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**PROGRAM MATERIALS**

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## **Blowing the Whistle: A Primer on the False Claims Act and SEC, CFTC, and IRS Whistleblower Programs**

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# Blowing the Whistle

## An Overview of the False Claims Act and the SEC, CFTC, and IRS Whistleblower Programs

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# False Claims Act

31 U.S.C. §§ 3729, *et seq.*

- Background and Legislative History
- Proving a False Claims Act Violation
- Whistleblower Awards
- Protections from Retaliation
- Recent Developments

# False Claims Act

(con't)

- Background and Legislative History
  - Lincoln's Law
  - Over \$2.2 billion recovered in Fiscal Year 2020
    - \$1.6 billion from *qui tam* actions; \$309 million paid to whistleblowers
  - 672 new *qui tam* cases filed in 2020
  - Healthcare focus

# False Claims Act

(con't)

- Proving a False Claims Act Violation
  - False/fraudulent claim and/or statements
    - Reverse false claims
  - Causation
  - Materiality
  - Damages
    - Treble damages
    - Civil penalties

# False Claims Act

(con't)

- Whistleblower awards
  - Relator share
  - Intervened v. Declined Cases

# False Claims Act

(con't)

- **Protections from Retaliation**
  - Section 3730(h)
  - Procedure
  - Damages

# False Claims Act

(con't)

- Recent Developments
  - Non-Insider Whistleblowers
  - Materiality and *Escobar*
  - Granston Memo
  - COVID Issues



A red graphic consisting of a horizontal bar at the top and a larger rectangle below it with a downward-pointing triangle at the bottom center. The text "SEC Whistleblower Program" is centered in the larger rectangle.

# SEC Whistleblower Program

- **Background and Legislative History**
- **Submitting SEC WB Tips**
- **Whistleblower Awards**
- **Protections from Retaliation**

# SEC Whistleblower Program (ctd.)

- **Background and Legislative History**

- Enacted in 2010 as part of the Dodd-Frank Act
- Fiscal year 2020 saw \$175 million awarded to 39 individuals
  - Largest individual award of \$114 million in October 2020
- 6,900 total tips in FY 2020, including 78 from foreign countries

# SEC Whistleblower Program (ctd.)

- Submitting WB Tips
  - Individuals only – no companies
  - Tip, Complaint, or Referral (TCR) Form
  - Anonymous Reporting Available
  - No *qui tam* provision

# SEC Whistleblower Program (ctd.)

- **Whistleblower Awards**
  - Recovery over \$1 million
  - 10% to 30% of recovery collected
  - 2020 Amendments – Presumption and “related action”

# SEC Whistleblower Program (ctd.)

- Protection from Retaliation
  - Private Right of Action
  - Procedure
    - *Digital Realty*
  - Retaliation vs. Anti-Reporting

The background of the slide features several thin, curved lines in a light gray color, some solid and some dashed, creating a sense of motion or a stylized globe. A large red speech bubble is positioned on the left side of the slide, containing the main title.

# SEC Whistleblower Program (ctd.)

- **Recent Developments**
  - **2020 Amendments**

# CFTC Whistleblower Program

- Background and Legislative History
- Submitting CFTC WB Tips
- Whistleblower Awards
- Protections from Retaliation
- Recent Developments

# CFTC Whistleblower Program (ctd.)

- **Background and Legislative History**
  - Enacted in 2010 as part of Dodd-Frank Act
  - Similar to SEC Program
    - Markets Regulated
  - \$20 million in awards in FY 2020, down from \$75 million in FY 2019
  - Increasing Activity – 1030 tips in FY 2020



# CFTC Whistleblower Program (ctd.)

- Submitting CFTC WB Tips
  - Individuals only
  - TCR Form
  - No *qui tam* or individual actions
  - Anonymous Reporting

# CFTC Whistleblower Program (ctd.)

- **Whistleblower Awards**
  - Recovery over \$1 million
  - 10% to 30% of recovery collected
  - CFTC Consumer Protection Fund

# CFTC Whistleblower Program (ctd.)

- **Protections from Retaliation**
  - Procedure/Eligibility
    - 2017 Amendments
  - Anti-Reporting

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## CFTC Whistleblower Program (ctd.)

- **Recent Developments**
  - LIBOR Whistleblowing Award
  - Cryptocurrency

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# IRS Whistleblower Program

- Background and Legislative History
- Submitting IRS WB Tips
- Whistleblower Awards
- Protections from Retaliation
- Recent Developments

# IRS WB Program

(con't)

- **Background and Legislative History**

- Dates back to 1867
- Tax Relief and Health Care Act of 2006
- Since 2007, \$6.14 billion collected from non-compliant taxpayers and over \$1 billion dollars paid in awards to whistleblowers
- FY2020: \$472,080,014 collected and 169 awards made to whistleblowers totaling \$86,619,032 (before sequestration)

# IRS WB Program

(con't)

- Submitting IRS WB Tips
  - Specific and credible information
  - Form 211
  - No *qui tam* provision

# IRS WB Program

(con't)

- Whistleblower Awards
  - Mandatory Awards
  - Discretionary Awards
  - How percentage of proceeds awarded is determined



# IRS WB Program

(con't)

- **Protections from Retaliation**
  - Taxpayer First Act in 2019
  - Procedure
  - Damages

# IRS WB Program

(con't)

- Recent Developments
  - IRS Whistleblower Program Improvement Act

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# AML/BSA Whistleblower Program

- **Background and Legislative History**
- **Submitting AML/BSA Tips**
- **Whistleblower Awards**
- **Protections from Retaliation**

A large red speech bubble graphic with a white outline, containing the text 'Q&A'.

# Q&A

- Questions
- Comments
- Suggestions