

**MEMO# 25672**

November 29, 2011

## **SEC Publishes Annual Report on Its Whistleblower Program**

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TO: COMPLIANCE MEMBERS No. 45-11

INTERNAL AUDIT ADVISORY COMMITTEE No. 9-11 RE: SEC PUBLISHES ANNUAL REPORT ON ITS WHISTLEBLOWER PROGRAM

The U. S. Securities and Exchange Commission has published its annual report on the Commission's Whistleblower Program as required by the Dodd-Frank Act (the "DFA"). [\[1\]](#) The report reflects the activities of the SEC's Whistleblower office for fiscal year 2011. According to the report:

- The Office of the Whistleblower (the "Office"), which was mandated by the DFA, has been created in the SEC's Division of Enforcement.
- The Office is headed by Sean McKessy. It is staffed by five attorneys and one paralegal who are each on a 12-month detail to the Office from various Commission Divisions and Offices. The Office is in the process of recruiting and hiring a Deputy Chief.
- Since its establishment, the Office has focused primarily on establishing itself and implementing the whistleblower program consistent with the SEC's whistleblower rules.
- The Office maintains a public hotline for tips and questions, and the Office's attorneys return calls within 24 business hours. Since its inception, the Office has returned over 900 calls from the public.
- Between August 12, 2011 and September 30, 2011, the Office received 334 whistleblower tips. Of these, the most common complaint [\[2\]](#) categories were marketing manipulation (16.2%), corporate disclosures and financial statements (15.3%), and offering fraud (15.6%). (The report does not indicate how many of these tips were filed with the SEC anonymously through attorneys or directly by whistleblowers.)
- Complaints came from individuals in 37 states and several countries.
- Due to the limited amount of data collected to date, "it is too early to identify any specific trends or conclusions from the data collected to date."
- "Several layers of staff" in the Office of Market Intelligence examine each tip received "to identify those that are sufficient, specific, timely and credible to warrant further

allocation of Commission resources, or a referral to another law enforcement or regulatory agency.” (The report contains no statistics regarding how many of the 334 tips received to date warranted such further action.)

- On August 12, 2011, the Office posted notices of 170 enforcement judgments and orders issued from July 21, 2010 through July 31, 2011 that would qualify a whistleblower for an award from the Office provided the Commission’s staff determines that the whistleblower had submitted information to the Commission that would make the whistleblower eligible for an award.
- The Commission did not pay any whistleblower awards for 2011 because the deadlines to qualify for awards based on “the initial list of covered actions” had not yet passed at the time of the report. (The report does not mention, however, whether any whistleblowers had submitted tips relevant to any of these covered actions, nor does it mention whether there may be whistleblowers who may qualify for an award in connection with these actions.)
- As of September 30, 2011, the SEC’s Investor Protection Fund, which is to be used exclusively to fund the SEC’s whistleblower award program and to finance the operations of the SEC’s Office of the Inspector General’s suggestion program, [3] “was fully funded with an ending balance of \$452,788,043.74.”

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#### **endnotes**

[1] See *Annual Report on the Dodd-Frank Whistleblower Program, Fiscal Year 2011* (U.S. Securities and Exchange Commission, November 2011). The 10-page report, which is accompanied by three appendices (i.e., Whistleblower Tips by Allegation Type; Whistleblower Tips Received by Geographic Location – Domestic 8/12/2011-9/30/2011; and Whistleblower Tips Received by Geographic Location – Overseas 8/12/2011-9/30/2011), is available on the SEC’s website at:

<http://www.sec.gov/about/offices/owb/whistleblower-annual-report-2011.pdf>.

[2] The report appears to use the words “tips” and “complaints” interchangeably.

[3] According to the report, “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.” See report at p. 9.