FREQUENTLY ASKED QUESTIONS[1]

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16. **What rights do I have if my employer retaliates against me?**

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[1] The answers to these Frequently Asked Questions represent the views of the staff of the CFTC's Whistleblower Office. They are not CFTC rules or regulations, and the Commission has neither approved nor disapproved them. These answers are short general summaries of certain key features of our whistleblower program and do not purport to be complete or comprehensive. For detailed information about the program, please read **Section 23 of the Commodity Exchange Act [7 U.S.C. § 26]** and the **Whistleblower Rules [17 C.F.R. § 165]**.

1. **What is the CFTC Whistleblower Program?**

   Our whistleblower program was created by the Dodd-Frank Act, and it provides monetary awards to persons who report violations of the Commodity Exchange Act if the information leads us to bring an action that results in more than $1 million in monetary sanctions. We can also pay awards based on monetary sanctions collected by other authorities in actions that are related to a successful CFTC action, and are based on information provided by a CFTC whistleblower. The Dodd-Frank whistleblower provisions also prohibit retaliation by employers against employees who provide us with information about possible violations, or who assist us in any investigation or proceeding based on such information.

2. **How much money could I receive as a whistleblower award?**

   Provided that you meet all of the program's eligibility criteria, we will pay between 10 and 30 percent of the monetary sanctions collected in either the CFTC action or a related action.

3. **Who can be a whistleblower?**

   A whistleblower can be <u>any person</u> who sends us a Form TCR containing information about a potential violation of the Commodity Exchange Act. A whistleblower can be anyone from a corporate officer or insider, to a trader or market observer, to an investor or fraud victim. **Rules 165.2(p), 165.3**.

   However, not every whistleblower is eligible for an award. To be eligible, a whistleblower must "voluntarily" provide us with "original information" about a violation. Those terms are explained below. Also, certain persons – including certain government and self-regulatory personnel, and persons convicted of a crime related to the conduct at issue in the whistleblower matter – are ineligible for an award. **Rules 165.5(a), 165.6**.

4. **What does it mean to provide information "voluntarily?"**

   You must give us your information <u>before</u> we send you, your lawyer or your employer a request, inquiry or demand for the information. You also cannot provide information to us "voluntarily" if you have already received a request, inquiry or demand from Congress, another regulatory or enforcement agency or a self-regulatory organization (such as the National Futures Association). On the other hand, if you provided information to any such organization before receiving a request, inquiry or demand, your submission to us will also be considered voluntary. **Rule 165.2(o)**.

5. **What is "original information?"**

"Original information" is information not already known to us that is derived from (i) your independent knowledge (information in your possession that is not generally known or available to the public), or (ii) your independent analysis (your examination and evaluation of information that may be publicly available but which reveals information that is not generally known). Also, if we received the same information previously from someone else, your information will not be considered original information unless you can show that you were the "original source" of the information. **Rule 165.2(k)-(l)**.

Please note that, unless certain limited exceptions apply, "independent knowledge" does not include communications that are subject to the attorney-client privilege and information obtained in connection with the legal representation of a client. **Rule 165.2(g)(2)-(3)**. If you are not sure whether the information that you intend to submit falls within these categories, you should describe such information rather than produce it with your Form TCR.

6. **How could my information lead to a successful enforcement action?**

Your information could lead us to open a new examination or investigation, re-open a previously closed investigation or pursue a new line of inquiry in connection with an ongoing investigation, and we could bring a successful enforcement action based at least in part on the information you provided. Additionally, you might also be eligible for an award if your information relates to an ongoing examination or investigation, and it significantly contributes to the success of an enforcement action. **Rule 165.2(i)**.

7. **I work at a company with an internal compliance process. Do I have to report internally? Can I report internally and still be eligible for a whistleblower award?**

You do not have to report internally to be eligible for a whistleblower award, and you may submit your information directly to us at any time.

If you choose to report internally first, your information will be deemed to be submitted to us on the date you reported it internally <u>if you also report it to us within 120 days of that date</u>. Under these circumstances, we will consider your place in line for determining whether your information is "original information" to be the date you reported it internally. In addition, if your company conducts an investigation and reports the results to us, you may benefit from the information that the company's investigation reveals when we consider whether you should receive an award and what percentage you should receive. **Rule 165.2(i)(3)**.

Also, the fact that you reported your information internally, and the extent to which you helped your company uncover a violation, will be considered as factors that may increase the size of any award that you are eligible to receive. **Rule 165.9(b)(4)**.

8. I provided information to the CFTC before the enactment of the Dodd-Frank Act on July 21, 2010. Am I eligible for an award?

No. The Dodd-Frank Act and our Whistleblower Rules make awards available only in connection with information first submitted to the CFTC after July 21, 2010. **Commodity Exchange Act Section 23(k)** and **Rule 165.2(k)(4)**.

9. How do I submit whistleblower information to the CFTC?

To become a whistleblower, you must complete and submit a Form TCR either electronically, by mail or by facsimile.

You may file a Form TCR electronically by clicking on the **"File a Tip or Complaint" button** on the right-hand side of the CFTC's homepage, **www.cftc.gov**, and selecting the first option under the description of the Whistleblower Program.

You may also mail or fax a **printed Form TCR** to:

Commodity Futures Trading Commission
Whistleblower Office
1155 21st Street, NW
Washington, DC 20581
Fax: (202) 418-5975

10. Can I submit my information anonymously?

Yes. You can file your Form TCR anonymously, with or without a lawyer's help. Because we may need to contact you for more information, and because you are required to cooperate with us while we are investigating a matter, you should provide some means of contact, such as an email address or telephone number. Also, there are detailed requirements for making an award claim anonymously. **Rules 165.3(c), 165.4(b), 165.7(c)**. If you have any questions about filing anonymously, we strongly encourage you to contact us by sending an email to **whistleblower@cftc.gov** before you file.

11. Will the CFTC keep my identity confidential?

Whether or not you seek anonymity, we are committed to protecting your identity. For example, we will not disclose your identity in response to requests under the Freedom of Information Act. As a general rule, we treat information learned during the course of an investigation – including the identity of our sources – as non-public and confidential.

There are, however, limits on our ability to shield your identity. For example, in an administrative or court proceeding, we may be required to produce documents or other information which would reveal your identity. In addition, as part of our ongoing investigatory responsibilities, we may use information you have provided during the course of our investigation. In appropriate circumstances, we may also provide information, subject to confidentiality requirements, to other governmental or regulatory entities. **Rule 165.4**.

12. How do I apply for an award?

You must complete a **Form WB-APP** and mail or fax it to the address below:

Commodity Futures Trading Commission
Whistleblower Office
1155 21st Street, NW
Washington, DC 20581
Fax: (202) 418-5975

No other form of submission will be accepted.

For covered CFTC actions, you must file the form no later than 90 days after we post a "Notice of Covered Action." For related actions, you must file the form no later than 90 days after a judgment in the related action. **Rule 165.7**.

13. How will I know when to apply for an award?

When the CFTC obtains a final judgment that contains more than $1 million in monetary sanctions, we will post a "Notice of Covered Action" on our **Whistleblower Notices page** on **www.cftc.gov**. We do not notify individuals directly about Whistleblower Notices, so you should monitor the webpage periodically. You can also sign up for our **Email Subscription Service** or **RSS Feeds** to receive Whistleblower Notices automatically. We also do not provide any notification for related actions.

14. What factors does the CFTC consider in determining the amount of the award?

The Whistleblower Rules require that we consider many factors in determining the amount of an award based on the unique facts and circumstances of each case. **Rule 165.9**.

We may increase the award percentage based on:

1. the significance of the information you provided us to the success of a CFTC action or related action;

2. the degree of assistance you provided;

3. our law enforcement interest in deterring violations of the commodities laws by making awards to whistleblowers who provide information that leads to the successful enforcement of these laws; and/or

4. whether, and the extent to which, you participated in your company's internal compliance systems.

We may reduce the amount of an award based on:

5. whether you were involved in, or culpable for, the conduct you reported;

6. whether you unreasonably delayed reporting a violation to us; and/or

7. whether you interfered with your company's internal compliance and reporting systems.

15. Can I appeal an award decision?

Yes. You can appeal a Final Order of the Commission regarding your award claim to an appropriate federal court of appeals no later than 30 days after the Final Order is issued. **Rule 165.13**.

16. What rights do I have if my employer retaliates against me?

Employers may not discharge, demote, suspend, harass, or in any way discriminate against you because of any lawful act done by you in providing information to us under the whistleblower program or assisting us in any investigation or proceeding based on the information submitted. If you believe that your employer has wrongfully retaliated against you, you may bring a private action in federal court against your employer, within two years of the employer's retaliatory act. If you

prevail, you may be entitled to reinstatement, back pay, litigation costs, expert witness fees and attorney's fees. **Whistleblower Rules, Appendix A**.

In addition to the anti-retaliation protections provided by the Commodity Exchange Act, a retaliatory action may also violate other federal and state statutes. If you have questions about these other statutes, please contact an attorney.