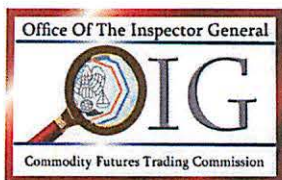


U.S. COMMODITY FUTURES TRADING COMMISSION

Office of Inspector General



Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5110
Facsimile: (202) 418-5522

September 29, 2016

TO: Chairman Timothy G. Massad
Commissioner Sharon Y. Bowen
Commissioner J. Christopher Giancarlo

FROM: A. Roy Lavik *ARL*
Inspector General

SUBJECT: Progress of CFTC's Whistleblower Office

The Office of the Inspector General (OIG) for the Commodity Futures Trading Commission (CFTC) has reviewed the CFTC Whistleblower program.¹ We examined the relevant statutes and regulations, as well as official reports and selected files of whistleblower claims and determinations. In addition, we conducted interviews with 32 current and former CFTC employees at various staff and management levels who are or have been involved with the Whistleblower program. Other than lengthy processing times, we encountered no irregularities in Whistleblower Office (WBO) processes, and the orders we reviewed appeared adequately supported by the record.

According to interviews with staff, early on in the program attorneys in the WBO grappled with issues of first impression, as well as staff and management turnover, causing delays in processing time. Although the WBO has experienced some targeted improvement in processing times over the past fiscal year, we believe further improvement is possible.²

As a result of Whistleblower awards made during this fiscal year,³ Whistleblower program administrative expenses no longer exceed award amounts.⁴ Additionally, the Director of

¹ Congress established the CFTC Whistleblower program and Customer Protection Fund (CPF) at section 748 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010), which added new section 23 to the Commodity Exchange Act (CEA), 7 U.S.C. § 26. The CPF is used to pay Whistleblower awards and related administrative expenses, and to fund customer education initiatives designed to help customers protect themselves against fraud or other violations. OIG audits the CPF yearly, and audited CFTC's consumer outreach program in 2014.

² The WBO represents average processing times for Whistleblower orders as follows: FY2013--396 days; FY2014--293 days; FY2015--84 days; and FY2016--374 days (through September 20, 2016).

³ CFTC has issued two whistleblower awards in FY 2016. On March 28, 2016, CFTC made its third whistleblower award and on April 4, 2016, issued a press release revealing the award was in excess of \$10 million. On July 19, 2016, CFTC issued its fourth whistleblower award and on July 26, 2016, issued a press release revealing the award was approximately \$50,000. These additional awards lifted the total amount awarded to approximately \$10.3 million since inception of the CFTC whistleblower program, with a new average award amount of \$3.5 million.

the WBO has informed us that whistleblower tips have gone up 15% over the past year, mostly as a consequence of recent whistleblower awards and increased exposure of the office.

The CFTC recently proposed new amendments to the Whistleblower rules.⁵ The proposals include amendment to the Award Claims Review process, expansion of the universe of records that may be examined in an award determination, amendment to the confidentiality protection provision under CEA section 23(h)(2),⁶ and establishment of a public anti-retaliation protection for prospective whistleblowers. We are pleased the WBO is seeking to improve its rules and broaden awareness of the program to the public. Given the significant changes the CFTC has submitted for public comment, we will refrain at this time from detailed commentary about the office/program or the proposed rules. We may revisit the WBO at a later date.

Finally, we are concerned with the level of institutional safeguards in place to protect a whistleblower's identity. The WBO and the Division of Enforcement (DOE or Enforcement) use Practice Manager to track open cases. Included in open case files, among other material germane to the Enforcement investigation, is the identity of a whistleblower. We understand that CFTC staff who are directly involved in an investigation could potentially need access to the whistleblower's identity; but we do not see any reason why staff unaffiliated with the investigation need such access. We recommend barring access to Practice Manager files containing a whistleblower's identity from anyone not involved in the underlying investigation. We will follow up this recommendation in our semiannual reports.

We are pleased with the level of cooperation my Office has received from Management and staff in the Whistleblower office and DOE during our fieldwork. As always, I appreciate your continuing support of my Office.

CC: Anthony C. Thompson, Executive Director
Aitan Goelman, Director, Division of Enforcement
Christopher Ehrman, Director, Whistleblower Office

⁴ Eaglesham, Jean, *CFTC Can't Give Whistleblower Money Away*, Wall Street Journal, Feb. 8, 2016 (reporting that the CFTC had spent roughly \$4 million in administrative costs of its whistleblower and outreach programs while paying \$530,000 million in whistleblower awards).

⁵ [81 FR 59551 \(Aug. 30, 2016\)](#).

⁶ 7 USC § 26(h)(2).