

Securities and Exchange Commission Office of the Whistleblower

Annual Report to Congress for Fiscal Year 2023

November 14, 2023

The U.S. Securities and Exchange Commission’s Whistleblower Program continued to grow and strengthen in Fiscal Year (FY) 2023, establishing new records for the Program. In FY 2023, the Commission awarded nearly \$600 million—the highest annual total by dollar value in the Program’s history—to 68 individual whistleblowers.¹ These totals include a single award for almost \$279 million—the largest in the history of the Program. The SEC has now awarded more than \$1.9 billion to 397 individual whistleblowers since the beginning of the Program in 2011. The impact of the Whistleblower Program was evident in the unprecedented level of public participation in the Program in FY 2023. The Commission received more than 18,000 whistleblower tips in FY 2023, almost 50% more than the previous record set in FY 2022. The Commission also received a record number of applications for awards in FY 2023.

This increase in public participation in the Program has occurred as the SEC’s Division of Enforcement has vigorously pursued enforcement actions against those who impede whistleblowers from reporting to the SEC or who retaliate against whistleblowers. In FY 2023, the Division brought five actions under Rule 21F-17,² including one that resulted in the highest penalty to date for a stand-alone action for violation of the anti-impeding rule.

“We saw three strands of the Whistleblower Program come together in FY 2023—record award amounts, unprecedented public participation, and strong enforcement of whistleblower protections,” said Creola Kelly, Chief of the Office of the Whistleblower (OWB). “The data show that whistleblowers are increasingly incentivized to come forward with their information about potential securities law violations, which is a testament to the strength of the Program.”

Claims for Awards

In FY 2023, the Commission granted awards in 40 Covered Actions,³ including the following noteworthy awards:

¹ The total dollar amount includes six awards that the Commission issued in connection with related actions pursuant to Rule 21F-11 of the Securities and Exchange Act of 1934. The number of individuals awarded includes each joint whistleblower awarded. If the Commission issues awards to a single whistleblower in two or more final orders, those awards are counted separately for the purposes of determining the number of individuals awarded.

² Section 21F of the Exchange Act and Rule 21F-17 thereunder.

³ Generally, OWB posts Notices of Covered Action for each SEC action where a final judgment or order, by itself or together with other prior judgments or orders in the same action issued after July 21, 2010, results in monetary sanctions exceeding \$1 million. *See* Exchange Act Rule 21F-10(a). The Commission may order an award in more than one covered action as part of a single final order.

- **Whistleblower tip leads to massive monetary sanctions.** In earning an almost \$279 million award, the largest in the history of the Program, a whistleblower provided information and substantial ongoing assistance to a Commission investigation and another federal agency’s investigation.⁴
- **Multiple whistleblowers share \$104 million award.** Seven whistleblowers, including foreign nationals, received awards for reporting misconduct at an entity’s subsidiaries in three jurisdictions. The total award, which included an award for contributions to related actions brought by another federal agency, was the fourth largest in the history of the Program.⁵
- **Whistleblower tip leads to an enforcement action returning money to investors.** A whistleblower’s information was of great significance to an investigation that led to an enforcement action and resulted in the return of a large amount of money to harmed investors.⁶
- **A whistleblower’s persistence pays off.** A whistleblower who made “persistent efforts to remedy” misconduct and caused Enforcement staff to open an investigation was awarded \$9 million; another whistleblower, who made an important, but lesser, contribution to the success of the investigation, was awarded \$3 million.⁷
- **Whistleblowers working together to stop a fraud.** Two whistleblowers, although not joint claimants, provided complementary information about an ongoing fraud. One provided accounting records to Enforcement staff and the other reported misrepresentations made to them as a potential investor in the scheme.⁸

⁴ Order Determining Whistleblower Award, Exchange Act Release No. 97438, File No. 2023-55 (May 5, 2023), <https://www.sec.gov/files/rules/other/2023/34-97438.pdf>.

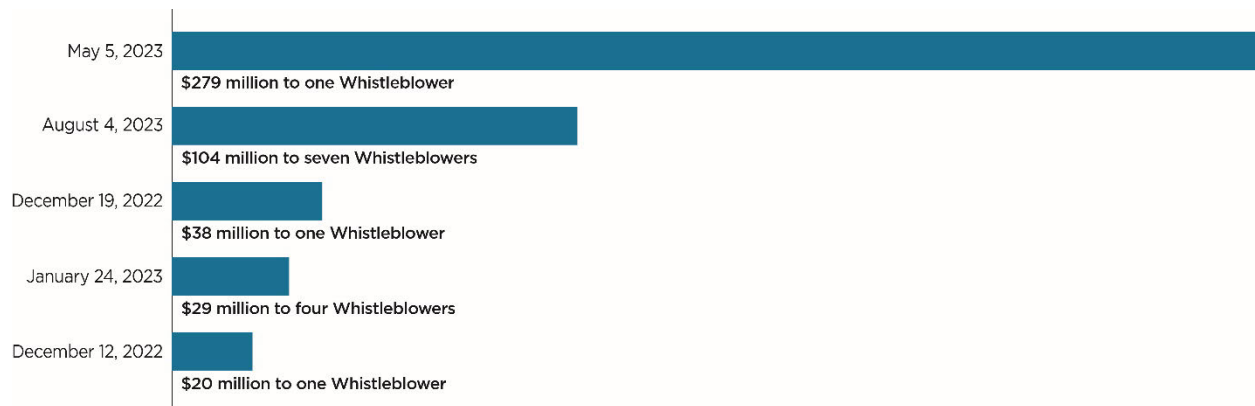
⁵ Order Determining Whistleblower Award, Exchange Act Release No. 98054, File No. 2023-75 (Aug. 4, 2023), <https://www.sec.gov/files/rules/other/2023/34-98054.pdf>.

⁶ Order Determining Whistleblower Award, Exchange Act Release No. 96178, File No. 2023-7 (Oct. 31, 2022), <https://www.sec.gov/files/rules/other/2022/34-96178.pdf>.

⁷ Order Determining Whistleblower Award, Exchange Act Release No. 97229, File No. 2023-48 (Mar. 31, 2023), https://www.sec.gov/files/award-orders-33123_0.pdf.

⁸ Order Determining Whistleblower Award, Exchange Act Release No. 96076, File No. 2023-3 (Oct. 14, 2022), <https://www.sec.gov/files/rules/other/2022/34-96076.pdf>.

Top Five Awards of FY 2023⁹



Determining Award Percentages

The Whistleblower Rule Amendments that became effective in December 2020 created a presumption of a maximum 30% award in certain circumstances where the Commission does not reasonably anticipate a maximum award would exceed \$5 million. For covered actions where the maximum award would have been \$5 million or less, the Commission applied the presumption nearly 90% of the time in FY 2023. Almost one-third of the awards issued in FY 2023 were ineligible for the presumption because a maximum award would have exceeded \$5 million.

If the presumption of a maximum award is not applicable, the Commission determines the appropriate award percentage based on the factors in Exchange Act Rules 21F-6(a) and (b). The Commission also considers these factors when apportioning an award between meritorious claimants, including if the maximum-award presumption applies.¹⁰

- **Positive Factors that May Increase an Award:**
 - **Significance of the information.** This factor is a critical driver of the award percentage and, in certain circumstances, could be the most important factor when apportioning award amounts between two or more meritorious whistleblowers, as the Commission often focuses on the relative significance (and timing) of the

⁹ Order Determining Whistleblower Award, Exchange Act Release No. 97438, File No. 2023-55 (May 5, 2023) <https://www.sec.gov/files/rules/other/2023/34-97438.pdf>; Order Determining Whistleblower Award, Exchange Act Release No. 98054, File No. 2023-75 (Aug. 4, 2023) <https://www.sec.gov/files/rules/other/2023/34-98054.pdf>; Order Determining Whistleblower Award, Exchange Act Release No. 96527, File No. 2023-21 (Dec. 19, 2022) <https://www.sec.gov/files/rules/other/2022/34-96527.pdf>; Order Determining Whistleblower Award, Exchange Act Release No. 96739, File No. 2023-32 (Jan. 24, 2023) <https://www.sec.gov/files/rules/other/2023/34-96739.pdf>; Order Determining Whistleblower Award, Exchange Act Release No. 96474, File No. 2023-20 (Dec. 12, 2022) <https://www.sec.gov/files/rules/other/2022/34-96474.pdf>.

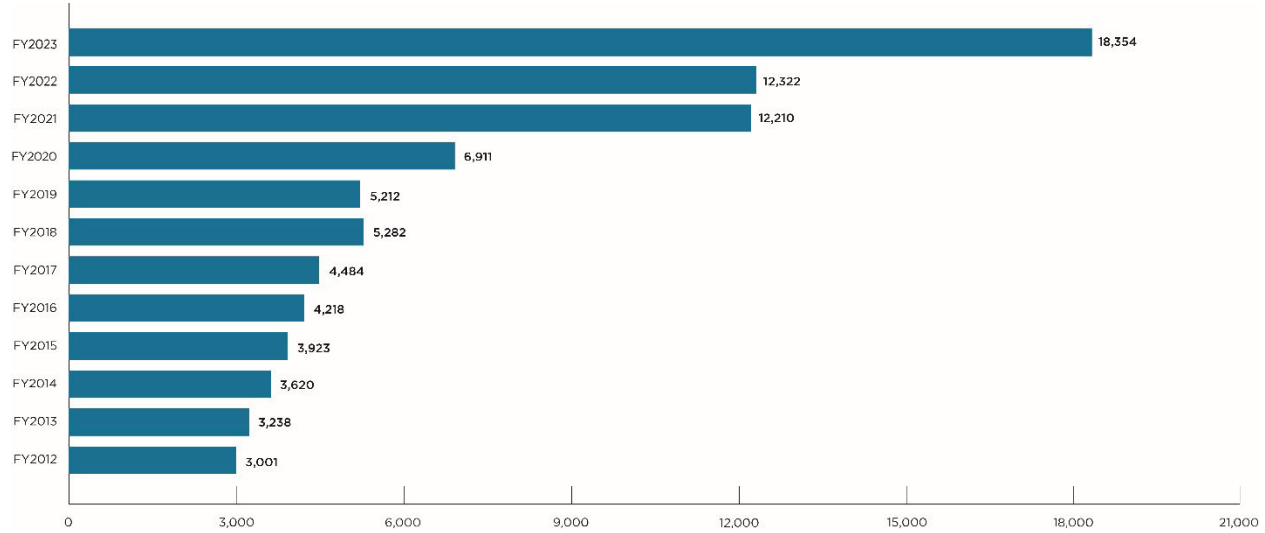
¹⁰ For a more detailed overview of the award process, please see OWB's annual report for FY 2021, which is available on OWB's website at <https://www.sec.gov/whistleblower/resources>.

whistleblowers' submissions.

- **Assistance provided by the whistleblower(s).** Whistleblower assistance can come at any stage of an investigation and can include helping staff decipher complex transactions, identifying key witnesses, documents or other sources of information, and communicating with staff and certain other authorities when appropriate. Whistleblowers may also assist during the litigation phase of an enforcement action.
 - **Law enforcement interest.** The law enforcement interest may be high when the whistleblower provides information about ongoing violations that are harming investors, such as misappropriation of investor funds. The law enforcement interest may also be high for securities violations with elements occurring abroad, which may be more difficult for Commission staff to detect or to gather evidence about without a whistleblower's cooperation.
 - **Participation in internal compliance or reporting systems.** While claimants are not required to report internally, their award percentage may be increased if they do so.
- **Negative Factors that May Decrease an Award**
 - **Unreasonable reporting delay.** In FY 2023, the Commission reduced the award percentages of five whistleblowers who unreasonably delayed in reporting. The Commission continues to emphasize the importance of timely reporting, which allows the Commission to act quickly to protect investors, to gather evidence before it becomes harder to access, and to bring claims for relief before they are time-barred.
 - **Culpability.** The Commission reduced one award in FY 2023 due to the whistleblower's participation in or benefit from the underlying misconduct.
 - **Interference with internal reporting systems.** No award was reduced in FY 2023 on account of this factor.

Increase in Whistleblower Tips

In FY 2023, the Commission received 18,354 whistleblower tips. The table below shows the number of whistleblower tips received by the Commission on a yearly basis since the inception of the Whistleblower Program.¹¹



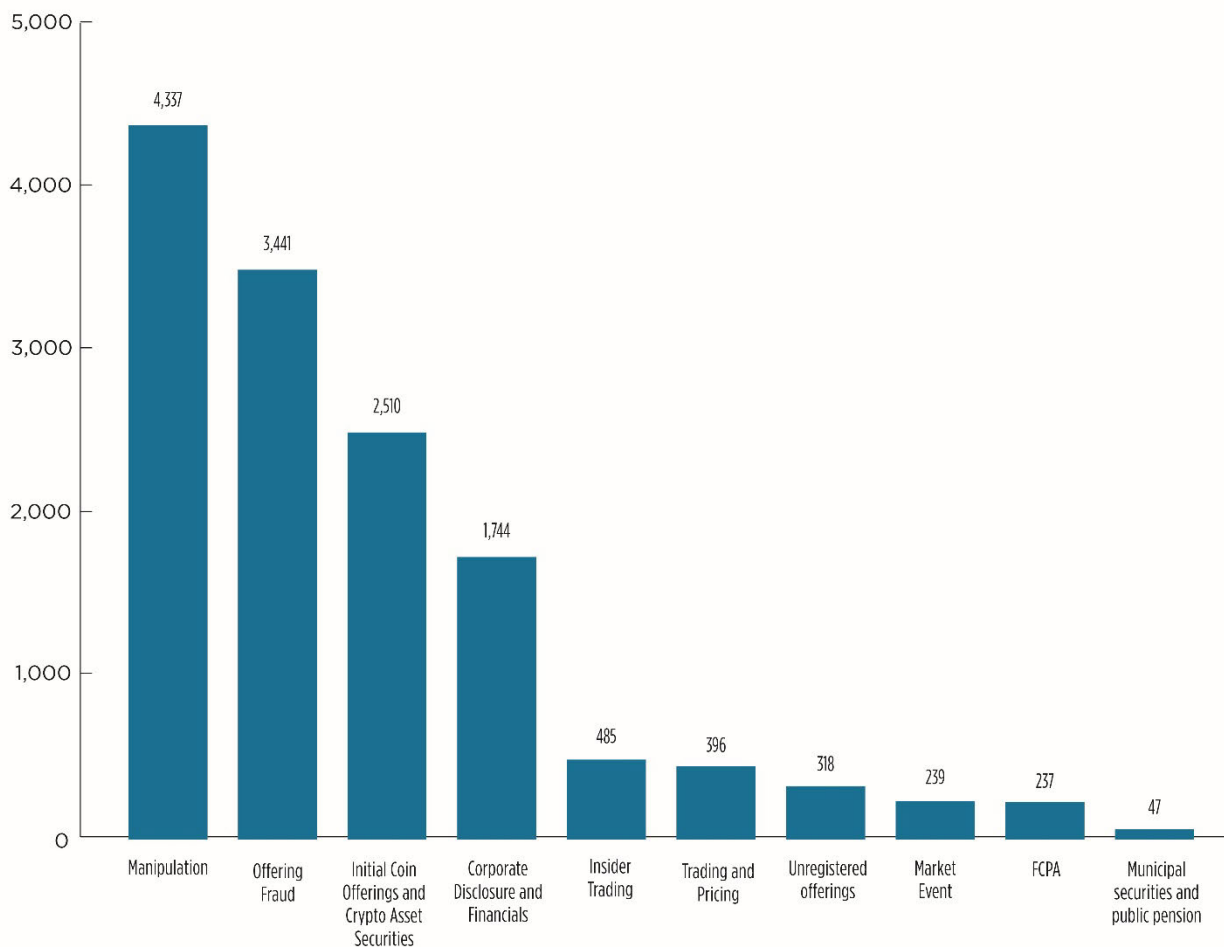
- **Nature of Whistleblower Allegations**

The record number of whistleblower tips the Commission received in FY 2023 alleged a variety of misconduct. The most common complaint categories reported by whistleblowers were Manipulation (24%), Offering Fraud (19%), Initial Coin Offerings and Crypto Asset Securities (14%), and Corporate Disclosures and Financials (10%).¹² The following graph reflects the number of whistleblower tips received in FY 2023 by allegation category.¹³

¹¹ The Commission also receives tips from individuals who do not elect to be part of the Whistleblower Program. The data in this report is limited to whistleblower tips and does not reflect all tips or complaints received by the Commission during the fiscal year.

¹² This breakdown reflects the categories selected by whistleblowers and, thus, the data represents each whistleblower's own characterization of the violation category.

¹³ There were also 4,591 whistleblower tips for which no allegation category was selected by the whistleblower on the TCR.



Finally, the Whistleblower Program has become fundamentally international in character, with tips received from all over the world. In FY 2023, the foreign countries from which the highest number of tips originated were Canada, the United Kingdom, Australia, Germany, and India. Domestically, the states from which the highest number of tips originated were Florida, South Carolina, California, Texas, and New York.

Enforcement of Whistleblower Protections

Ensuring that individuals are free to report potential securities-related misconduct to the Commission without reprisal is crucial to the Whistleblower Program. The Commission is committed to enforcing both the rule against actions to impede reporting¹⁴ and the anti-

¹⁴ See Exchange Act Rule 21F-17, which provides in relevant part that, “[n]o person may take any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation....”

retaliation protections.¹⁵ To date, the SEC has brought 21 enforcement actions involving violations of Rule 21F-17 and five anti-retaliation enforcement actions.

Notably, in FY 2023, the Commission brought an action against Gaia, Inc., an internet streaming company, charging the company with retaliation violations and with violating Rule 21F-17.¹⁶ The Commission found that the company retaliated, in violation of Section 21F(h)(1), against an employee (including firing the employee) who repeatedly reported internally to management both before and after filing a complaint with the Commission. The Commission further found that Gaia violated the Commission’s rule against impeding reporting by including provisions in certain severance agreements that required departing employees to waive any potential right to a whistleblower award.

Additionally, the Commission brought a number of actions this fiscal year arising from employment-related agreements that violated Rule 21F-17, including an action that resulted in a \$10 million civil penalty, the largest ever for a stand-alone Rule 21F-17 action.¹⁷ In that case, the Commission charged registered investment advisor D.E. Shaw & Co., L.P. for requiring new employees to sign agreements that prohibited them from disclosing “Confidential Information” to anyone outside of the company unless authorized by the company or required by law or an order of a court or other regulatory or governmental body. This prohibition did not include any exception for voluntary communications with the Commission concerning possible securities laws violations. D.E. Shaw also required many departing employees to sign a release in exchange for the receipt of certain deferred compensation and other benefits affirming that, among other things, the employee had not filed any complaints with any governmental agency.

The Commission also found the following entities to have violated Rule 21F-17:

- Activision Blizzard, Inc., a video game development and publishing company, because of its use of separation agreements that required former employees to notify the company of any request for information from the Commission’s staff.¹⁸

¹⁵ See Section 21F(h)(1) of the Exchange Act, which prohibits an employer from taking retaliatory actions, either directly or indirectly, against a whistleblower who makes a report to the Commission in accordance with the Exchange Act; and Exchange Act Rule 21F-2, which provides anti-retaliation protection to whistleblowers who reasonably believe that the information they provide to the Commission relates to a possible violation of the federal securities laws and provide that information in a manner described in Section 21F(h)(1)(A) of the Exchange Act.

¹⁶ See *In the Matter of Gaia, Inc. & Paul C. Tarell, Jr., CPA*, File No. 3-21438 (May 23, 2023), <https://www.sec.gov/files/litigation/admin/2023/33-11196.pdf>.

¹⁷ See *In the Matter of D.E. Shaw & Co., L.P.*, File No. 3-21775 (Sept. 29, 2023), <https://www.sec.gov/files/litigation/admin/2013/34-70396.pdf>.

¹⁸ See *In the Matter of Activision Blizzard, Inc.*, File No. 3-21294 (Feb. 3, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-96796.pdf>.

- CBRE, Inc., a commercial real estate services and investment firm, because it required its employees, as a condition of receiving separation pay, to represent that they had not filed a complaint against CBRE with any federal agency.¹⁹
- Monolith Resources, LLC, a privately held energy and technology company, because it required certain departing employees to waive their rights to monetary whistleblower awards.²⁰

OWB assists investigative and examinations staff in identifying actions that impeded individuals' abilities to report potential wrongdoing to the Commission as well as assessing instances of adverse employment actions taken against employees. OWB continues to support enforcement investigations involving whistleblowers who may have suffered retaliation after reporting securities violations to the Commission.

Investor Protection Fund

Section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act established the Investor Protection Fund (Fund) to provide funding for the Commission's whistleblower award program, including the payment of awards in related actions.²¹ As required by statute, all payments are made out of the Fund, which is financed entirely through monetary sanctions paid to the SEC by securities law violators; no money is taken or withheld from harmed investors to pay whistleblower awards. The Fund also is used to finance the operations of the SEC's Office of Inspector General to improve work efficiency and productivity.²²

Section 21F(g)(5) of the Exchange Act requires certain Fund information to be reported to Congress on an annual basis. Below is a chart containing Fund-related information for FY 2023.

¹⁹ See *In the Matter of CBRE, Inc.*, File No. 3-21675 (Sept. 19, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98429.pdf>.

²⁰ See *In the Matter of Monolith Resources, LLC*, File No. 3-21629 (Sept. 8, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98322.pdf>.

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

²² Section 21F(g)(2)(B) of the Exchange Act, 15 U.S.C. § 78u-6(g)(2)(B), provides that the Fund shall be available to the Commission for "funding the activities of the Inspector General of the Commission under section 4(i)."

	FY 2023
Balance of Fund at beginning of fiscal year	\$306,367,793.90
Unavailable amounts from FY 2022 available during fiscal year ²³	\$23,398,757.00
Amounts deposited into or credited to Fund during fiscal year	\$643,275,788.95
Amounts of interest receipts from investments during fiscal year	\$16,333,153.72
Amount of receipts during the fiscal year that are unavailable ²⁴	(\$37,597,710.00)
Amounts paid from Fund during fiscal year to whistleblowers	(\$321,533,048.90)
Amounts estimated to be paid from Fund during fiscal year to whistleblowers ²⁵	(\$292,509,162.40)
Amount disbursed to Office of the Inspector General during fiscal year	(\$27,780.63)
Balance of Fund at end of fiscal year	\$337,707,791.64

Section 21F(g)(5) of the Exchange Act also requires the Commission to provide a complete set of audited financial statements for the Fund,²⁶ including a balance sheet, income sheet, income statement, and cash-flow analysis. That information will be included in the Commission’s Agency Financial Report, which will be separately submitted to Congress.

* * *

OWB maintains a hotline to respond to questions about the Program. Individuals may leave messages on the hotline by calling (202) 551-4790. Calls are typically returned by OWB staff within three business days. OWB returned more than 3,500 calls from the public in FY 2023, about 1,000 more than in FY 2022.

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

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

²⁴ *Id.*

²⁵ The positive number in this line reflects the lower awards payable balance as of September 30, 2023, compared to the awards payable balance at the end of FY 2022.

²⁶ For a complete description of the mechanisms that Congress established to replenish the Fund, *see* Section 21F(g)(3) of the Exchange Act, 15 U.S.C. § 78-6(g)(3).