



Commodity Futures Trading Commission

Office of Public Affairs

Three Lafayette Centre

1155 21st Street, NW

Washington, DC 20581

www.cftc.gov

Final Regulations Regarding Whistleblower Incentives and Protection

The Commodity Futures Trading Commission (CFTC) announced the publication in the Federal Register of a Final Rulemaking concerning commodity whistleblower incentives and protection under the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)

On July 21, 2010, the Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act. Among other things, section 748 of the Dodd-Frank Act amended the Commodity Exchange Act to provide whistleblower incentives and protection, and finance customer education initiatives. The Final Rules will be effective no later than 60 days from publication in the Federal Register.

- In section 748 of the Dodd-Frank Act, Congress amended the CEA by adding section 23, which directs the Commission to issue final rules implementing whistleblower incentives and protections. Specifically, section 748 requires the Commission to pay awards to whistleblowers who are individuals that provide original information to the Commission, which leads to successful enforcement of a Commission action resulting in monetary sanctions exceeding \$1,000,000. The amount of the award, as determined by the Commission, will be between 10 to 30 percent of sanctions collected in either the Commission's action or a related action that is based upon the original information provided by the whistleblower.
- The Commission will determine whether to grant an award, and the award amount (between 10 and 30 percent of collected sanctions), based upon certain criteria. The Commission may exercise discretion in granting an award amount based upon the significance of the information, degree of assistance provided in support of a covered judicial or administrative action, programmatic interest, and any other criteria other than the balance of the Commodity Futures Trading Commission Customer Protection Fund. An award shall be denied to certain government employees and others who are statutorily ineligible.
- A whistleblower may appeal certain Commission decisions including award denials and amounts to the appropriate U.S. Circuit Courts of Appeal.
- Whistleblowers may receive an award based upon violations that occurred prior to the date of enactment of the Dodd-Frank Act (July 21, 2010).
- Whistleblowers who submit original information after the date of enactment of the Dodd-Frank Act but before these proposed rules become effective, will also be eligible for an award provided they comply with the Commission's procedures within one hundred and twenty (120) days of the rules' effective date.
- A whistleblower who has submitted information after July 16, 2011 may have a private cause of action for employment retaliation of whistleblower activities. Ineligibility to receive a whistleblower award from the Commission award does not preclude application of anti-retaliation protections.

Public Comment

On December 6, 2010 the Commission issued a Notice of Proposed Rulemaking to encourage comments to address specifically enumerated questions concerning the statutory provisions and any other rules the Commission should consider under the rulemaking authority of Section 748.

The comment period closed on February 4, 2011. The Commission received comment letters from individuals, whistleblower advocacy groups, public companies, corporate compliance personnel, law firms and individual lawyers, professional associations, and nonprofit organizations. The comments addressed a wide range of issues, including the interplay of the proposed CFTC whistleblower program and company internal compliance processes, the proposed exclusions from award eligibility for certain categories of individuals or types of information, the availability of awards to culpable whistleblowers, the procedures for submitting information and making a claim for an award, and the application of the statutory anti-retaliation provision.

What changes were made to the final regulations from the proposed regulations?

The final regulations are substantially similar to the proposed regulations. The Commission has also made minor changes to the final regulations to ensure consistency and promote harmonization with the Securities and Exchange Commission's whistleblower final regulations and program.