

CLIENT ALERT

SEC Whistleblower Office Reports Record Numbers for FY2018

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On November 14, 2018, the Securities and Exchange Commission's Office of the Whistleblower issued its annual report to Congress. As detailed in the report, the SEC saw record-breaking numbers for its whistleblower program in fiscal year 2018, including the highest volume of whistleblower tips and the highest amount (by far) of dollars awarded to whistleblowers. While the total award amount was impacted by two of the largest-ever whistleblower awards, the increase in the number of tips was likely due, in part, to the Supreme Court's ruling in *Digital Realty Trust, Inc. v. Somers*, 138 S. Ct. 767 (2018), which limited the scope of whistleblower retaliation protections to individuals who report possible violations directly to the SEC.

The SEC's whistleblower program was established in 2010 under the Dodd-Frank Wall Street Reform and Consumer Protection Act. It authorizes the Commission to pay monetary awards to people who voluntarily provide information that leads to successful enforcement actions resulting in monetary sanctions over \$1 million and successful related actions. The monetary awards must equal 10 to 30 percent of the monetary sanctions collected.

Since the program's inception, the Commission has awarded more than \$326 million in whistleblower awards to 59 individuals. In FY 2018 alone, the Commission awarded over \$168 million to 13 individuals, exceeding the total amount awarded in all prior years combined. Notably, the Commission ordered an \$83 million award in March 2018 (split among three individuals), as well as a \$54 million award in September 2018 (split between two individuals). These amounts represent the two highest whistleblower awards in the history of the program.

The Office of the Whistleblower also received a record number of tips in FY 2018. The 5,282 tips amounted to a 17-percent increase over the 4,484 tips received in FY 2017 and a 76-percent increase over the 3,001 tips received in FY 2012, the first full year of data tracking.

The report notes that the increase in tips "may have been attributable, in part, to the [Supreme Court's] ruling" in *Digital Realty*. In February 2018, the Court held that the whistleblower provisions of the Securities Exchange Act of 1934 require an individual to report a possible securities law violation to the SEC in order to qualify for protections against employment retaliation under Section 21F(h) of the Dodd-Frank Act. This ruling incentivizes employees who suspect securities law violations to go directly to the SEC before or instead of raising concerns to their supervisors or compliance functions. Following the *Digital Realty* decision, the Commission issued proposed amendments to Rule 21F-2 of the Exchange Act to modify the rule in accordance with the Court's holding.

In sum, the information provided in the annual report reflects the increased activity in SEC whistleblower matters. Corporate clients must be aware of their risks and obligations with respect to whistleblowers, especially given the changing landscape of whistleblower retaliation protections.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Thomas A. Hanusik

Partner – Washington, D.C.

Phone: +1 202.624.2530

Email: thanusik@crowell.com

Rebecca Monck Ricigliano

Partner – New York

Phone: +1 212.895.4268

Email: rricigliano@crowell.com

Daniel L. Zelenko

Partner – New York

Phone: +1 212.895.4266

Email: dzelenko@crowell.com