

## First Report of SEC's Whistleblower Office Contains Some Surprises

On November 16, 2011, the SEC's Office of the Whistleblower released its [first annual report](#) to Congress, as required by section 924(d) of the Dodd-Frank Act. The report only includes information about tips received after the final rules implementing the program became effective on August 12, 2011. As a result, it only includes seven weeks of data. Still, the information provides useful insights into the number and types of whistleblower complaints being received and some insights into the Office's staffing and activities to date.

### Staffing

The report indicates that, in addition to Sean McKessy, the Head of the Office of the Whistleblower, the Office is currently staffed by five attorneys and one paralegal, all of whom are serving 12-month details from various Commission divisions and offices, which details started in May. The Office is currently in the process of recruiting and hiring a deputy chief.

### Activities

The Office's primary activities to date have included:

- Establishing a publicly-available whistleblower hotline for members of the public to call with questions about the program, which hotline has received over 900 calls since being established in May, 2011;
- Launching a [website](#), which includes detailed information about the program, links to required forms, and a list of notices of covered actions for which whistleblowers may seek bounties;
- Meeting with whistleblowers and their counsel to provide guidance concerning expectations and follow-up; and
- Actively publicizing the whistleblower program through presentations, press releases and other public communications.

The Office expects that, as the program evolves, it will provide individualized notice to whistleblowers who may have contributed to the success of a Commission action resulting in monetary sanctions exceeding \$1 million, so that they can apply for bounties.

### Number and Types of Tips Received

In terms of numbers, the Office reports that it received 334 tips between August 12, 2011 and September 30, 2011. This number is far below the SEC's previously publicized reports that it was receiving approximately 100 whistleblower tips a day, with an anticipated volume of 30,000 tips a year. The actual number received thus far

### Contact Us

For more information about this alert or the whistleblower provisions of Dodd-Frank, please contact any of the following [Employment Law](#) attorneys:

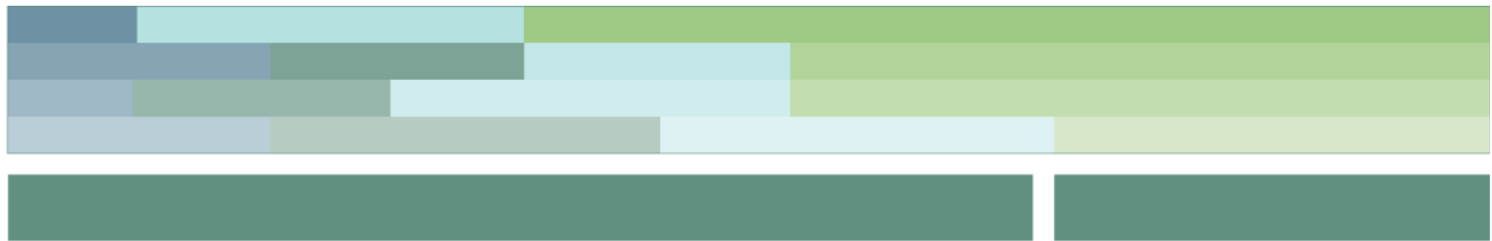
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suggests closer to a total of 2,500 tips a year if the tips continue at the same pace. The volume of tips will likely increase, however, after the first bounties begin to be awarded and the program becomes more widely publicized.

As for the types of tips received, the most common complaint categories were market manipulation (16.2 percent), corporate disclosures and financial statements (15.3 percent) and offering fraud (15.6 percent). Foreign Corrupt Practices Act (FCPA) tips only comprised 3.9 percent of those received, somewhat surprising given the high level of government enforcement activity in this area.

### **Location of Tips**

The Commission received whistleblower submissions from individuals in 37 states, as well as 11 foreign countries. The most highly represented states were California, New York, Florida and Texas. The most highly represented foreign countries were China and the U.K. In the seven weeks for which data was compiled, the Office received 32 whistleblower tips from foreign countries, constituting approximately 10 percent of all tips received.

These numbers reflect that it is critical for multinational companies that have not yet done so to review their whistleblower and ethics policies and procedures not only for the U.S., but globally, to ensure that they consider whether or not changes are warranted under Dodd-Frank.

### **Best Practices**

As discussed in our [September 20, 2011 newsletter](#), there are a number of best practices Orrick recommends to address the challenges of Dodd-Frank's whistleblower provisions. They include:

- Reviewing existing reporting and disclosure policies as well as policies against retaliation to encourage internal reporting, and incorporating those obligations in other documents such as deferred compensation arrangements;
- Publicizing the existence of, and value of, internal reporting in communications from the CEO or other senior management;
- Providing other opportunities for reporting that do not involve filing a regular complaint;
- Improving procedures and processes for receiving tips and promptly and thoroughly investigating them;
- Evaluating whether existing compliance and legal staff are adequate to meet the challenges of Dodd-Frank;
- Evaluating Board involvement in the review of whistleblower complaints;
- Delivering training programs to supervisors to be sensitive to comments from employees that might later be considered to have been complaints to ensure that complaints are handled properly;
- Updating the procedures and timelines for conducting investigations, and the documentation, where appropriate, of investigations and outcomes; and
- Reviewing third-party vendor practices (e.g., consultants, auditors, hotline administrators) to ensure they provide optimal protection.