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Regulatory Reform

Whistleblower Office Received 334 Tips Since Start of Operations, SEC Report Says

Since becoming operational, the Securities and Exchange Commission's Office of the Whistleblower has received a total of 334 tips from individuals in 37 states as well as from countries such as China, according to the office's annual report.

In its seven weeks of operation—from Aug. 12, when the office became operational, to Sept. 30, the end of fiscal year 2011—the office saw the most complaints in the areas of market manipulation (16.2 percent), offering fraud (15.6 percent), and corporate disclosures and financial statements (15.3 percent). These categories were selected by the whistleblowers.

The office's FY 2011 report, released Nov. 15, is mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Not Inundated. The flood of tips that initially was anticipated to inundate the SEC because of the bounty program so far has not materialized. However, officials recently said that the quality of the tips has improved (43 SRLR 2301, 11/14/11).

The report added that of the foreign countries, the most complaints came from China—10—and the United Kingdom—nine. Domestically, the most tips by far—34—were received from California.

The report also noted that because of the program's infancy, it still is too early to identify specific trends or draw 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."

Similarly, the report said the office has yet to pay out any awards, given that the 90-day reward application period for eligible cases has not concluded. The eligible

cases—SEC actions that resulted in monetary sanctions exceeding \$1 million—are listed as notices of covered actions on the office's website. "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," the report said.

Corporate Worry. Meanwhile, a survey by law firm Littler Mendelson PC of senior executives from S&P 500 companies and other organizations showed that the bounty program continues to be a major source of concern for the corporate community.

According to the survey, the vast majority of the executives—96 percent—are either very concerned—27 percent—or moderately concerned—69 percent—about potential whistleblower claims. Seventy-three percent of the respondents say whistleblowing and retaliation are emerging risk areas.

Moreover, 67 percent of the executives expect whistleblower claims to increase in the next two years. However, despite those concerns, 65 percent of the survey respondents said their companies are only moderately prepared to handle whistleblower claims.

"A whistleblower can cause greater disruption to a business if internal compliance programs are not in order," said Edward T. Ellis, a partner in the firm's Philadelphia office, in a release. "It is critical that executives and managers be trained on compliance with laws that affect their businesses as well as best practices for handling whistleblower claims when they arise."

The SEC's whistleblower annual report is available at <http://www.sec.gov/about/offices/owb/whistleblower-annual-report-2011.pdf>. The Littler Mendelson release and survey are available at <http://www.littler.com/publication-press/press/companies-anticipate-rise-whistleblower-claims-according-littler-survey-96-p>.