

How to Report Accounting Fraud and Earn an SEC Whistleblower Award

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SEC Targets Accounting Fraud in Financial Reporting

In the early 2000s, the U.S. Securities and Exchange Commission (SEC) was abruptly reminded of the dangers of accounting fraud after Enron and WorldCom collapsed within months of each other. In the years following these corporate accounting scandals, the SEC maintained an enforcement regime that prioritized identifying and rooting out similar corporate accounting frauds.

Recently, the SEC has continued to focus its enforcement efforts on accounting fraud as well as other violations that affect [retail investors](#). In 2016 and 2017, approximately 20% of the SEC's standalone enforcement actions related to issuer reporting and accounting violations. In 2018, 16% of the SEC's standalone enforcement actions related to issuer reporting and accounting violations, including actions against prominent companies such as Tesla Inc., Theranos Inc., and Walgreens.

Despite the SEC's continued focus on accounting fraud, companies continue to "cook the books" when it is necessary to make the numbers. Fortunately for investors, whistleblower tips have significantly aided the SEC in quickly identifying and halting such frauds. In fact, since the enactment of the SEC Whistleblower Program in 2011, whistleblower tips have consistently been one of the SEC's most powerful weapons in its law enforcement arsenal against accounting fraud.

SEC Whistleblower Program

In response to the 2008 financial crisis, Congress passed the Dodd-Frank Act, which, among other things, created the SEC Whistleblower Program. Under the program, whistleblowers may be eligible for monetary awards when they report original information to the SEC about violations of federal securities laws, including accounting fraud. If a whistleblower's tip leads to a successful enforcement in which the SEC obtains more than \$1 million, the whistleblower is eligible to receive an award of between 10% and 30% of the total monetary sanctions collected. In certain circumstances, even auditors and accountants may be eligible for awards under the program.

The SEC Whistleblower Program also protects the confidentiality of whistleblowers and does not disclose information that might directly or indirectly reveal a whistleblower's identity. Whistleblowers can submit a tip anonymously to the SEC if represented by counsel.

Since 2011, the SEC Whistleblower Office has issued more [than \\$326 million in awards](#) to whistleblowers. The largest SEC whistleblower award to date is \$50 million.

Whistleblower Tips Aid the SEC in Identifying and Halting Accounting Fraud

Whistleblower tips related to violations in corporate disclosures and financial statements have consistently been one of the most common types of tips submitted to the SEC. In fact, the number of these tips has increased in every year since the SEC Whistleblower Office opened its doors:

- 2011: 51 tips related to corporate disclosures and financials



Article By [Matthew Stock](#)
[Jason Zuckerman](#)[Zuckerman Law](#)
[Whistleblower Protection Law Blog](#)

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- 2012: 547 tips related to corporate disclosures and financials
- 2013: 557 tips related to corporate disclosures and financials
- 2014: 610 tips related to corporate disclosures and financials
- 2015: 687 tips related to corporate disclosures and financials
- 2016: 938 tips related to corporate disclosures and financials
- 2017: 954 tips related to corporate disclosures and financials
- 2018: 983 tips related to corporate disclosures and financials

In 2016, a former Monsanto executive received a [\\$22 million SEC whistleblower award](#) for reporting a well-hidden accounting fraud to the SEC. Monsanto was fined [\\$80 million](#) for the accounting fraud.

Red Flags for Identifying Financial Statement and Accounting Fraud

Accurate financial reporting is integral to maintaining public markets that function [fairly and efficiently](#). The SEC relies on industry insiders, such as the [ex-Monsanto executive](#), to help identify and report accounting fraud and to aid in successful enforcement actions. Former Enforcement Director Andrew Ceresney has [noted](#) that although the SEC's focus on accounting fraud has yielded positive results, it is important to remain vigilant against such misconduct and remember the causes of previous corporate accounting scandals as these causes continue to be the same in new accounting scandals. Red flags include:

- Significant pressure to meet earnings and other performance expectations;
- Excessive focus on short term performance rather than longer term success;
- Poor oversight in units and subsidiaries;
- Growth outpacing the reporting and accounting infrastructure; and
- Management's over-reliance on processes and poor "tone at the top."

How to Report Accounting Fraud and Earn an SEC Whistleblower Award

To report accounting fraud and qualify for an award under the SEC Whistleblower Program, the SEC requires that whistleblowers or their attorneys report the tip online through the [SEC's Tip, Complaint or Referral Portal](#) or mail/fax a [Form TCR](#) to the SEC Office of the Whistleblower. Prior to submitting a tip, whistleblowers should consult with an experienced whistleblower attorney and review the SEC whistleblower [rules](#) to, among other things, understand eligibility rules and consider the factors that can significantly increase or decrease the size of a future whistleblower award.

SEC Targets Accounting Fraud in Fiscal Year 2018

The SEC brought several significant enforcement actions against companies for accounting fraud and violations in fiscal year 2018, including:

- 3/27/18: [In Re Maxwell Technologies](#)
 - The SEC charged Maxwell Technologies, its sales executive, and former CEO and former controller, in a fraudulent revenue recognition scheme designed to inflate the company's reported financial results. The SEC stated that "Maxwell recorded revenue before it was actually earned, to make investors believe the company's most important business segment...was growing faster than it actually was." Maxwell violated antifraud books and records, and internal accounting controls provisions of the federal securities laws. Maxwell was ordered to pay a \$2.8 million penalty, while former sales executive and corporate officer Van Andrews was ordered to pay a \$50,000 penalty. Maxwell's former CEO and former controller were also ordered to pay \$80,000 in disgorgement and prejudgment interest, and a \$20,000 penalty respectively. [[Press Release](#)]
- 4/30/18: [In Re Panasonic Corporation](#)
 - The SEC charged Panasonic Avionics Corp ("PAC") with fraudulently overstating pre-tax and net income, by prematurely recognizing more than \$82 million in revenue for the fiscal quarter ending

June 30, 2012. PAC backdated an agreement with a state-owned airline, providing misleading information to PAC's auditor. PAC further lacked sufficient internal accounting controls and failed to keep accurate books and records in connection with their transactions. Panasonic was ordered to pay approximately \$143 in disgorgement and prejudgment interest. In a separate Department of Justice criminal action, Panasonic was ordered to pay a criminal penalty of over \$137 million for violating the [FCPA](#). [[Press Release](#)]

- 9/4/18: [SEC v. Tangoe, Inc.](#)
 - The SEC charged Tangoe with accounting fraud when they misstated the existence and/or timing of approximately \$40 million in revenue, out of a total revenue of \$566 million for the years in question. Tangoe violated their publicly stated policy on reported revenue by engaging in sham transactions with a large customer during fiscal years 2014 and 2015, to inflate Tangoe's revenues that were to be reported for year-end. Tangoe further entered into agreements with a payment processor and negotiated a series of contractual agreements requiring the processor to make payments that were recognized as revenue for fiscal years 2014 and 2015, thereby reducing Tangoe's sizeable shortfalls in revenue for the relevant quarters, when they could not be recognized. The SEC charged Tangoe, its former CEO Albert R. Subbloie, former CFO Gary R. Martino, former vice president of finance Thomas H. Beach, and former senior vice president of expense management operations Donald J. Farias, all with violations of federal securities laws. Tangoe was ordered to pay a penalty in the amount of \$1.5 million. [[Press Release](#)]

Also Authored by Diana Alsabe, a law clerk at Zuckerman Law

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