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DEALING WITH (AND HOW NOT TO DEAL WITH) WHISTLEBLOWERS

Recent enforcement actions demonstrate an increasing reliance on whistleblowers by federal regulators and law enforcement. Therefore, it is more likely than ever that a company will have to face whistleblower complaints, and more critical than ever that companies do so effectively. This article outlines best practices for dealing with whistleblowers and encouraging internal reporting, as well as how to steer clear of the common mistakes companies make when a whistleblower complaint arises.

By Terri L. Chase, David Peavler, and Alexander J. Wilson *

Whistleblowers today play a prominent role in the enforcement efforts of the principal financial market regulators, the Securities and Exchange Commission, and the Commodity Futures Trading Commission. The SEC explicitly acknowledges this in public statements, characterizing its whistleblower program as “critical” to its enforcement success¹ and “instrumental in helping the SEC detect and prosecute wrongdoing . . .”²

The trend in whistleblower awards bears this out. The SEC, for instance, reported its two largest aggregate awards payouts, both in number of recipients and

amount awarded, in the last two fiscal years, and just announced the largest single whistleblower award ever granted by SEC or CFTC of \$279 million on May 5, 2023.³ The SEC also reported receiving a record number of whistleblower tips in fiscal year 2022 — more than 12,300 — narrowly breaking the record set a year earlier.⁴ The CFTC likewise announced record-breaking whistleblower numbers in 2022, including what

¹ SEC Press Release, *SEC Announces Enforcement Results for FY 2021*, November 18, 2021, available at <https://www.sec.gov/news/press-release/2021-238>.

² SEC Press Release, *SEC Issues \$28 Million Award to Joint Whistleblowers*, January 24, 2023, available at <https://www.sec.gov/news/press-release/2023-16>.

³ SEC FY 2021 Results, *supra* note 1; SEC Press Release, *SEC Announces Enforcement Results for FY 2022*, November 15, 2022, available at <https://www.sec.gov/news/press-release/2022-206>.

⁴ SEC Whistleblower Program 2021 Annual Report to Congress, available at <https://www.sec.gov/files/owb-2021-annual-report.pdf>; SEC FY 2022 Results, *supra* note 3.

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