CFTC-49

SYSTEM NAME:

Whistleblower Records (Exempted).

SYSTEM LOCATION:

This system is located in the Whistleblower Office, in the Office of the Executive Director, in the Commission's principal office at Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Individuals who have submitted tips, complaints or referrals, award applications and/or related documents or information to the Whistleblower Office in relation to the Commission's whistleblower program, and any individuals who are referenced in any information submitted to or accessed by the Whistleblower Office in relation to the whistleblower program.

b. Individuals whom the Commission staff has reason to believe have violated, are violating, or are about to violate the Commodity Exchange Act and the rules, regulations and orders promulgated thereunder.

c. Individuals whom the Commission staff has reason to believe have violated, are violating, or are about to violate a law or regulation or order of another federal, state or foreign authority.

d. Individuals whom the Commission staff has reason to believe may have information concerning violations of the Commodity Exchange Act and the rules, regulations and orders promulgated thereunder.

e. Individuals whom the Commission staff has identified as relevant to an enforcement investigation, such as complainants, witnesses and counsel.

f. Individuals whom a foreign law enforcement authority has found or alleges to have, or suspects of having, violated foreign laws, rules, regulations or orders of such foreign law enforcement authority.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system may include all or any part of the records developed during the whistleblower tip, complaint or referral submission process, investigation or inquiry, or whistleblower award claim and determination process, as described in Section 23 of the Commodity Exchange Act, 7 U.S.C. 26, and the rules promulgated thereunder, 17 CFR part 165, including but not limited to data from Commission reporting forms, such as Commission Forms TCR and WB-APP, documents and information related to the whistleblower program, and records drafted and/or compiled for the Commission's Whistleblower Award Determination Panel whose disclosure the Commission staff has determined could impair the effectiveness and orderly conduct of the Commission's

whistleblower, regulatory and enforcement programs or compromise Commission investigations. This system may include: records, data and correspondence submitted by and sent to whistleblowers and/or their representatives; correspondence with other law enforcement and regulatory agencies regarding referral of whistleblower information and related actions brought by such agencies based on whistleblower information; interviews, memoranda and other work products prepared by Commission staff; affidavits, statements by witnesses, contracts and agreements with whistleblowers, including confidentiality agreements; and information available on the Internet or other electronic sources accessed for purposes of the whistleblower program. The system may also contain internal memoranda and declarations of Commission staff, correspondence and other miscellaneous investigatory matters. The nature of the personal information contained in these files varies according to what has been submitted by the whistleblower and/or his/her representative, and may include personal background information about individuals involved, their education and employment history, social security numbers, trading account details, information on prior violations, and a wide variety of financial information, as well as a detailed examination of the individuals' activities during the period in question.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Commodity Exchange Act Section 23, 7 U.S.C. § 26, and the rules promulgated thereunder, 17 CFR part 165, authorizing the creation and administration of the Commission's whistleblower program.

PURPOSE(S):

The Commission's whistleblower program is designed to pay awards to eligible individuals who voluntarily provide the Commission with original information about violations of the Commodity Exchange Act (CEA) that lead to the successful enforcement of covered judicial or administrative actions, or related actions. The whistleblower provisions also prohibit retaliation by employers against individuals who provide the Commission with information about possible CEA violations. As part of its administration of the whistleblower program, the Commission's Whistleblower Office maintains records of whistleblower tips, complaints, award claims and related supplemental records and correspondence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system may be disclosed in accordance with the blanket routine uses numbered 1 through 19 that appear at the beginning of the Commission's compilation of its systems of records notices and are set out below.

1. Information may be used by the Commission in any administrative proceeding before the Commission, in any injunctive action authorized under the Commodity Exchange Act or in any other action or proceeding in which the Commission or its staff participates as a party or the Commission participates as amicus curiae.

2. Information may be disclosed to the Department of Justice, the Securities and Exchange Commission, the United States Postal Service, the Internal Revenue Service, the Department of Agriculture, the Office of Personnel Management, and to other Federal, State, local, territorial or

Tribal law enforcement or regulatory agencies for use in meeting their statutory and regulatory requirements.

3. Information may be given to any "registered entity," as defined in section 1a of the Commodity Exchange Act, 7 U.S.C. 1, *et seq.* ("the Act"), if the Commission has reason to believe that such information will assist the registered entity in carrying out its responsibilities under the Act. Information may also be given to any registered futures association registered under section 17 of the Act (*e.g.,* the National Futures Association) to assist it in carrying out its self-regulatory responsibilities under the Act, and to any national securities exchange or national securities association registered with the Securities and Exchange Commission to assist those organizations in carrying out their self-regulatory responsibilities under the Securities Exchange Act of 1934, 15 U.S.C. 78a, *et seq.*

4. At the discretion of the Commission staff, information may be given or shown to anyone during the course of a Commission investigation if the staff has reason to believe that the person to whom it is disclosed may have further information about the matters discussed therein, and those matters appear relevant to the subject of the investigation.

5. Information may be included in a public report issued by the Commission following an investigation, to the extent that this is authorized under section 8 of the Commodity Exchange Act, 7 U.S.C. 12. Section 8 authorizes publication of such reports but contains restrictions on the publication of certain types of sensitive business information developed during an investigation. In certain contexts, some of this information might be considered personal in nature.

6. Information may be disclosed to a Federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract or the issuance of a license, or a grant or other benefit by the requesting agency, to the extent that the information may be relevant to the requesting agency's decision on the matter.

7. Information may be disclosed to a prospective employer in response to its request in connection with the hiring or retention of an employee, to the extent that the information is believed to be relevant to the prospective employer's decision in the matter.

8. Information may be disclosed to any person, pursuant to Section 12(a) of the Commodity Exchange Act, 7 U.S.C. 16(a), when disclosure will further the policies of that Act or of other provisions of law. Section 12(a) authorizes the Commission to cooperate with various other government authorities or with "any person."

9. Where information, either alone or in conjunction with other information indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant information may be disclosed to the appropriate Federal, State, local, territorial, Tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

10. Information may be disclosed to the General Services Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

11. Information may be disclosed to the National Archives and Records Administration for the purpose of records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

12. Information may be disclosed to foreign law enforcement, investigatory, or administrative authorities in order to comply with requirements set forth in international arrangements, such as memoranda of understanding.

13. Information may be disclosed to contractors, grantees, volunteers, experts, students, and others performing or working on a contract, service, grant, cooperative agreement, or job for the Federal government when necessary to accomplish an agency function.

14. Information may be disclosed to the Merit Systems Protection Board, including the Office of Special Counsel for the purpose of litigation, including administrative proceedings, appeals, special studies of the civil service and other merit systems.

15. Information may be disclosed to the Department of Justice or in a proceeding before a court, adjudicative body, or other administrative body which the agency is authorized to appear, when:

a. The agency, or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her official capacity where the Department of Justice or the agency has agreed to represent the employee; or

d. The United States, when the agency determines that litigation is likely to affect the agency or any of its components;

Is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

16. Information may be disclosed to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, or at the request of, the individual who is the subject of the record.

17. Information related to any traders or the amount or quantity of any commodity purchased or sold by such traders may be disclosed to any committee of either House of Congress upon its request, acting within the scope of its jurisdiction, pursuant to the Commodity Exchange Act, 7 U.S.C. 1 *et seq.,* including Section 8(e) of such Act at 7 U.S.C. 12, and the rules and regulations promulgated thereunder.

18. Information may be disclosed to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

19. Information may be disclosed to appropriate agencies, entities, and individuals when:

a. The Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

b. The Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and

c. The disclosure made to such agencies, entities, and individuals is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in file folders and binders. Electronic records, including PDFs of paper records and computer files, are stored on the Commission's network and on various other electronic media as needed, such as encrypted hard drives.

RETRIEVABILITY:

By the name, submission number or other individual identifier of the individual or individuals seeking whistleblower status or claiming a whistleblower award.

SAFEGUARDS:

Records are protected from unauthorized access and improper use through administrative, technical and physical security measures. Technical security measures within the Commission include restrictions on computer access to authorized individuals, required use of strong passwords that are frequently changed, use of encryption for certain data types and transfers, and regular review of security procedures and best practices to enhance security. Physical measures include restrictions on building access to authorized individuals and maintenance of certain records in secured filing rooms and/or locked filing cabinets. Also, all employees are made aware of the sensitive nature of whistleblower information.

RETENTION AND DISPOSAL:

1. Whistleblower Submission Files:

a. Includes but is not limited to Forms TCR and WB-APP, records provided by whistleblowers and/or their representatives in support of their submissions, memoranda of interviews with

whistleblowers, correspondence with whistleblowers and/or their representatives, and other related records.

b. Such files will be closed after the last action on the relevant Division of Enforcement matter, after the final appeal of the decision of the Whistleblower Award Determination Panel is exhausted, or after the award payment to the whistleblower has been made, whichever is applicable and whichever is latest (the cut-off date). Such files will be destroyed 15 years after the end of the fiscal year on which the latest cut-off date occurs.

2. Whistleblower Award Determination Panel Records:

a. Includes but is not limited to documentation that the Whistleblower Office collects and prepares for the Whistleblower Award Determination Panel to make eligibility and award decisions, the Panel's determinations, records documenting payment of awards to whistleblowers, Panel membership lists and other records related to the administration of the Panel, and other related records.

b. Such files will be closed after the final appeal of the Whistleblower Award Determination Panel decision is exhausted, or after the award payment to the whistleblower has been made, whichever is applicable and whichever is latest (the cut-off date). Such files will be transferred to the National Archives and Records Administration 15 years after the end of the fiscal year in which the latest cut-off date occurs.

All whistleblower records remain exempt from disclosure under the Privacy Act.

SYSTEM MANAGER(S) AND ADDRESS:

Whistleblower Officer in the Office of the Executive Director, in the Commission's principal office at Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

RECORD SOURCE CATEGORIES:

Reporting forms and other information filed with or submitted to the Commission by: Individuals interested in participating in the whistleblower program; self-regulatory organizations; individuals or firms covered by the Commission's registration requirements; federal, state and local regulatory and law enforcement agencies; banks, credit organizations and other institutions; corporations; individuals having knowledge of the facts; attorneys; publications; courts; the Whistleblower Award Determination Panel; and other sources which may have information related to the handling of a whistleblower matter.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The records in this system have been exempted by the Commission from certain provisions of the Privacy Act of 1974 pursuant to the terms of the Privacy Act, 5 U.S.C. 552a(k)(2), and the Commission's rules promulgated thereunder, 17 CFR 146.12. These records are exempt from the notification procedures, records access procedures, and record contest procedures set forth in the

system notices of other systems of records, and from the requirement that the sources of records in the system be described.