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

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

**Fiscal Year 2011**

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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 2011**

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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 Protections.” 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 related successful 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, Dodd-Frank Act § 924(d) directs the Commission to establish a separate office within the Commission to administer the whistleblower program.

Section 924(d) of the Dodd-Frank Act requires the Commission’s Office of the Whistleblower to report annually to Congress on its 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 the Commission's Office of the Whistleblower to satisfy the reporting obligations of Dodd Frank Act § 924(d) and Exchange Act § 21F(g)(5). Parts II, III, and IV of the report primarily address the requirements of Dodd Frank Act § 924(d), and Parts V and VI of the report, along with the financial statements of the Investor Protection Fund that are included in the Commission's 2011 Performance Annual Report, primarily address the requirements of Exchange Act § 21F(g)(5).

## **II. Implementation of the Whistleblower Award Program**

### **A. Adoption of Implementing Regulations**

Exchange Act § 21F(b) provides that whistleblower awards shall be paid under regulations prescribed by the Commission. Shortly after the enactment of the Dodd-Frank Act, the Commission formed a cross-disciplinary working group to draft proposed rules to implement the Act's whistleblower provisions. In addition, before publishing proposed rules and commencing formal notice-and-comment rulemaking, the Commission provided an e-mail link on its website to facilitate public input about the whistleblower award program.<sup>4</sup> On November 3, 2010, the Commission proposed Regulation 21F to implement Exchange Act § 21F.<sup>5</sup> The Commission received more than

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<sup>4</sup> See <http://www.sec.gov/spotlight/regreformcomments.shtml>.

<sup>5</sup> Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities and Exchange Act of 1934, Release No. 34-63237.

240 comment letters and approximately 1,300 form letters on the proposal.<sup>6</sup> In response to the comments, the Commission made a number of revisions and refinements to the proposed rules in order to better achieve the goals of the statutory whistleblower program and to advance effective enforcement of the federal securities laws.

On May 25, 2011, the Commission adopted final Regulation 21F, which became effective on August 12, 2011 (the “Final Rules”).<sup>7</sup> Among other things, the Final Rules define certain terms essential to the operation of the whistleblower program; establish procedures for submitting tips and applying for awards, including appeals of Commission determinations whether or to whom to make an award; describe the criteria the Commission will consider in making award decisions; and implement the Dodd-Frank Act’s prohibition against retaliation for whistleblowing.

#### **B. Establishment and 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 the newly-created Office of the Whistleblower in the Division of Enforcement.<sup>8</sup> In addition to Mr. McKessy, the Office is currently staffed by five attorneys and one senior paralegal on detail from various Commission Divisions and Offices, each serving a 12-month detail in the Office of the Whistleblower. These details started in May 2011. The Office of the Whistleblower is in the process of recruiting and hiring a Deputy Chief.

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<sup>6</sup> The public comments are available at <http://www.sec.gov/comments/s7-33-10/s73310.shtml>.

<sup>7</sup> Implementation of the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934, Release No. 34-64545.

<sup>8</sup> <http://www.sec.gov/news/press/2011/2011-47.htm>.

Since its establishment, the Office of the Whistleblower has focused primarily on establishing the office and implementing the whistleblower program. During fiscal year 2011, the Office's activities included the following:

- Providing extensive training on the Dodd-Frank statute and Final Rules to the Commission's staff;
- Establishing and implementing internal policies, procedures, and protocols;
- Establishing a publicly-available Whistleblower hotline for members of the public to call with questions about the program. Office of the Whistleblower attorneys return calls within 24 business hours. Since the hotline was established in May 2011, the Office has returned over 900 phone calls from members of the public;
- Redesigning and launching an Office of the Whistleblower website dedicated to the whistleblower program ([www.sec.gov/whistleblower](http://www.sec.gov/whistleblower)). The website includes 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 frequently asked questions;
- Meeting with whistleblowers, potential whistleblowers and their counsel, and consulting with the relevant subject matter experts in the Division of Enforcement to provide guidance to whistleblowers and their counsel concerning expectations and follow up;
- 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, presentations, speeches, press releases, and other public communications;<sup>9</sup>
- Assisting in updating the Commission's web-based system for submitting tips, complaints, and referrals (<https://denebleo.sec.gov/TCRExternal/index.xhtml>) to conform to the Final Rules;
- Providing ongoing guidance to staff throughout the Commission regarding various aspects of the program, including the development of internal policies for the handling of confidential whistleblower identifying information; and
- Working with Enforcement staff to identify and track all enforcement cases involving a whistleblower to assist in the documentation of the whistleblower's participation in anticipation of an eventual claim for award.

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<sup>9</sup> See, e.g., <http://www.sec.gov/news/speech/2011/spch081111sxm.htm>.

### **III. Whistleblower Tips Received During Fiscal Year 2011**

The Final Rules specify that individuals who would like to be considered for a whistleblower award must submit their tip to the Office of the Whistleblower on Form-TCR either via facsimile or mail or via the Commission's online TCR questionnaire portal. Concurrently with the effectiveness of the Final Rules on August 12, 2011, the Commission updated its Tips, Complaints and Referrals System (the "TCR System") to conform the online questionnaire to the substantive requirements in the Final Rules and to provide enhanced whistleblower functionality. The updated online TCR questionnaire allows whistleblowers to make online submissions that satisfy Regulation 21F, including making the required declarations. In addition, the TCR System allows the Commission to comprehensively and centrally track all whistleblower tips submitted to the Commission online or via hard copy by mail or facsimile.

Because the Final Rules became effective August 12, 2011, only 7 weeks of whistleblower tip data is available for fiscal year 2011. Appendix A lists, by subject matter and month, the 334 whistleblower tips received from August 12, 2011 through September 30, 2011.<sup>10</sup> The most common complaint categories were market manipulation (16.2%), corporate disclosures and financial statements (15.3%), and offering fraud (15.6%).<sup>11</sup>

The Commission received whistleblower submissions from individuals in 37 states, as well as from several foreign countries, including China (10) and the United Kingdom (9). Appendices B and C set forth tabular presentations of the sources of domestic and international whistleblower tips.

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<sup>10</sup> Of course, 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 TCR's that include the required whistleblower declaration and does not reflect all TCRs received by the Commission during the fiscal year.

<sup>11</sup> This breakdown reflects the categories selected by whistleblowers in their online questionnaire or hard copy TCR submissions and, thus, the data represents the whistleblower's own characterization of the violation type. The Office of the Whistleblower will work to synchronize the categories enumerated in the online and hard copy TCR forms with the categories of cases the Division of Enforcement uses in its case tracking database. As the program evolves, the Office of the Whistleblower will use this data to calculate metrics, identify trends and evaluate the overall program.

As a result of the relatively recent launch of the program and the small sample size, it is too early to identify any specific trends or conclusions from the data collected to date. We expect that the Annual Report for 2012 – with the benefit of a full year’s worth of data – will yield such trends and conclusions.<sup>12</sup>

#### **IV. Processing of Whistleblower Tips During Fiscal Year 2011**

The Office of the Whistleblower leverages the resources and expertise of the Commission’s Office of Market Intelligence to triage incoming whistleblower TCRs and to assign specific, timely and credible TCRs to appropriate members of the Enforcement staff.

During the triage process, several layers of staff in the Office of Market Intelligence examine each submitted tip to identify those that are sufficiently specific, timely and credible to warrant the further allocation of Commission resources, or a referral to another law enforcement or regulatory agency. Complaints that relate to an existing investigation are generally forwarded to the staff assigned to the existing matter. Complaints that involve the specific expertise of another Division or Office within the Commission are generally forwarded to staff in that particular Division or Office for further analysis. When appropriate, complaints 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 without violating the confidentiality of whistleblower-identifying information contained in the complaint. Complaints that relate to the private financial affairs of an investor or a discrete investor group are usually forwarded to the Office of Investor Education and Advocacy (“OIEA”).

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<sup>12</sup> Pursuant to Dodd-Frank Act § 924(b), information regarding possible federal securities law violations submitted to the Commission in writing after the Dodd-Frank Act became law and prior to the adoption of the Final Rules implementing Exchange Act § 21F is considered original information, and thus, is potentially eligible for a whistleblower award. Although these tips are not included in the numbers reported herein, individuals who submitted them will be eligible to apply for an award in connection with covered actions and related actions if they submit claims pursuant to the claims process described in the Final Rules.



Comments or questions about agency practice or the federal securities laws are also forwarded to OIEA.

The Office of the Whistleblower participates in the tip allocation and investigative processes in several ways. When callers to the Office of the Whistleblower's voicemail provide information of any allegation or statement of concern about possible violations of the federal securities laws or conduct that poses a possible risk of harm to investors (either as a message or during a return call), members of the Office of the Whistleblower staff enter that information in the TCR System so it can be triaged. During triage, the Office of the Whistleblower may contact the whistleblower to glean 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, the Office of the Whistleblower is available as needed to serve as a liaison between the whistleblower (and his or her counsel) and investigative staff. On occasion, the Office of the Whistleblower arranges meetings between whistleblowers and subject matter experts on the Enforcement staff to assist in better understanding the whistleblowers' submissions and developing the specific facts of a case. Staff in the Office of the Whistleblower 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 2011**

The Final Rules set out the procedures for applying for a whistleblower award. The award process begins following the entry of a final judgment or order for monetary sanctions that, alone or jointly with judgments or orders previously entered in the same action or an action based on the same nucleus of operative facts, exceeds \$1 million. Following the entry of such a judgment or

order, the Office of the Whistleblower publishes a Notice of Covered Action on the Commission's website. Once a Notice of Covered Action is posted, individuals have 90 calendar days to apply for an award by submitting a completed whistleblower award application, which is known as Form WB-APP, to the Office of the Whistleblower.<sup>13</sup> It is anticipated that as the program evolves, the Office of the Whistleblower's standard practice will be to provide individualized notice to whistleblowers who may have contributed to the success of a Commission action resulting in monetary sanctions exceeding \$1 million.

On August 12, 2011, the Office of the Whistleblower posted Notices of Covered Actions for the 170 applicable enforcement judgments and orders issued from July 21, 2010 through July 31, 2011 that included the imposition of sanctions exceeding the statutory threshold of \$1 million.<sup>14</sup> Analysis of claims submitted in connection with any of these Covered Actions requires, as a preliminary matter, identifying all claimants who submit an application for an award in connection with the Covered Action before the deadline. The 90-day deadline for all applications for the initial list of Covered Actions is November 11, 2011.<sup>15</sup> Because the 90-day application period had not passed with respect to any Notices of Covered Actions as of the end of the fiscal year, applications for awards had not yet been processed. Accordingly, the Commission did not pay any whistleblower awards during fiscal year 2011.

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<sup>13</sup> Rule 21F-10(a)-(b), 17 C.F.R. § 240.21F-10(a)-(b).

<sup>14</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>15</sup> On October 5, 2011, the Office of the Whistleblower posted Notices of Covered Actions for fifteen additional cases that met the eligibility requirements for a potential whistleblower award. The deadline for applications for this second round of notices is January 3, 2012. On October 31, 2011, the Office of the Whistleblower posted Notices of Covered Actions for six additional cases. The deadline for award applications for these cases is January 30, 2012.

## VI. Securities and Exchange Commission Investor Protection Fund

Section 922 of the Dodd-Frank Act established the Securities and Exchange Commission Investor Protection Fund (“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>

As of September 30, 2011, the Fund was fully funded, with an ending balance of \$452,788,043.74.

	<b>FY 2011</b>	<b>FY 2010</b>
Balance of Fund at beginning of preceding fiscal year	\$451,909,854.07	\$0.00
Amounts deposited into or credited to Fund during preceding fiscal year	\$0.00	\$451,909,854.07
Amount of earnings on investments during preceding fiscal year	\$990,562.11	\$0.00
Amount paid from Fund during preceding fiscal year to whistleblowers	\$0.00	\$0.00
Amount disbursed to Office of the Inspector General during preceding fiscal year	(\$112,372.44)	\$0.00
Balance of Fund at end of the preceding fiscal year	\$452,788,043.74	\$451,909,854.07

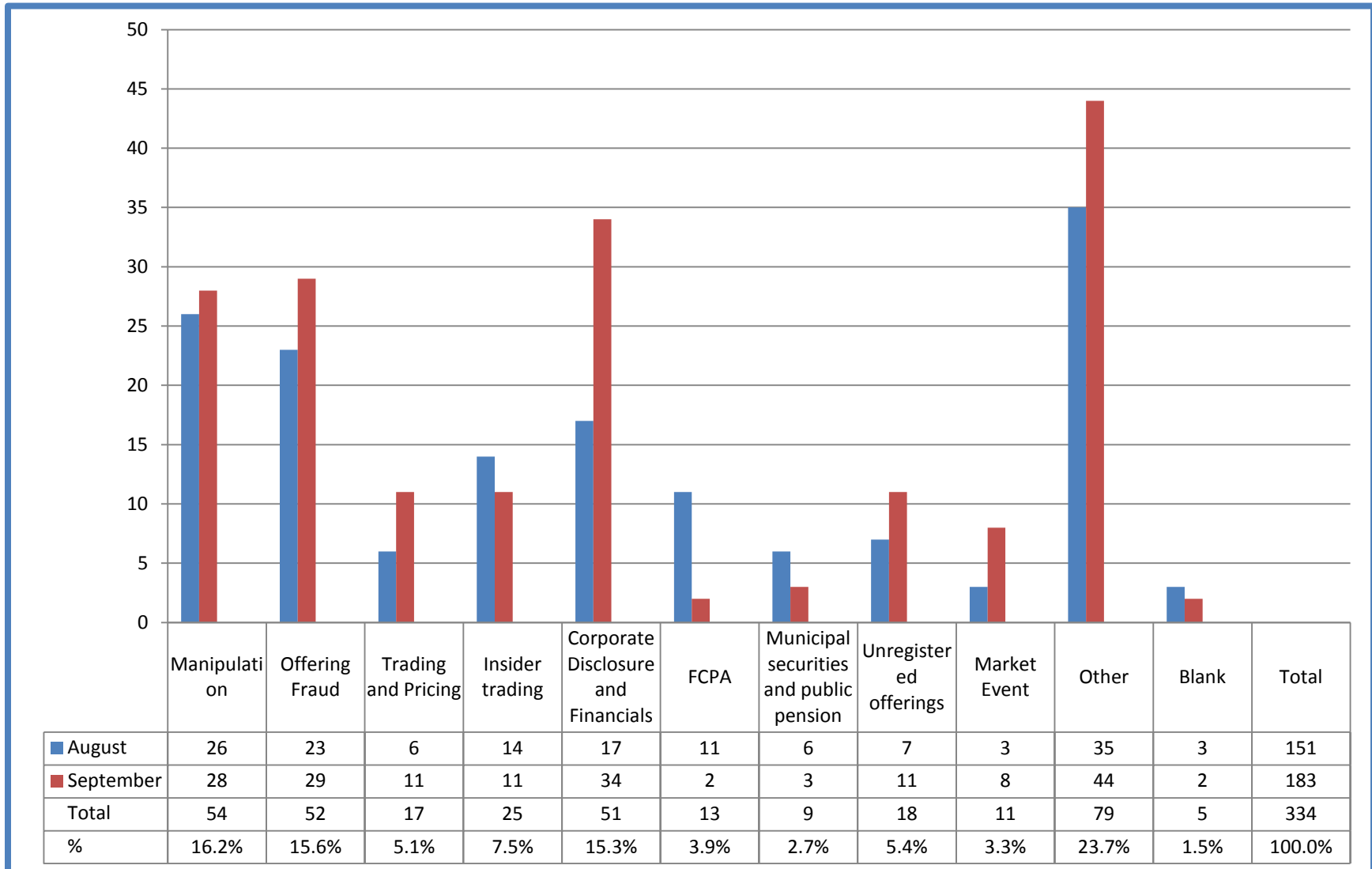
<sup>16</sup> See Exchange Act §21F(g)(2)(A)

<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).

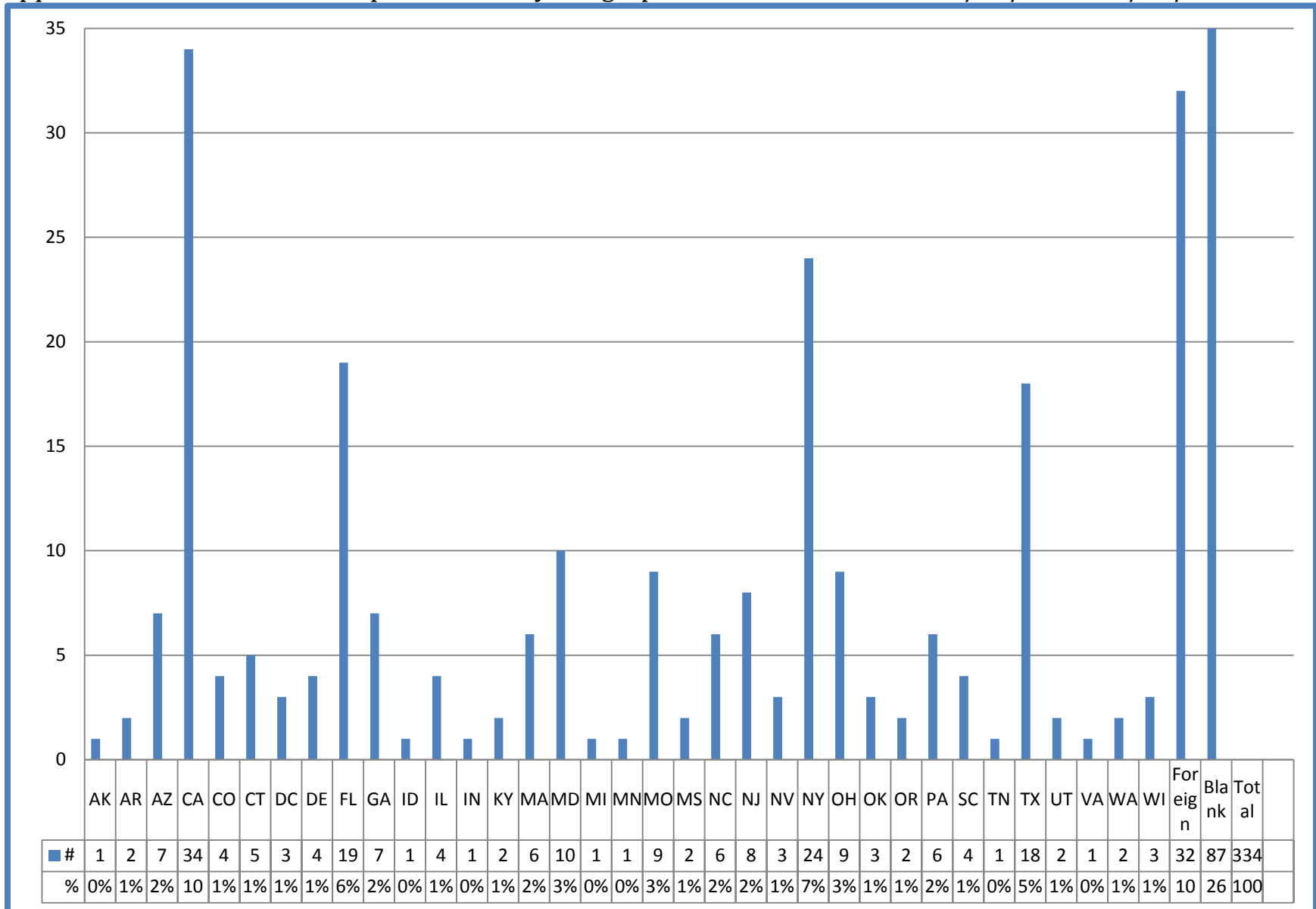
The audited financial statements for the Fund, including a balance sheet, income statement and cash flow analysis are included in the Commission's 2011 Performance and Accountability Report, separately submitted to Congress and accessible at [www.sec.gov/about/secpar2011.shtml](http://www.sec.gov/about/secpar2011.shtml).

## Appendix A: Whistleblower Tips by Allegation Type



\*The 79 TCRs that whistleblowers identified as “Other,” relate to those instances when the whistleblower chose not to use one of the predefined complaint categories in the online questionnaire.

Appendix B: Whistleblower Tips Received by Geographic Location – Domestic 8/12/2011 – 9/30/2011



Appendix C: Whistleblower Tips Received by Geographic Location – Overseas 8/12/2011 – 9/30/2011

