
Note: On August 2, 2018, the CFTC announced multiple additional whistleblower awards totaling more than \$45 million. James McDonald, Director of the CFTC's Division of Enforcement, said that these awards were "another significant step in what has been a transformative year for the CFTC's Whistleblower Program I expect this trend to continue as the Commission continues to receive increasing numbers of high-quality whistleblower tips." The CFTC press release is available [here](#).

July 30, 2018

CFTC Issues Largest Ever Whistleblower Award and First Award to a Foreign Whistleblower

On July 12 and 16, 2018, the Commodity Futures Trading Commission ("CFTC" or "Commission") announced two landmark awards to whistleblowers. The first was an award of approximately \$30 million, by far the CFTC's largest award to a whistleblower since its Whistleblower Program was created in 2010.¹ The second, of approximately \$70,000, was the Commission's first award to a whistleblower living in a foreign country.² As underscored by recent statements by senior CFTC officials, these awards highlight the CFTC's continued emphasis on the role of the Whistleblower Program in fulfilling its regulatory mission.

Background on the CFTC Whistleblower Program

The CFTC Whistleblower Program, like the Securities and Exchange Commission ("SEC") Whistleblower Program, was created by the Dodd-Frank Act.³ The statute directs the CFTC to pay awards to eligible whistleblowers who voluntarily provide the CFTC with original information that leads to a successful enforcement action resulting in monetary sanctions exceeding \$1 million.⁴ Whistleblowers are eligible to receive an award of between 10 percent and 30 percent of what is collected of the monetary sanctions.⁵ The CFTC has discretion in determining the percentage (within the 10 percent to 30 percent range) to award, but is guided by certain enumerated factors, including: the significance of the whistleblower's information, the amount of assistance provided by the whistleblower, and the CFTC's programmatic interest in deterring violations.⁶

Until recently, the CFTC had only paid four whistleblower awards in its program's history: a \$240,000 award in May 2014,⁷ a \$290,000 award in September 2015,⁸ a \$10 million award in April 2016,⁹ and a \$50,000 award in July 2016.¹⁰ Around the time the CFTC was announcing its fourth award, the SEC's total payments to whistleblowers had already exceeded \$100 million.¹¹

Recent Efforts to Strengthen the CFTC Whistleblower Program

The relatively limited number of awards paid to date notwithstanding, the CFTC Whistleblower Program appears to be in a period of rapid expansion. In May 2017, the CFTC approved amendments to the

Whistleblower Rules that significantly strengthened the program's anti-retaliation protections.¹² The number of tips submitted to the Whistleblower Program has increased every year¹³ and the number received in fiscal year 2018 is on track to nearly double the record number received in 2017 and nearly quadruple the number received in any year prior to that.¹⁴

Separately, in January 2017, the CFTC Division of Enforcement issued new Enforcement Advisories clarifying when companies and individuals would receive benefits for cooperation with its investigations and enforcement actions.¹⁵ The Advisories were intended to "complement the CFTC's robust Office of the Whistleblower and Whistleblower Program" by "incentiviz[ing] insiders to provide [the CFTC] with first-hand evidence" and by "making the benefits of cooperation . . . more transparent."¹⁶

Recent CFTC Whistleblower Awards

In announcing its largest ever whistleblower award and the first award to a foreign whistleblower, the CFTC highlighted the importance and utility of its Whistleblower Program in regulating the U.S. futures and swaps markets. Speaking about the record \$30 million award, Chairman J. Christopher Giancarlo described the Whistleblower Program as an "integral component in the agency's enforcement arsenal," and stated that he hopes "that an award of this magnitude will incentivize whistleblowers to come forward with valuable information and provide notice to market participants that individuals are reporting quality information about violations of the Commodity Exchange Act."¹⁷ James McDonald, Director of the Division of Enforcement, said that the Commission has "worked hard to expand [the] Whistleblower Program" and that whistleblower submissions have allowed the CFTC to "pursue violations [it] might otherwise have been unable to detect."¹⁸

Director McDonald said that the award to the foreign whistleblower is "significant because it signals to whistleblowers around the world that anyone with information about potential violations of the Commodity Exchange Act can participate in the CFTC's Whistleblower Program."¹⁹ He continued: the "award also serves as another example of the increasing significance of whistleblowers in our enforcement program, a trend I expect to continue going forward."²⁰

The award determinations do not identify the recipients of the awards or the conduct to which they relate.²¹ The Commission is generally prohibited from disclosing information "which could reasonably be expected to reveal the identity of a whistleblower."²²

Observations

The CFTC annually imposes hundreds of millions of dollars in monetary sanctions for failure to comply with the Commodity Exchange Act and its implementing regulations. In 2017, the CFTC obtained orders imposing nearly \$413 million in restitution, disgorgement, and penalties.²³ In 2016, that sum was nearly three-times that: \$1.29 billion.²⁴

If the recent whistleblower awards paid by the CFTC have their intended effect as monetary incentives, the number of whistleblower tips sent to the CFTC will likely continue to rise. Chairman Giancarlo and Director McDonald have both expressed the hope that the Whistleblower Program's expansion will strengthen the Commission's already-robust enforcement capabilities. Particularly in light of the potential benefits available to entities that cooperate with the CFTC, the recent whistleblower awards serve as a powerful reminder of the importance of corporate compliance programs. It remains extremely beneficial for companies to maintain internal reporting channels for employees who would like to report potential misconduct, to develop procedures designed to prevent and detect misconduct, and to investigate any potential misconduct promptly.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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- ¹ Press Release, CFTC, CFTC Announces Its Largest Ever Whistleblower Award of Approximately \$30 Million (July 12, 2018), <https://www.cftc.gov/PressRoom/PressReleases/7753-18>.
- ² Press Release, CFTC, CFTC Announces First Whistleblower Award to a Foreign Whistleblower (July 16, 2018), <https://www.cftc.gov/PressRoom/PressReleases/7755-18>.
- ³ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 748, 124 Stat. 1376 (2010); 7 U.S.C. § 26.
- ⁴ See 7 U.S.C. § 26.
- ⁵ 7 U.S.C. § 26(b)(1); 17 C.F.R. § 165.8.
- ⁶ 17 C.F.R. § 165.9.
- ⁷ Press Release, CFTC, CFTC Issues First Whistleblower Award (May 20, 2014), <https://www.cftc.gov/PressRoom/PressReleases/pr6933-14>.
- ⁸ Press Release, CFTC, CFTC to Issue Whistleblower Award of Approximately \$290,000 (Sept. 29, 2015), <https://cftc.gov/PressRoom/PressReleases/pr7254-15>.
- ⁹ Press Release, CFTC, CFTC Announces Whistleblower Award of More Than \$10 Million (Apr. 4, 2016), <https://www.cftc.gov/PressRoom/PressReleases/pr7351-16>.
- ¹⁰ Press Release, CFTC, CFTC Announces Fourth Whistleblower Award (July 26, 2016), <https://www.cftc.gov/PressRoom/PressReleases/pr7411-16>.
- ¹¹ See Press Release, SEC, SEC Whistleblower Program Surpasses \$100 Million in Awards (Aug. 30, 2016) <https://www.sec.gov/news/pressrelease/2016-173.html>. To date, the SEC has awarded 55 individuals approximately \$266 million in whistleblower awards. See Press Release, SEC, SEC Awards Whistleblower More Than \$2.1 Million (Apr. 12, 2018), <https://www.sec.gov/news/press-release/2018-64>.

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- ¹² Press Release, CFTC, CFTC Strengthens Anti-Retaliation Protections for Whistleblowers and Enhances the Award Claims Review Process (May 22, 2017), <https://www.cftc.gov/PressRoom/PressReleases/pr7559-17>.
- ¹³ Annual Report on the Whistleblower Program and Customer Education Initiatives, CFTC (Oct. 2017), https://www.whistleblower.gov/sites/whistleblower/files/Reports/wb_fy2017reporttocongress.pdf.
- ¹⁴ See J. Christopher Giancarlo, CFTC, Testimony of Chairman J. Christopher Giancarlo before the House Committee on Agriculture, Washington, D.C. (July 25, 2018), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo50>.
- ¹⁵ Press Release, CFTC, CFTC's Enforcement Division Issues New Advisories on Cooperation (Jan. 19, 2017), <https://www.cftc.gov/PressRoom/PressReleases/pr7518-17>.
- ¹⁶ *Id.*
- ¹⁷ Press Release, CFTC, CFTC Announces Its Largest Ever Whistleblower Award of Approximately \$30 Million (July 12, 2018), <https://www.cftc.gov/PressRoom/PressReleases/7753-18>.
- ¹⁸ *Id.*
- ¹⁹ Press Release, CFTC, CFTC Announces First Whistleblower Award to a Foreign Whistleblower (July 16, 2018), <https://www.cftc.gov/PressRoom/PressReleases/7755-18>.
- ²⁰ *Id.*
- ²¹ Media reports have linked the \$30 million award to a JPMorgan Chase resolution with the CFTC. See Henry Cutter, *JPMorgan Whistleblower Set to Get Largest Payout from CFTC*, Wall St. J. (July 12, 2018), <https://www.wsj.com/articles/jpmorgan-whistleblower-set-to-get-largest-payout-from-cftc-1531421603>.
- ²² 7 U.S.C.A. § 26(h)(2); 17 C.F.R. § 165.4.
- ²³ Press Release, CFTC, CFTC Releases Annual Enforcement Results for Fiscal Year 2017 (Nov. 22, 2017), <https://www.cftc.gov/PressRoom/PressReleases/pr7650-17>.
- ²⁴ Press Release, CFTC, CFTC Releases Annual Enforcement Results for Fiscal Year 2016 (Nov. 21, 2016), <https://www.cftc.gov/PressRoom/PressReleases/pr7488-16>.