



On December 5, 2017, the U.S. Securities and Exchange Commission (SEC) issued an [order awarding more than \\$4.1 million](#) to a whistleblower who voluntarily provided original information to the agency concerning a widespread, multi-year securities-law violation.



The award was paid pursuant to the [SEC's Whistleblower Program](#) under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). While the identities of whistleblowers are kept confidential in accordance with the [Program's rules](#), information released by the SEC indicates that the latest payout marks the [tenth award made to a whistleblower outside the U.S.](#) A total of 50 whistleblowers have received monetary awards since the first bounty was awarded in 2012. The SEC's 2017 [Annual Report to Congress](#) regarding its Whistleblower Program touted the fact that, since the inception of the Program, the Commission has received whistleblower tips from individuals in 114 countries outside the U.S. According to the Report, the highest number of tips from foreign whistleblowers in fiscal year 2017 originated from the United Kingdom, Canada and Australia. Furthermore, the number of individuals submitting tips from abroad during fiscal year 2017 exceeded 550, and constituted approximately 12% of the individuals participating in the Commission's Whistleblower Program. Despite foreign whistleblowers being eligible to receive monetary awards under the Program, the Second Circuit ruled in 2014's [Liu v. Siemens](#) that the Dodd-Frank Act's anti-retaliation provisions do not apply to conduct abroad—thereby leaving a foreign-based whistleblower unable to avail himself of those protections. The SEC's December 5th [award order](#) noted the resulting uncertainty surrounding the protection of foreign whistleblowers, conceding that the claimant is a foreign national working outside the U.S. and, as such, "it is unclear whether the employment anti-retaliation protections" would apply to the claimant. For that reason, the claimant's apparent "unreasonable delay" in reporting the misconduct to the Commission was deemed "somewhat offset." As reported by the SEC, almost 83% of Whistleblower Program tipsters first raised their concerns internally to their supervisors, compliance personnel, or other internal reporting mechanisms before reporting the wrongdoing to the Commission. Given the growing participation in the Program by foreign tipsters, companies conducting business outside the U.S. should ensure that their non-U.S. employees are well-trained in how to recognize and report concerns about potentially improper activity to the appropriate corporate personnel. A company's failure to respond to those concerns with attention and care will open the door to the possibility that employees instead elect to take their concerns to folks eagerly awaiting tips at the SEC Office of the Whistleblower.

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