3) Florida; (4) New York; and (5) Texas

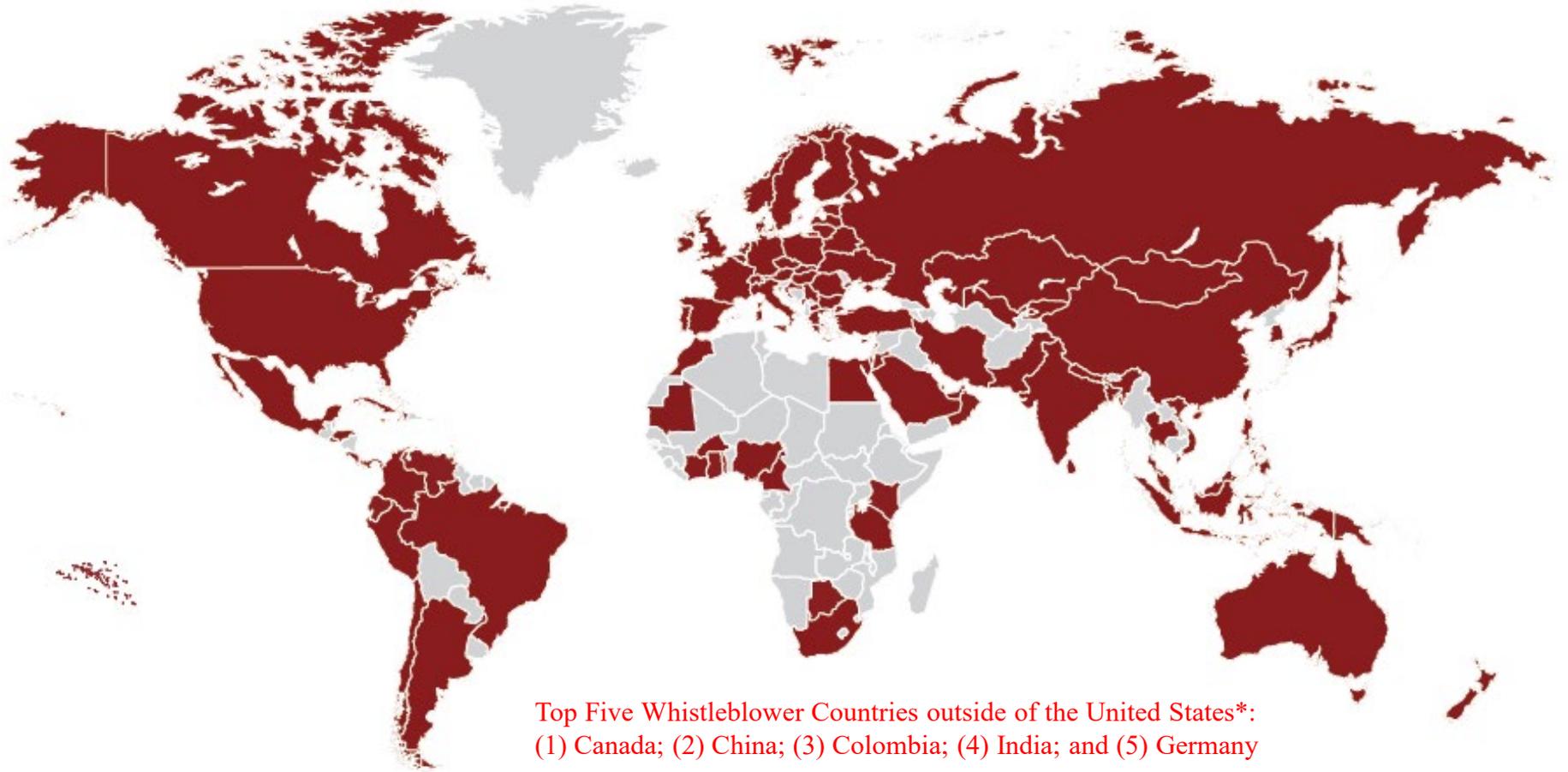
\* 2021 Annual Report to Congress on the Dodd-Frank Whistleblower Program, U.S. Securities & Exchange Commission

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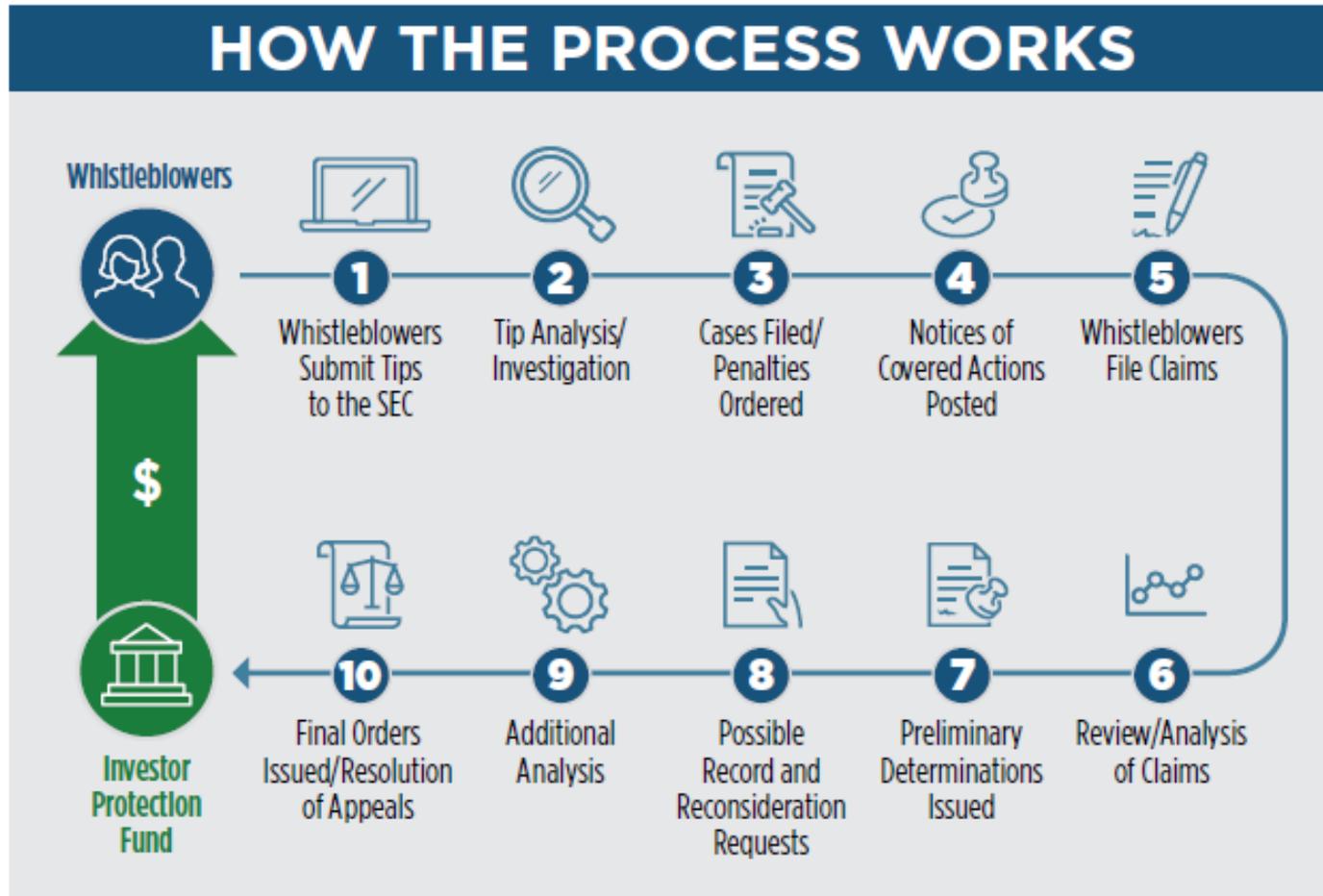
# Global Map of FY 2021 Whistleblower Tips



\* 2021 Annual Report to Congress on the Dodd-Frank Whistleblower Program, U.S. Securities & Exchange Commission

## How Whistleblower Tips Are Processed / Investigated

- OWB receives tips and enters information into the SEC “TCR System”
- SEC Office of Market Intelligence (“OMI”) then evaluates tips
  - Tips deemed sufficiently specific, timely, and credible by OMI are assigned to an SEC regional office or specialty unit for further investigation
  - Tips relating to ongoing investigations forwarded to existing investigation staff
  - In certain instances, OMI may share with other regulatory / law enforcement agencies
- OWB serves as liaison between whistleblower and OMI / investigation staff
  - May assist in gathering additional information during evaluation phase
  - May arrange for meetings between whistleblower and investigation staff
- OWB is currently tracking more than 1,000 matters originating from whistleblower tips



\*2020 Annual Report to Congress on the Dodd-Frank Whistleblower Program

# SEC Form TCR: [www.sec.gov/about/forms/formtcr.pdf](http://www.sec.gov/about/forms/formtcr.pdf)

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549

FORM TCR  
TIP, COMPLAINT OR REFERRAL

**A. INFORMATION ABOUT YOU**

**COMPLAINANT 1:**

1. Last Name

**B. ATTORNEY'S INFORMATION (If Applicable - See Instructions)**

**C. TELL US ABOUT THE INDIVIDUAL OR ENTITY YOU HAVE A COMPLAINT AGAINST**

**INDIVIDUAL/ENTITY 1:**

1. Type:  Individual  Entity

If an individual, specify profession:

If an entity, specify type:

**D. TELL US ABOUT YOUR COMPLAINT**

5a. Does this complaint relate to an entity of which the complainant is or was an officer, director, counsel, employee, consultant or contractor?  
YES  NO

5b. If the answer to question 5a is "Yes," has the complainant reported this violation to his or her supervisor, compliance office, whistleblower hotline, ombudsman, or any other available mechanism at the entity for reporting violations? YES  NO

8. State in detail all facts pertinent to the alleged violation. Explain why the complainant believes the acts described constitute a violation of the federal securities laws. Use additional sheets if necessary.

9. Describe all supporting materials in the complainant's possession and the availability and location of any additional supporting materials not in complainant's possession. Use additional sheets, if necessary.

10. Describe how and from whom the complainant obtained the information that supports this claim. If any information was obtained from an attorney or in a communication where an attorney was present, identify such information with as much particularity as possible. In addition, if any information was obtained from a public source, identify the source with as much particularity as possible. Attach additional sheets if necessary.

11. Identify with particularity any documents or other information in your submission that you believe could reasonably be expected to reveal your identity and explain the basis for your belief that your identity would be revealed if the documents were disclosed to a third party.

## How Whistleblower Awards Are Reviewed / Made

- OWB posts Notice of Covered Action (“NoCA”) for each post-July 21, 2010 SEC enforcement action resulting in > \$1M in aggregate monetary sanctions (105 in FY 2020)
- Putative whistleblowers have 90 days from posting to apply for award with OWB
- OWB analyzes each application, working with Enforcement staff, and prepares written recommendation
- Claims Review Staff reviews OWB recommendation and issues Preliminary Determination
  - Staff comprised of Director of Enforcement and three other senior Enforcement officers
- If Claims Review Staff denies claim
  - If claimant does not object, Preliminary Determination becomes final
  - If claimant challenges, 30 days to request copy of record / meeting with OWB and 60 days to seek reconsideration
  - After request for reconsideration, OWB will make second recommendation and Claims Review Staff will then make Proposed Final Determination that is forwarded to Commission for consideration

## How Whistleblower Awards Are Reviewed / Made (Cont'd)

- Where Claims Review Staff recommends monetary award
  - Claimant can ask the Claims Review Staff to re-consider award percentage, and has 30 days to request copy of record / meeting with OWB and 60 days to seek reconsideration
  - After the time to appeal expires (or if the Claimants waives the right to challenge the proposed award), the decision is forwarded to Commission as Proposed Final Determination
- Any Commissioner may request full Commission review within 30 days
- Claimants have ability to seek limited appellate review either in D.C. Circuit or circuit of residence
  - Only a Claimant who received a contested Final Order denying his/her claim has appeal rights; Claimants may not appeal the percentage awarded in court
- In FY 2021, OWB processed 318 Final Orders for individual award claims and 354 claims to Preliminary Determination / Preliminary Summary Determination—**highest numbers of Final Orders issued and claims processed in any year**

# SEC Form WBB-APP: <http://www.sec.gov/about/forms/formwb-app.pdf>

## FORM WB-APP

### APPLICATION FOR AWARD FOR ORIGINAL INFORMATION SUBMITTED PURSUANT TO SECTION 21F OF THE SECURITIES EXCHANGE ACT OF 1934

<p>UNITED STATES SECURITIES AND EXCHANGE COMMISSION Washington, DC 20549</p> <p>FORM WB-APP</p> <p>APPLICATION FOR AWARD FOR ORIGINAL INFORMATION SUBMITTED PURSUANT TO SECTION 21F OF THE SECURITIES EXCHANGE ACT OF 1934</p>		<p><b>OMB APPROVAL</b> OMB Number: 3235-0696 Expires: August 31, 2014 Estimated average burden hours per response: 2</p>	<p>2. Are you, or were you at the time you acquired the original information you submitted to us, a member, officer or employee of a foreign government, any political subdivision, department, agency, or instrumentality of a foreign government, or any other foreign financial regulatory authority as that term is defined in Section 3(a)(52) of the Securities Exchange Act of 1934 (15 U.S.C. §78c(a)(52))?</p> <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p>3. Did you obtain the information you are providing to us through the performance of an engagement required under the federal securities laws by an independent public accountant?</p> <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p>4. Did you provide the information identified in Section C above pursuant to a cooperation agreement with the SEC or another agency or organization?</p> <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p>5. Are you a spouse, parent, child, or sibling of a member or employee of the Commission, or do you reside in the same household as a member or employee of the Commission?</p> <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p>6. Did you acquire the information you are providing to us from any person described in questions F1 through F5?</p> <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p>7. If you answered "yes" to any of questions 1 through 6 above, please provide details. Use additional sheets if necessary.</p>
<p><b>A. APPLICANT'S INFORMATION (REQUIRED FOR ALL SUBMISSIONS)</b></p> <p>1. Last Name: _____ Social: _____</p> <p>2. Street: _____</p> <p>City: _____ State/Province: _____ ZIP Code: _____ Country: _____</p> <p>3. Telephone: _____ Alt. Phone: _____ E-mail Address: _____</p>		<p>8. If you answered "no" to question 5a, please provide details. Use additional sheets if necessary.</p> <p>9. If you answered "no" to question 5b, please provide details. Use additional sheets if necessary.</p>	
<p><b>B. ATTORNEY'S INFORMATION (IF APPLICABLE – SEE INSTRUCTIONS)</b></p> <p>1. Address: _____</p> <p>2. Firm Name: _____</p> <p>3. Street Address: _____</p> <p>City: _____ State/Province: _____ ZIP Code: _____ Country: _____</p> <p>4. Telephone: _____ Fax: _____ E-mail Address: _____</p>		<p><b>G. ENTITLEMENT TO AWARD</b></p> <p>10. Explain the basis for your belief that you are entitled to an award in connection with your submission of information to us, or to another agency in a related action, the amount of an award set forth in the attached information, and attach additional information as necessary.</p>	
<p><b>C. TIP/COMPLAINT DETAILS</b></p> <p>1. Name of Tipster: _____ Other: <input type="checkbox"/></p> <p>2a. Tip/Complaint Description: _____</p> <p>2b. Subject(s) of the Tip/Complaint or Referral: _____</p>		<p><b>H. DECLARATION</b></p> <p>I declare under penalty of perjury that the information contained herein is true, correct and complete to the best of my knowledge and belief, and that I am not subject to prosecution and ineligible for a whistleblower award in connection with a related action, investigations, or use any false writing or document knowing that the writing or document contains any false, fictitious, or fraudulent statement or entry.</p> <p>Signature: _____ Date: _____</p>	
<p><b>D. NOTICE OF COVERED ACTION</b></p> <p>1. Date of Covered Action: _____</p> <p>2. Case Name: _____</p>			
<p><b>E. CLAIMS PERTAINING TO RELATED ACTIONS</b></p> <p>1. Name of Related Action: _____</p> <p>2. Name of Related Action: _____</p> <p>3a. Date you provided your information: / / 3b. Date action filed by agency/organization: / /</p> <p>4a. Case Name: _____ 4b. Case number: _____</p>			
<p><b>F. ELIGIBILITY REQUIREMENTS AND OTHER INFORMATION</b></p> <p>1. Are you, or were you at the time you acquired the original information you submitted to us, a member, officer or employee of a foreign government, any political subdivision, department, agency, or instrumentality of a foreign government, or any other foreign financial regulatory authority as that term is defined in Section 3(a)(52) of the Securities Exchange Act of 1934 (15 U.S.C. §78c(a)(52))?</p> <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p>			

SEC2851 (08-11)

1

SEC2851 (08-11)

2

# Noteworthy FY 2021 SEC Whistleblower Award Orders

PR No.	Date	Award	Public Details
2020-266	10/22/2020 (FY 2021)	\$144M	<ul style="list-style-type: none"> <li>• Award consists of \$52M for SEC case and \$68M for related action.</li> <li>• Highest award in the history of the Whistleblower Program; more than double the previous largest award from June 2020.</li> <li>• WB repeatedly reported concerns internally and suffered “personal and professional hardships” as a result; WB’s information led SEC to open an investigation that led to the successful enforcement of the matter.</li> </ul>
2021-177	9/15/2021	\$144M	<ul style="list-style-type: none"> <li>• Joint award given to two individuals, \$110M and \$4M respectively.</li> <li>• First WB’s award consists of \$40M award for an SEC case and \$70 million for a case involving another agency; WB provided “significant independent analysis that substantially advanced the SEC’s and the other agency’s investigations.”</li> <li>• Second WB voluntarily provided original information, but the information was provided after an investigation had already been opened and SEC had undertaken significant investigative steps, and much more limited compared to the first WB.</li> </ul>
2021-62	4/15/2021	\$50M	<ul style="list-style-type: none"> <li>• \$50M awarded to joint WBs who voluntarily provided “exemplary assistance” to the investigation, including “meeting with staff numerous times and providing voluminous detailed documents.”</li> <li>• Information provided by the WBs resulted in the result of tens of millions of dollars to harmed investors.</li> </ul>
2021-211	10/15/2021 (FY 2022)	\$40M	<ul style="list-style-type: none"> <li>• Joint award given to two individuals, \$32M and \$8M to each WB.</li> <li>• First WB provided information that caused SEC to open an investigation and expose difficult-to-detect violations; also provided “substantial assistance” including identifying witnesses and helping SEC understand complex fact patterns.</li> <li>• Second WB provided important new information during the course of the investigation but waited several years to report to SEC.</li> </ul>
2021-192	9/24/2021	\$36M	<ul style="list-style-type: none"> <li>• WB’s tip significantly contributed to the success of the enforcement action; WB met with SEC on multiple occasions and provided information that allowed SEC to identify key documents.</li> <li>• However, the award percentage was adjusted in light of the fact that WB unreasonably delayed reporting to SEC for over five years and that WB was culpable in the underlying scheme. WB was still eligible for the award because he/she did not direct, plan, or initiate the misconduct.</li> </ul>

## OWB Enforcement Initiative: Whistleblower Anti-Retaliation

- **Exchange Act, Section 21F(h)(1):** “No employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, a whistleblower in the terms and conditions of employment”
- **SEC has brought four Section 21F(h)(1) anti-retaliation enforcement actions to date**
  - ***SEC v. GPB Capital Holdings*** (Feb. 4, 2021)
    - In a complaint alleging several securities violations, SEC alleged that GPB Capital Holdings terminated an employee who raised numerous concerns internally and filed a whistleblower claim with SEC
    - Case has been stayed pending the outcome of the criminal case and the ongoing grand jury investigation
  - ***In the Matter of HomeStreet, Inc.*** (Jan. 19, 2017)
    - After receiving an inquiry from the SEC, HomeStreet allegedly began interrogating employees in an effort to identify a whistleblower; HomeStreet allegedly suggested to at least one that a report to the SEC could prevent them from having their personal legal fees advanced
    - Without admitting or denying the findings, HomeStreet agreed to pay a \$500K penalty both for alleged underlying securities law violation and retaliation actions
  - ***In the Matter of Int’l Game Tech.*** (Sept. 29, 2016)
    - The Company allegedly fired an employee with a history of positive performance reviews for reporting to senior management and the SEC that the company’s financial statements might be distorted.
    - Int’l Game Tech agreed to pay a \$500,000 penalty
  - ***In the Matter of SandRidge Energy, Inc.*** (Dec. 20, 2016)
    - The company allegedly used illegal separation agreements and retaliated against a whistleblower who expressed concerns internally about how its reserves were being calculated
    - SandRidge agreed to pay a \$1.4M penalty for both of the alleged retaliation and the restrictive separation agreement language actions

## OWB Enforcement Initiative: Preserving Individuals' Rights to Report to SEC

- **SEC Rule 21F-17(a)**: “No 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”
- *In the Matter of Guggenheim Sec., LLC* (June 23, 2021)
  - From 2016 to 2020, Guggenheim’s Core Compliance Manual prohibited employees from initiating contact with any regulator, including the SEC, without prior approval from the Legal or Compliance Department
  - In 2018 and 2019, Guggenheim provided compliance trainings containing similar language
  - Upon being contacted by SEC, Guggenheim revised the manual by removing the language prohibiting employees from contacting regulators without approval, and added provisions affirmatively advising employees of their right to contact regulators regarding potential legal and regulatory violations
  - SEC found that Guggenheim willfully violated Rule 21F-17
  - Guggenheim has agreed, without admitting or denying SEC’s findings, to a cease-and-desist order, a censure, and a civil penalty of \$208,912

## OWB Enforcement Initiative: Preserving Individuals' Rights to Report to SEC (continued)

- *SEC v. GPB Capital Holdings, LLC, et al.* (complaint filed Feb. 4, 2021 in E.D.N.Y.)
  - SEC included a Rule 21F-17 charge against a defendant for impeding individuals from contacting the SEC
  - Complaint alleged that certain confidentiality and separation agreements prohibited individuals from contacting SEC regarding potential securities law violations
  - Case has been stayed pending the outcome of the criminal case and the ongoing grand jury investigation
- *SEC v. Collector's Coffee* (complaint filed Nov. 4, 2019 in S.D.N.Y.)
  - SEC's amended complaint alleges that Collector's Coffee and its CEO attempted to resolve investor allegations of wrongdoing by conditioning the return of investor money on the investors signing agreements prohibiting them from reporting potential securities law violations to law enforcement, including the SEC
  - The complaint alleges the defendants went so far as to sue two investors that they believed breached the agreements
  - **Court denied Collector's Coffee's motion to dismiss the claim in July 2021, holding that SEC was within its authority to promulgate Rule 21F-17 and that the rule was not limited to employees being impeded by employers.**
  - Case is ongoing

## Separation Language SEC Deemed to Violate Rule 21F-17

- *GPB Capital Holdings* (Feb. 4, 2021)
  - Employee “shall not, without prior written consent of [the Company] or as required by law, use or disclose or enable anyone else to use or disclose any Confidential Information of [the Company].”
  - Employee was required to immediately notify the Company if “contacted by any regulatory agency or authority, including but not limited to, the Securities and Exchange Commission.”
- *SandRidge Energy, Inc.* (Dec. 20, 2016)
  - Employee may not “at any time in the future voluntarily contact or participate with any governmental agency in connection with any complaint or investigation pertaining to the Company”
- *NeuStar, Inc.* (Dec. 19, 2016)
  - “Except as specifically authorized in writing by NeuStar or as may be required by law or legal process, I agree not to engage in any communication that disparages . . . NeuStar, including but not limited to communications with . . . regulators (including but not limited to the [SEC]) . . . .”
- *Anheuser-Busch InBev SA/NV* (Sept. 28, 2016)
  - “[Employee] agrees to keep in strict secrecy and confidence any and all unique, confidential and/or proprietary information” of the company, subject to \$250,000 in liquidated damages
- *Health Net* (Aug. 16, 2016); *accord HomeStreet* (Jan. 19, 2017) *BlackRock* (Jan. 17, 2017)
  - While employee may file a whistleblower complaint, employee “waives any right to any individual monetary recovery in any such proceeding”
- *BlueLinx Holdings Inc.* (Aug. 10, 2016)
  - “Employee is waiving the right to any monetary recovery in connection with any such complaint or charge that Employee may file with an administrative agency”
- *Merrill Lynch, Pierce, Fenner & Smith Inc.* (June 23, 2016)
  - Employees permitted to disclose confidential information in response to court order, not voluntarily
- *Cf. KBR, Inc.* (Apr. 1, 2015)
  - Employees interviewed in internal investigations prohibited from discussing content absent approval

## Observations from the Whistleblower Program (FY 2021)

1. SEC received over 12,200 whistleblower tips in FY 2021, the highest number of tips in a year by far and around 300% increase since FY 2012
2. More awards in FY 2021 than all of the prior years combined, **both in dollar amounts and number of recipients**, including two largest awards to date
  - \$564 million awarded to 108 individuals in FY 2021, compared to \$562M awarded to 106 whistleblowers in FY 2011 to FY 2020
3. Enforcement actions resulting from tips have resulted in > \$5B in remedies over life of program
4. 56% of FY 2021 awardees caused a new investigation to be opened; other 44% significantly advanced a pre-existing SEC investigation
5. 60% of awardees were current or former insiders of the entity about which they reported information of wrongdoing to the SEC
  - Of those, 75% first reported internally or understood that supervisors or compliance were aware of the issue
6. About 20% of whistleblower awardees have been foreign nationals or residents of foreign countries
7. Whistleblower awardees over life of program have included governmental employees, compliance personnel, and company officers who received internal reports
8. SEC remains active in bringing enforcement actions to ensure whistleblowers' rights to report to the government are protected

# Landscape of Dodd-Frank Whistleblower Litigation

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**GIBSON DUNN**

**AlixPartners**  
when it really  
matters

**PHILLIPS & COHEN LLP**

## Key Litigated Issue: DFA Anti-retaliation Protection Requires Reporting to SEC

- *Moniodes v. Autonomy Capital (Jersey) LP* (August 11, 2021, S.D.N.Y.)
  - Plaintiff worked as an IT professional in a financial services industry
  - In 2018, Plaintiff joined a conference call with SEC, during which he indirectly relayed to the SEC (through a company executive) that the company was not complying with relevant SEC rules and regulations with respect to data management
  - After the call, SEC cited the company for failure to adequately secure its data, and the company promised remediation by the end of 2019
  - Over the next few months, the CEO expressed dissatisfaction with Plaintiff’s handling of the remediation efforts, and fired Plaintiff in April 2020
  - Citing *Digital Realty* and Rule 21F, Court found that Plaintiff failed to state a claim for retaliation under Dodd-Frank because he did not provide information to SEC in a manner consistent with Rule 21F-9(a)

*“Dodd–Frank requires that an individual asserting a claim for retaliation first qualify as a whistleblower. To qualify as a whistleblower, an individual—or two individuals acting jointly—must provide information to the SEC in a manner consistent with Rule F–9(a). Rule F–9(a) requires that information be provided via mail, fax, or the SEC’s website... Because a conference call is not one of the methods prescribed by Rule F–9(a), Plaintiff has not alleged that he was a whistleblower under Dodd–Frank, and therefore has not stated a claim for retaliation.”*

## Key Litigated Issue: When & How Must One Report to SEC to Be a Whistleblower?

### *Slawin v. Bank of Am. Merchant Servs. (N.D. Ga. 2020)*

- Employee repeatedly raised concerns internally
- Employee began collecting evidence of the misconduct. HR asked him to destroy the evidence and he refused
- One day later he was terminated, and *on that same day*, filed his report with the SEC
- The court dismissed his complaint because he failed to provide the information to the SEC “*before termination*” and thus did not qualify as a whistleblower at the time of the retaliation

### *Cellucci v. O’Leary (S.D.N.Y. 2020)*

- Employee generally alleged in his complaint that he filed a report with the SEC before his termination and that his employer was aware of his protected activity. The court dismissed his retaliation claim for failing to properly plead either element
- First, the complaint failed to identify what the plaintiff’s SEC report alleged, or “even identify a specific provision or section that may have been violated” to show that he had engaged in protected activity
- Second, the employee failed to allege how his employer could have had knowledge of his protected activity if (1) he told no one of his SEC complaint, (2) the SEC maintained the report’s confidentiality, and (3) the SEC had not taken any investigative action against his employer

“Because Wutherich did not provide information to the SEC until 2017, after his termination, “he did not qualify as a ‘whistleblower’ at the time of the alleged retaliation. He is therefore ineligible to seek relief under § 78u-6(h).”

*Wutherich v. Rice Energy Inc.*, No. 20-2394, 2021 WL 5745696, at \*1 (3d Cir. Dec. 2, 2021)

## Key Litigated Issue: Dodd-Frank's Extraterritorial Application

- Every court to address has held anti-retaliation provisions do not apply extraterritorially
  - *Almeida v. W. Digital Corp. (N.D. Cal. June 25, 2021)*: Brazilian citizen employed in Brazil raised potential FCPA and financial reporting concerns regarding alleged conduct in Brazil
  - *Ulrich (2d Cir. 2018)*: resident of Hong Kong employed by HK subsidiary of U.S. company reporting alleged misconduct in Indonesia and South Korea to supervisors in Australia / United States
  - *Liu (2d Cir. 2014)*: resident of Taiwan employed by Chinese subsidiary of German ADR-issuer reporting alleged misconduct in China, North Korea, and Hong Kong to supervisors in China / Germany

**“[T]here is absolutely nothing in the text of the [Dodd-Frank anti-retaliation provision] that suggests that Congress intended the [provision] to regulate the relationships between foreign employers and their foreign employees working outside the United States.” — *Liu v. Siemens AG* (2d Cir. 2014)**

- *Asadi (S.D. Tex. 2012)*: dual U.S. / Iraqi citizen living in Jordan and alleging misconduct in Iraq against subsidiary of publicly traded U.S. company to supervisor / ombudsperson “for the region”
- Reliance on *Morrison v. Nat’l Austl. Bank Ltd.*, 561 U.S. 247 (2010) (non-DFA case)
  - “Unless there is the affirmative intention of the Congress clearly expressed to give a statute extraterritorial effect, we must presume it is primarily concerned with domestic concerns”
  - **But note**: SEC applies award provisions to whistleblowers in foreign countries notwithstanding *Morrison*, provided claimant’s information leads to U.S. enforcement

## Key Litigated Issue: Mandatory Arbitration of Retaliation Claims

- Dodd-Frank includes section invalidating arbitration provisions in employment agreements for claims arising under SOX, but not those arising under Dodd-Frank anti-retaliation provisions
- Two U.S. courts of appeals and six federal district courts have upheld arbitration provisions, rejecting argument that omission in anti-retaliation provisions was inadvertent error by Congress
  - *Daly* (2d Cir. 2019)
  - *Khazin* (3d Cir. 2014)
  - *Pompliano* (C.D. Cal. 2018)
  - *Price* (D.N.J. 2018)
  - *Sayre* (S.D. Cal. 2018)
  - *Wussow* (W.D. Wis. 2017)
  - *CitiGroup Global Mkts. Inc.* (S.D.N.Y. 2015)
  - *Murray* (S.D.N.Y. 2014)
  - *James* (S.D. Tex. 2012)
  - *Ruhe* (C.D. Cal. 2011)
- One federal district court held that arbitration is not required: *Wiggins* (D. Conn. 2015)
- At least seven district courts have held that the anti-arbitration provision does not apply retroactively
  - *Jaludi* (M.D. Pa. 2016)
  - *Richards* (S.D. Miss. 2015)
  - *Khazin* (D.N.J. 2014)
  - *Weller* (D. Colo. 2013)
  - *Taylor* (D. D.C. 2012)
  - *Blackwell* (D. S.C. 2012)
  - *Henderson* (D. Nev. 2011)
- Two district courts have applied the anti-arbitration provision retroactively
  - *Wong* (S.D.N.Y. 2012)
  - *Pezza* (D. Mass. 2011)

## Key Litigated Issue: Mandatory Arbitration of Retaliation Claims

### *Daly v. Citigroup*, 939 F.3d 415 (2d Cir. 2019)

- Plaintiff, an internal whistleblower, filed whistleblower retaliation claims under SOX and DFA
- The bank contended that Plaintiff's non-SOX claims were subject to an employment agreement Plaintiff had signed containing an arbitration provision. The bank further contended that Plaintiff's SOX claim should be dismissed because she had failed to exhaust her administrative remedies
- The district court concluded that although the plaintiff's SOX claim was not arbitrable, but the remainder of her claims (including Dodd-Frank) were arbitrable, granting the Bank's motion in its entirety. Daly appealed to the Second Circuit
- The Second Circuit affirmed, holding that, unlike SOX, Dodd-Frank does not contain an express anti-arbitration provision. As a result, the anti-retaliation claim must be pursued in an arbitration if the whistleblower's employment agreement contains a mandatory arbitration provision
- This decision is consistent with the Third Circuit's decision in *Jaludi v. Citigroup*, in which a three-judge panel acknowledged that Dodd-Frank does not shield whistleblowers from arbitration. The court in *Jaludi* also held that whistleblowers can pursue SOX anti-retaliation claims in court rather than through arbitration even if the employment agreement contains an arbitration provision

## Key Litigated Issue: Deference to SEC Award Decisions

- Claimants have the ability to seek appellate review of SEC award determinations either in the D.C. Circuit or the circuit of their residence
  - But the review tends to be extremely deferential to SEC
- *Kilgour v. SEC*, No. 18-1124 (2d Cir. 2019)
  - Upholding SEC interpretation of Dodd-Frank to render whistleblowers who report information that leads to a successful enforcement action ineligible for awards if the submissions containing the information do not lead to such an action
- *Stryker v. SEC*, 780 F.3d 163 (2d Cir. 2015)
  - Upholding SEC interpretation of Dodd-Frank to render whistleblowers who reported to the SEC prior to July 21, 2010 ineligible for awards
- *Greenspan v. SEC*, 727 Fed. Appx. 381 (9th Cir. 2018)
  - Determining, under “arbitrary or capricious” review standard, record supported SEC finding petitioner’s information did not lead to successful action
- *Doe v. SEC*, 729 Fed. Appx. 1 (D.C. Cir. 2018)
  - Substantial evidence in record enforcement team did not consider petitioner’s information in bringing enforcement action based on staff affidavits

## Key Litigated Issue: Filling in the Gaps Where DFA Is Silent

- **Right to Jury Trial**

- One district court held DFA remedies sound primarily in equity, thus no entitlement to jury trial
  - *Pruett* (N.D. Ga. 2013)

- **Punitive Damages**

- Two district courts have held that punitive damages are not available under Dodd-Frank
  - *Rosenblum* (S.D.N.Y. 2013)
  - *Pruett* (N.D. Ga. 2013)
  - *But see Wadler* (N.D. Cal. 2017) (CA law)

- **Individual Liability for Corporate Directors**

- One district court held that board members may be held personally liable for retaliatory acts
  - *Wadler* (N.D. Cal. 2015)

- **Concurrent State Jurisdiction**

- Two federal district courts have held that Dodd-Frank claims may proceed in state court
  - *Kruchoski* (N.D. Ga. 2017)
  - *Igwe* (S.D. Fla. 2016)
- One court of appeals and one district court have noted federal courts have exclusive jurisdiction
  - *Khazin* (3d. Cir. 2014)
  - *Simons* (N.D. Ill. 2014)



# Five Key Takeaways for the HR / Compliance Professional

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## ***Takeaway # 1: Internal Compliance Processes Are Even More Important in Post-Dodd-Frank World***

- Studies continue to show that most employees report their concerns internally first
  - E.g., OWB report found that of “insider” whistleblowers, 75% raised their concerns to supervisor or compliance personnel, or understood the complaint was already known internally, before approaching the SEC
- Potential for *Digital Realty Trust* decision and other cases applying it to encourage employees to bypass internal reporting processes and go directly to the SEC with complaints
  - Although OWB has historically encouraged internal reporting as a positive factor, in the wake of *Digital Realty Trust* it has questioned whether this remains practical
  - OWB noted an increased volume of tips immediately following *Digital Realty Trust*
- Companies should review compliance & HR policies / procedures to ensure:
  - internal reporting is easy, accessible, and perceived as corporate priority;
  - cataloguing / tracking of complaints is organized / covers all avenues;
  - there are robust, comprehensive investigative protocols for investigations; and
  - employees who report are treated with respect and results of investigation are communicated to extent possible



## *Takeaway # 2: Review Your Confidentiality Provisions*

- SEC Rule 21F-17(a)
  - “No 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 . . . .”
- Substantial area of focus for SEC in early years of Dodd-Frank
  - Even without any specific instances in which employees are prevented from communicating with SEC, having prohibitive provisions can result in enforcement actions (In the Matter of Guggenheim Securities)
  - 2021 OWB Report to Congress indicates the SEC will continue to monitor for muzzle clauses
- Significant privilege and confidentiality concerns raised by settled enforcement actions
- SEC’s view is that all employee confidentiality obligations must include explicit carve-out for reporting securities law violations to SEC

**“Retaliation protection remains a key tenet of the whistleblower program.”**

**— 2021 OWB Annual Report to Congress**

## *Takeaway # 3: 120 Days Is New Standard for Corporate Internal Investigations*

- In two separate rules passed as part of Dodd-Frank regulations, SEC chose 120 days as key milestone for investigations
  - SEC will not consider in making WB awards information derived by non-lawyer compliance / internal audit / management personnel unless person waited at least 120 days
- After making internal report (privileged information separate, see #5)
  - SEC will consider report to entity other than SEC (e.g., Congress, other government agencies) to effect marker for SEC award purposes if reported to SEC within 120 days
- Whistleblowers' bar has picked up on 120-day clock



I ask that [Company] conduct its FCPA and bribery investigation and report its findings within 120 days of this date.

- Internal investigations that place company in position to make disclosure decision within 120 days should be deemed presumptively reasonable

## *Takeaway # 4: Adjust the Voluntary Disclosure Calculus*

- The ultimate debate has traditionally come down to perceived likelihood that government will discover conduct on its own
- Now, with the requirement that an individual report to the SEC to be protected against retaliation under DFA, as well as the growing whistleblower awards and plaintiffs' bar, expect more external reporting overall
- Highly publicized anti-retaliation enforcement actions likely to encourage external reporting of not only securities fraud, but also of related misconduct
- Voluntary self-disclosure is a key consideration to SEC during the resolution phase (see Quad/Graphics, Inc. (File No. 3-19531); PPG Industries, Inc. (File No. 3-19532))
- No voluntary disclosure discussion is complete without analysis of potential whistleblowers



## *Takeaway # 5: Critical Import of Attorney-Client Privilege*

- Privilege has always been key consideration in determining whether to engage counsel (vs. other compliance professionals) for internal investigations
- Dodd-Frank implementing regulations provide more reason to consider retention of counsel, due to ability of non-legal compliance personnel to become whistleblower under certain circumstances
  - Non-lawyer personnel conducting internal investigation (e.g., compliance or internal audit personnel or external investigators) permitted to claim award for information gleaned from investigation if
    - disclosure is necessary to prevent company from engaging in conduct likely to cause substantial injury to its financial interests, property, or investors;
    - company has impeded investigation of alleged misconduct; or
    - at least 120 days have elapsed since internal report of that information
  - Lawyers, on the other hand, are generally barred from using information obtained in connection with legal representation for their own whistleblowing benefit unless they are authorized to report information under state attorney conduct rules or 17 C.F.R. § 205.3(d)(2)
    - This general bar also applies more broadly to non-lawyer personnel if communication in which they learned information was subject to privilege
    - Non-lawyer personnel retained to supplement legal team under privilege should be covered by exception
- OWB has issued at least two awards to non-lawyer compliance / internal audit professionals

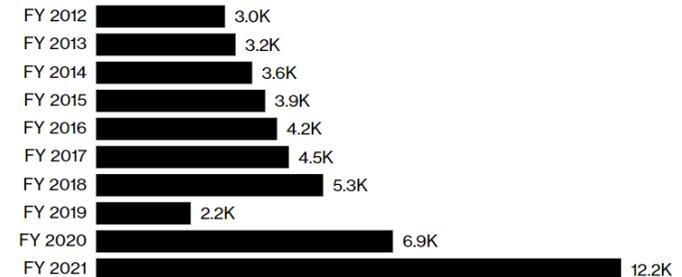
## *Potential Impact of the COVID-19 Pandemic and Work-from-Home environment*

- SEC received a record-breaking 12,210 tips in FY 2021 – a whopping 76% increase from FY 2020 (6,911 tips)
- WFH environment makes it easier to document misconduct, such as recording a Zoom call or taking photos of computer screens
- Likewise, it may be easier for some employees to report issues without having to interact in-person with managers or other co-workers
- As WFH becomes exceedingly common, reporting may continue to be active



### Tipster Complaints Surge

Whistle-blowers raced to share information with SEC during pandemic



Source: Bloomberg

# APPENDIX A

## 2021 SEC Whistleblower Award Proceeding Orders

## FY 2021 SEC Whistleblower Award Proceeding Orders

PR No.	Date	Award	Public Details
2020-255	10/15/2020	\$800,000	<ul style="list-style-type: none"> <li>• Provided “detailed analysis” that alerted the SEC to the underlying securities violations that led to two SEC enforcement actions.</li> </ul>
2020-266	10/22/2020	\$144M	<ul style="list-style-type: none"> <li>• Award consists of \$52M for SEC case and \$68M for related action.</li> <li>• Whistleblower reported concerns internally repeatedly and suffered “personal and professional hardships” as a result.</li> </ul>
2020-270	10/29/2020	\$10M	<ul style="list-style-type: none"> <li>• Whistleblower’s information prompted the opening of an investigation and provided substantial, ongoing assistance to SEC staff throughout the investigation.</li> <li>• In more than a dozen communications with the staff, the whistleblower provided key evidence, helped decipher communications, and distilled complex issues.</li> </ul>
2020-275	11/3/2020	\$28M	<ul style="list-style-type: none"> <li>• Whistleblower internally reported information that prompted the company to initiate an internal investigation, and saved time and resources for the SEC by providing testimony and identifying a key witness.</li> </ul>
2020-278	11/5/2020	\$3.6M	<ul style="list-style-type: none"> <li>• Whistleblower provided important information that alerted SEC to misconduct occurring abroad.</li> <li>• Provided substantial and ongoing assistance to SEC, which included traveling to another country at the Whistleblower’s own expense to meet with SEC in person and providing extensive supporting documentation.</li> </ul>
2020-278	11/5/2020	\$750,000	<ul style="list-style-type: none"> <li>• Tip uncovered an ongoing fraud; whistleblower assisted SEC by meeting with them in person and explaining the likely mechanics of the fraudulent scheme.</li> </ul>
2020-283	11/13/2020	\$1.1M	<ul style="list-style-type: none"> <li>• Whistleblower’s information and exemplary assistance helped SEC bring an emergency action preventing further investor harm.</li> </ul>
2020-288	11/19/2020	\$900,000	<ul style="list-style-type: none"> <li>• Whistleblower identified securities law violations occurring overseas; Whistleblower’s timely and important information resulted in a significant expansion of an ongoing investigation.</li> </ul>
2020-297	12/1/2020	\$6M	<ul style="list-style-type: none"> <li>• Joint Whistleblowers’ substantial assistance, provided to the SEC and another government agency, included submitting documents, participating in interviews, and identifying key individuals involved in the misconduct.</li> </ul>
2020-307	12/7/2020	\$3M	<ul style="list-style-type: none"> <li>• Three different awards given to five individuals; in one case, SEC exercised discretion to waive TCR filing requirement.</li> </ul>
2020-316	12/14/2020	\$300,000	<ul style="list-style-type: none"> <li>• Whistleblower became aware of the potential securities law violations in connection with audit-related responsibilities. Whistleblower had a reasonable basis to believe that the entity would impede the Commission's investigation.</li> </ul>

# FY 2021 SEC Whistleblower Award Proceeding Orders

PR No.	Date	Award	Public Details
2020-325	12/18/2020	\$3.6M	<ul style="list-style-type: none"> <li>• Separate Whistleblower awards related to three separate enforcement actions.</li> <li>• In one order, SEC determined that the whistleblower's culpability and unreasonable delay impacted the award amount.</li> </ul>
2020-333	12/22/2020	\$1.6M	<ul style="list-style-type: none"> <li>• Whistleblower produced critical information about an ongoing fraudulent scheme and provided extensive assistance to SEC, including by participating in meetings and furnishing high-quality evidence.</li> </ul>
2021-7	1/14/2021	\$600,000	<ul style="list-style-type: none"> <li>• Whistleblower met with staff multiple times and provided substantial assistance to the investigation that led to the SEC's enforcement action.</li> </ul>
2021-30	2/19/2021	\$3M	<ul style="list-style-type: none"> <li>• Two separate awards, \$2.2M and \$700,000 each.</li> <li>• The first Whistleblower's tip helped the SEC bring an enforcement action that resulted in the return of millions of dollars to harmed client; the second Whistleblower alerted SEC staff to a fraudulent reporting scheme, prompting the opening of the investigation.</li> </ul>
2021-31	2/23/2021	\$9.2M	<ul style="list-style-type: none"> <li>• Whistleblower provided information that led to successful related actions by the U.S. Department of Justice, one of which was a non-prosecution agreement (NPA) or deferred prosecution agreement (DPA).</li> </ul>
2021-34	2/25/2021	\$1.7M	<ul style="list-style-type: none"> <li>• Two separate awards, \$900,000 and \$800,000 each.</li> <li>• The first Whistleblower provided significant evidence, including a critical declaration, that helped expedite an ongoing investigation and enabled SEC to shut down an ongoing fraudulent scheme preying on retail investors; the second one provided important evidence of false and misleading statements made to investors, resulting in the return of millions to harmed investors.</li> </ul>
2021-37	3/1/2021	\$500,000	<ul style="list-style-type: none"> <li>• Award to two Whistleblowers whose tips revealed an ongoing fraud and resulted in multiple SEC actions and a related action from another government agency.</li> </ul>
2021-44	3/9/2021	\$1.5M	<ul style="list-style-type: none"> <li>• Whistleblower alerted the SEC to previously unknown conduct and thereafter provided multiple submissions, identified potential witnesses, and met with SEC on several occasions</li> </ul>
2021-54	3/29/2021	\$500,000	<ul style="list-style-type: none"> <li>• Whistleblower raised concerns internally before reporting to SEC; Whistleblower's information helped shut down an ongoing fraudulent scheme.</li> </ul>
2021-60	4/9/2021	\$2.5M	<ul style="list-style-type: none"> <li>• Whistleblower in this matter provided key evidence that supported charges related to a breach of fiduciary duties owed to investors.</li> </ul>

# FY 2021 SEC Whistleblower Award Proceeding Orders

PR No.	Date	Award	Public Details
2021-62	4/15/2021	\$50M	<ul style="list-style-type: none"> <li>\$50M awarded to joint whistleblowers who voluntarily provided “exemplary assistance” to the investigation, including “meeting with staff numerous times and providing voluminous detailed documents.”</li> <li>Information provided by the whistleblowers resulted in the result of tens of millions of dollars to harmed investors.</li> <li>Second largest award to date.</li> </ul>
2021-70	4/23/2021	\$3.2M	<ul style="list-style-type: none"> <li>Two separate award to Whistleblowers; both Whistleblowers provided new, important information that aided SEC in learning about and understanding the violative conduct.</li> </ul>
2021-81	5/10/2021	\$22M	<ul style="list-style-type: none"> <li>Separate awards to two whistleblowers whose information and assistance were of crucial importance to successful SEC enforcement actions brought against a financial services firm.</li> <li>The larger award was in recognition of the fact that, among other things, the first whistleblower was the initial source of the investigation while the second whistleblower submitted information much later after the investigation was already underway.</li> </ul>
2021-83	5/12/2021	\$3.6M	<ul style="list-style-type: none"> <li>Whistleblower’s tip led to a successful SEC enforcement action; Whistleblower provided ongoing assistance as SEC’s investigation progressed.</li> </ul>
2021-85	5/17/2021	\$31M	<ul style="list-style-type: none"> <li>Award given to four individuals who provided significant and ongoing assistance, including meeting with SEC in person on several days.</li> </ul>
2021-86	5/19/2021	\$28M	<ul style="list-style-type: none"> <li>Whistleblower’s information led to an SEC enforcement action and a related action by another federal agency.</li> </ul>
2021-88	5/27/2021	\$4M	<ul style="list-style-type: none"> <li>Whistleblower’s information led SEC to open an investigation, and provided substantial assistance by meeting with SEC staff, identifying key players, and providing additional helpful information and documents.</li> </ul>
2021-91	6/2/2021	\$23M	<ul style="list-style-type: none"> <li>Two separate awards of approximately \$13 million and \$10 million to two whistleblowers whose information and assistance led to successful SEC and related actions.</li> </ul>
2021-100	6/14/2021	\$3M	<ul style="list-style-type: none"> <li>Award to two Whistleblowers whose information and assistance led to a successful SEC enforcement action.</li> <li>Whistleblowers participated in multiple interviews and provided helpful documents.</li> </ul>
2021-106	6/21/2021	\$5.3M	<ul style="list-style-type: none"> <li>Two separate awards of \$4M and \$1.3M. The Whistleblower for the first award provided extraordinary assistance, participating in hours of telephonic interviews and communicating dozens of times with investigative staff.</li> </ul>
2021-110	6/24/2021	\$1M	<ul style="list-style-type: none"> <li>Whistleblower’s information and assistance led to multiple successful SEC enforcement actions; Whistleblower provided SEC with valuable information and ongoing assistance, including participating in interviews.</li> </ul>

# FY 2021 SEC Whistleblower Award Proceeding Orders

PR No.	Date	Award	Public Details
2021-128	7/15/2021	\$1M	<ul style="list-style-type: none"> <li>Whistleblower's information led to an SEC enforcement action. Whistleblower participated in an interview and provided documents.</li> </ul>
2021-134	7/21/2021	\$3M	<ul style="list-style-type: none"> <li>Whistleblower alerted SEC to previously unknown conduct and then provided substantial additional assistance.</li> </ul>
2021-143	8/2/2021	\$4M	<ul style="list-style-type: none"> <li>Awards given to four Whistleblowers related to two separate actions.</li> </ul>
2021-146	8/6/2021	\$3.5M	<ul style="list-style-type: none"> <li>Awards given to three Whistleblowers related to two separate actions.</li> <li>One Whistleblower, who was awarded \$2M, alerted SEC staff to an ongoing fraud and participated in multiple voluntary interviews, provided documents and additional information.</li> </ul>
2021-149	8/10/2021	\$6M	<ul style="list-style-type: none"> <li>Awards to two Whistleblowers related to two separate enforcement proceedings.</li> <li>One Whistleblower's information led SEC to expand an investigation into a new geographical area, and the other Whistleblower's information alerted SEC to previously unknown conduct.</li> </ul>
2021-168	8/27/2021	\$2.6M	<ul style="list-style-type: none"> <li>Awards to five Whistleblowers in connection with three different enforcement actions.</li> </ul>
2021-177	9/15/2021	\$144M	<ul style="list-style-type: none"> <li>Joint award given to two individuals, \$110M and \$4M respectively.</li> <li>First whistleblower's award consists of \$40M award for an SEC case and \$70 million for a case involving another agency; whistleblower provided "significant independent analysis that substantially advanced the SEC's and the other agency's investigations."</li> <li>Second whistleblower voluntarily provided original information, but the information was provided after an investigation had already been opened and SEC had undertaken significant investigative steps, and much more limited compared to the first whistleblower.</li> </ul>
2021-180	9/17/2021	\$11.5M	<ul style="list-style-type: none"> <li>Joint award to two Whistleblowers; the first Whistleblower received around \$7M in recognition of the fact that he/she was the initial source that caused the investigation to be opened into hard-to-detect violations.</li> </ul>
2021-192	9/24/2021	\$36M	<ul style="list-style-type: none"> <li>Whistleblower provided crucial information on an illegal scheme to SEC and other agencies, including multiple meetings and the identification of key documents and witnesses.</li> </ul>
2021-211 (FY 2022)	10/15/2021	\$40M	<ul style="list-style-type: none"> <li>Joint award given to two individuals, \$32M and \$8M to each whistleblower.</li> <li>First whistleblower provided "substantial assistance" including identifying witnesses and helping SEC understand complex fact patterns</li> <li>Second whistleblower provided important new information but waited several years to report to SEC</li> </ul>

## **APPENDIX B**

# **Landscape of Dodd-Frank Whistleblower Litigation**

# Landscape of Dodd-Frank Whistleblower Litigation: Recent Supreme Court / Circuit Courts of Appeal Decisions

The Supreme Court and six U.S. courts of appeals have weighed in on the scope of Dodd-Frank's whistleblower provisions to date:

- *Digital Realty Trust, Inc. v. Somers*, 138 S. Ct. 767 (2018)
- *Wutherich v. Rice Energy Inc.*, No. 20-2394, 2021 WL 5745696, \*1 (3rd Cir. 2021)
- *Belaski v. SEC*, 839 Fed.Appx. 566 (D.C. Cir. 2021)
- *Doe v. SEC*, 846 Fed.Appx. 1 (D.C. Cir. 2021)
- *Neely v. Boeing Co.*, 823 F. App'x 494 (9th Cir. 2020)
- *Downey v. United States*, 816 F. App'x 625 (3d Cir. 2020)
- *Kilgour v. SEC*, 942 F.3d 113 (2d Cir. 2019)
- *Frye v. Anadarko Petroleum Corp.*, 953 F.3d 285 (5th Cir. 2019)
- *Greenspan v. SEC*, 727 F. App'x. 381 (9th Cir. 2018)
- *Doe v. SEC*, 729 F. App'x. 1 (D.C. Cir. 2018)
- *Martesana v. Chicago Stock Exchange*, 882 F.3d 744 (7th Cir. 2018)
- *Verfuert v. Orion Energy Systems*, 879 F.3d 789 (7th Cir. 2018)
- *Somers v. Digital Realty Trust, Inc.*, 850 F.3d 1045 (9th Cir. 2017)
- *Cerny v. SEC*, 707 F. App'x 29 (2d Cir. 2017)
- *Berman v. Neo@Ogilvy LLC*, 801 F.3d 145 (2d Cir. 2015)
- *Stryker v. SEC*, 780 F.3d 163 (2d Cir. 2015)

## Landscape of Dodd-Frank Whistleblower Litigation: District Court Decisions (2021)

- *Rinaldi v. NICE, Ltd.*, No. 19 Civ. 424 (LGS), 2021 WL 4295263, at \*1 (S.D.N.Y. Sept. 21, 2021)
- *Moniodes v. Autonomy Cap. (Jersey) LP*, No. 1:20-cv-5648-GHW, 2021 WL 3605385, at \*1 (S.D.N.Y. Aug. 11, 2021)
- *Kuba v. Disney Fin. Servs., LLC*, Case No. 6:21-cv-312-JA-LRH, 2021 WL 3269248, at \*1 (M.D. Fla. July 30, 2021)
- *United States Sec. & Exch. Comm'n v. Collector's Coffee Inc.*, Case No. 19 Civ. 4355 (VM) (GWG), 2021 WL 3082209, at \*1 (S.D.N.Y. July 21, 2021)
- *Almeida v. W. Digital Corp.*, Case No. 20-cv-04735-RS, 2021 WL 4441991, at \*1 (N.D. Cal. June 25, 2021)
- *Gupta v. New Silk Route Advisors, L.P.*, No. 19-cv-9284 (PKC), 2021 WL 1812202, at \*1 (S.D.N.Y. May 5, 2021)

# Landscape of Dodd-Frank Whistleblower Litigation: District Court Decisions (2020)

- *Corrent v. Cooper Standard Auto., Inc.*, No. 20-11070, 2020 WL 7389040 (E.D. Mich. Dec. 16, 2020)
- *Rodriguez v. Stanley*, No. 19-9104 (CCC), 2020 WL 7338221 (D. N.J. Dec. 14, 2020)
- *Fitzpatrick v. Milwaukee School of Engineering*, No. 18-CV-0541-BHL, 2020 WL 7060133 (E.D. Wis. Dec. 2, 2020)
- *Slawin v. Bank of Am. Merchant Servs.*, 491 F. Supp. 3d 1334 (N.D. Ga. Sept. 30, 2020)
- *Hunt v. Nationstar Mortgage, LLC*, No. 1:20-cv-02359-TWT-LTW, 2020 WL 5548777 (N.D. Ga. Aug. 10, 2020)
- *Erhart v. Bofl Holding, Inc.*, \_\_\_ F. Supp. 3d \_\_\_, 2020 WL 1550207 (S.D. Cal. March 31, 2020)
- *Cellucci v. O'Leary*, No. 19-CV-2752 (VEC), 2020 WL 977986 (S.D.N.Y. Feb. 28, 2020)
- *Jones v. Adams*, No. CIV-19-979-J, 2020 WL 236740 (W.D. Ok. Jan. 15, 2020)

## Landscape of Dodd-Frank Whistleblower Litigation: District Court Decisions (2019)

- *Downey v. United States*, No. CV 19-1212-CFC, 2019 WL 5595291 (D. Del. Oct. 30, 2019)
- *Dhaliwal v. Mallinckrodt plc*, No. 18-CV-3146 (VSB), 2019 WL 4739045 (S.D.N.Y. Sept. 29, 2019)
- *Neff v. PKS Holdings, LLC*, No. 5:18-CV-1826, 2019 WL 3729568 (E.D. Pa. Aug. 8, 2019)
- *Davis v. Bank of Am. Mortg. Servicer*, No. 8:19-CV-1582-T-02SPF, 2019 WL 5110832 (M.D. Fla. July 10, 2019)
- *Rollins v. Goldman Sachs & Co. LLC*, No. 18 CIV. 7162 (ER), 2019 WL 2754635 (S.D.N.Y. July 2, 2019)
- *Tellez v. OTG Interactive, LLC*, No. 15 CV 8984-LTS-KNF, 2019 WL 234320 (S.D.N.Y. June 3, 2019)
- *Neely v. Boeing Co.*, No. C16-1791-JCC, 2019 WL 2161564 (W.D. Wash. May 17, 2019)
- *Brooks v. Agate Res., Inc.*, No. 6:15-CV-00983-MK, 2019 WL 2635594 (D. Or. Mar. 25, 2019), *report and recommendation adopted*, No. 6:15-CV-000983-MK, 2019 WL 2156955 (D. Or. May 14, 2019)

## Landscape of Dodd-Frank Whistleblower Litigation: District Court Decisions (2018)

- *Danon v. Vanguard Group, Inc.*, 2018 WL 5785342 (E.D. Pa. Nov. 2, 2018)
- *Johnson v. Oystacher*, 2018 WL 5249229 (N.D. Ill. Oct. 22, 2018)
- *Wutherich v. Rice Energy Inc.*, 2018 WL 5724128 (W.D. Pa. Oct. 2, 2018)
- *Robertson v. Beacon Sales Acquisition*, 2018 WL 2464455 (D.Md. May 31, 2018)
- *Johnson v. AmeriGas Propane, L.P.*, 2018 WL 2304742 (N.D.N.Y. May 21, 2018)
- *Neely v. Boeing Co.*, 2018 WL 2216093 (W.D. Wa. May 15, 2018)
- *Cohen v. Power Solutions Int'l, Inc.*, 2018 WL 1919058 (N.D. Ill. Apr. 23, 2018)
- *Pompliano v. Snap, Inc.*, 2018 WL 3198454 (C.D. Cal. Apr. 11, 2018)
- *Price v. UBS Fin. Svcs., Inc.*, 2018 WL 1885669 (D.N.J. Apr. 19, 2018)
- *Toscano v. Regions Fin. Corp.*, 2018 WL 1518348 (N.D. Ala. Mar. 28, 2018)
- *Sayre v. JP Morgan Chase & Co.*, 2018 WL 1109032 (S.D. Cal. Feb. 26, 2018)
- *Shea v. Kohl's Dep't Stores, Inc.*, 2018 WL 2676164 (N.D. Ala. Feb. 8, 2018)
- *Daly v. Citigroup, Inc.*, 2018 WL 741414 (S.D.N.Y. Feb. 6, 2018)
- *Polite v. Khan Funds Mgmt. America, Inc.*, 2018 WL 894394 (S.D.N.Y. Feb. 5, 2018)
- *MiMedx Group, Inc. v. Fox.*, 2018 WL 558500 (N.D. Ill. Jan. 24, 2018)
- *Tam v. Qualcomm, Inc.*, 300 F.Supp. 3d 1130 (S.D. Cal. 2018)

## Landscape of Dodd-Frank Whistleblower Litigation: District Court Decisions (2017)

- *Price v. UBS Fin. Servs.*, 2017 WL 5667994 (D.N.J. Nov. 27, 2017)
- *Smith v. Raytheon Co.*, 2017 WL 4685373 (E.D. Va. Aug. 11, 2017)
- *O’Risky v. Mead Johnson Nutrition Co.*, 2017 WL 3421552 (N.D. Ill. Aug. 8, 2017)
- *Lawrence v. IBM Corp.*, 2017 WL 3278917 (S.D.N.Y. Aug. 1, 2017)
- *Boyle v. Evolve Bank & Trust*, 2017 WL 3075157 (W.D. Tenn. July 19, 2017)
- *Reyher v. Grant Thornton, LLP*, 2017 WL 2880585 (E.D. Pa. July 6, 2017)
- *Wussow v. Bruker Corp.*, 2017 WL 2805016 (W.D. Wis. June 28, 2017)
- *Kruchoski v. MiMedx Grp., Inc.*, 2017 WL 3433697 (N.D. Ga. June 13, 2017)
- *Martensen v. Chicago Stock Exch.*, 2017 WL 2461548 (N.D. Ill. June 7, 2017)
- *McManus v. Tetra Tech Constr., Inc.*, 2017 WL 1968290 (N.D.N.Y. May 11, 2017)
- *Wadler v. Bio-Rad Labs., Inc.*, 2017 WL 1910057 (C.D. Cal. May 10, 2017)
- *Vista Outdoor, Inc. v. Reeves Family Trust*, 234 F.Supp. 3d 558 (S.D.N.Y. 2017)
- *Grimm v. Target Corp.*, 2017 WL 481455 (D. Minn. Feb. 6, 2017)
- *Blanda v. Martin & Seibert, L.C.*, 2017 WL 63027 (S.D.W.V. Jan. 5, 2017)

## Landscape of Dodd-Frank Whistleblower Litigation: District Court Decisions (2016)

- *Deykes v. Cooper-Standard Auto., Inc.*, 2016 WL 6873395 (E.D. Mich. Nov. 22, 2016)
- *Hall v. Teva Pharm. USA, Inc.*, 214 F.Supp. 3d 1281 (S.D. Fla. 2016)
- *Igwe v. City of Miami*, 2016 WL 7671370 (S.D. Fla. Sept. 29, 2016)
- *Ott v. Fred Alger Mgmt., Inc.*, 2016 WL 5407663 (S.D.N.Y. Sept. 27, 2016)
- *Erhart v. Bofi Holding, Inc.*, 2016 WL 5369470 (S.D. Cal. Sept. 26, 2016)
- *Jaludi v. Citigroup*, 2016 WL 4528352 (M.D. Pa. Aug. 30, 2016)
- *Kuhns v. Ledger*, 202 F.Supp. 3d 433 (S.D.N.Y. 2016)
- *Lamb v. Rockwell Automation Inc.*, 2016 WL 4273210 (E.D. Wis. Aug. 12, 2016)
- *Feldman-Boland v. Morgan Stanley*, 2016 WL 3826285 (S.D.N.Y. July 13, 2016)
- *Ange v. Parker Hanifan Corp.*, 2016 WL 3582086 (N.D. Ohio June 28, 2016)
- *Danon v. Vanguard Group, Inc.*, 2016 WL 2988987 (E.D. Pa. May 23, 2016)
- *Allstate Ins. Co. v. Zeefe*, 2016 WL 1071011 (E.D. Ky. Mar. 17, 2016)
- *Graham v. Select Portfolio Servicing, Inc.*, 156 F.Supp. 3d 491 (S.D.N.Y. 2016)
- *Yang v. Navigators Grp., Inc.*, 155 F.Supp. 3d 327 (S.D.N.Y. 2016)

## Landscape of Dodd-Frank Whistleblower Litigation: District Court Decisions (2015)

- *Puffenbarger v. Engility Corp.*, 151 F.Supp. 3d 651 (E.D. Va. Dec. 31, 2015)
- *Wiggins v. ING U.S., Inc.*, 2015 WL 8779559 (D. Conn. Dec. 15, 2015)
- *Verble v. Morgan Stanley Smith Barney, LLC*, 148 F.Supp. 3d 644 (E.D. Tenn. 2015)
- *Lutzeier v. Citigroup Inc.*, 2015 WL 7306443 (E.D. Mo. Nov. 19, 2015)
- *Kshetrapal v. Dish Network, LLC*, 90 F.Supp. 3d 108 (S.D.N.Y. 2015)
- *Wadler v. Bio-Rad Labs., Inc.*, 141 F.Supp. 3d 1005 (N.D. Cal. 2015)
- *Pabon v. Barclays Bank PLC*, 2015 WL 5834796 (S.D.N.Y. Sept. 30, 2015)
- *Davies v. Broadcom Corp.*, 130 F.Supp. 3d 1343 (C.D. Cal. 2015)
- *Duke v. Prestige Cruises Int'l, Inc.*, 2015 WL 4886088 (S.D. Fla. Aug. 14, 2015)
- *Dressler v. Lime Energy*, 2015 WL 4773326 (D.N.J. Aug. 13, 2015)
- *Somers v. Digital Realty Trust, Inc.*, 119 F.Supp. 3d 1088 (N.D. Cal. 2015)
- *CitiGroup Global Mkts. Inc. v. Preis*, 2015 WL 1782135 (S.D.N.Y. Apr. 14, 2015)

## Landscape of Dodd-Frank Whistleblower Litigation: District Court Decisions (2014)

- *Verfuert v. Orion Energy Sys., Inc.*, 65 F.Supp. 3d 640 (E.D. Wis. 2014)
- *Simons v. Ditto Trade, Inc.*, 2014 WL 6488338 (N.D. Ill. Nov. 19, 2014)
- *Connolly v. Remkes*, 2014 WL 5473144 (N.D. Cal. Oct. 28, 2014)
- *Ulrich v. Moody's Corp.*, 2014 WL 4977562 (S.D.N.Y. Sept. 30, 2014)
- *Peters v. LifeLock Inc.*, No. 14-cv-576 (D. Az. Sept. 19, 2014)
- *Zillges v. Kenney Bank & Trust*, 24 F.Supp. 3d 795 (E.D. Wis. 2014)
- *Bussing v. COR Clearing, LLC*, 20 F.Supp. 3d 719 (D. Neb. 2014)
- *Wilson v. Susquehanna Bancshares, Inc.*, 2014 WL 2094039 (D. Md. May 19, 2014)
- *Englehart v. Career Educ. Corp.*, 2014 WL 2619501 (M.D. Fla. May 12, 2014)
- *Yang v. Navigators Grp.*, 18 F.Supp. 3d 519 (S.D.N.Y. 2014)
- *Safarian v. Am. DG Energy, Inc.*, 2014 WL 1744989 (D.N.J. Apr. 29, 2014)
- *Azim v. Tortoise Capital Advisors, LLC*, 2014 WL 707235 (D. Kan. Feb. 24, 2014)
- *Ahmad v. Morgan Stanley & Co.*, 2 F.Supp. 3d 491 (S.D.N.Y. 2014)

## Landscape of Dodd-Frank Whistleblower Litigation: District Court Decisions (2011-2013)

- *Pruett v. BlueLinx Holdings, Inc.*, 2013 WL 6335887 (N.D. Ga. Nov. 12, 2013)
- *Rosenblum v. Thomson Reuters (Mkts.) LLC*, 984 F.Supp. 2d 141 (S.D.N.Y. 2013)
- *Ellington v. Giacoumakis*, 977 F.Supp. 2d 42 (D. Mass. 2013)
- *Banko v. Apple Inc.*, 20 F.Supp. 3d 749 (N.D. Cal. 2013)
- *Wagner v. Bank of Am. Corp.*, 2013 WL 3786643 (D. Colo. July 19, 2013)
- *Murray v. UBS Secs., LLC*, 2013 WL 2190084 (S.D.N.Y. May 21, 2013)
- *Genberg v. Porter*, 935 F.Supp. 2d 1094 (D. Colo. 2013)
- *Murray v. UBS Secs., LLC*, 2014 WL 285093 (S.D.N.Y. Jan. 27, 2013)
- *Ott v. Fred Alger Mgmt., Inc.*, 2012 WL 4767200 (S.D.N.Y. Sept. 27, 2012)
- *Kramer v. Trans-Lux Corp.*, 2012 WL 4444820 (D. Conn. Sept. 25, 2012)
- *Nollner v. S. Baptist Convention, Inc.*, 852 F.Supp. 2d 986 (M.D. Tenn. 2012)
- *James v. Conceptus Inc.*, 851 F.Supp. 2d 1020 (S.D. Tex. 2012)
- *Ruhe v. Masimo Corp.*, 2011 WL 4442790 (C.D. Cal. Sept. 16, 2011)
- *Egan v. TradingScreen, Inc.*, 2011 WL 4344067 (S.D.N.Y. Sept. 12, 2011)

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