

October 27, 2021

The CFTC Issues Historic \$200 Million Award to Whistleblower

On Thursday, October 21, the Commodity Futures Trading Commission (“CFTC” or the “Commission”) announced that it awarded a historic award of nearly \$200 million to a whistleblower whose assistance led to success in three unnamed actions, brought by the CFTC, a U.S. federal regulator, and a foreign regulator.¹ This award is the largest ever issued by the CFTC to a single whistleblower, eclipsing the now-second largest award of approximately \$30 million.² The award underscores the importance of understanding the CFTC’s maturing whistleblower program for companies subject to the jurisdiction of the CFTC, including asset managers.

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According to the CFTC’s order, it had initially denied the award, reversing only after the whistleblower submitted a request for reconsideration.³ Ultimately, the Commission concluded there existed a “meaningful nexus” between the whistleblower’s “important, direct evidence of wrongdoing” and the “CFTC’s ability to successfully complete its investigation, and to either obtain a settlement or prevail in a litigated proceeding.”⁴

CFTC Commissioners were not unanimous in their decision to grant this groundbreaking award.⁵ Commissioner Dawn Stump, in fact, issued a statement to explain three areas of disagreement.⁶ First, she noted this award was issued based on sanctions collected by foreign futures authorities—the first of its kind.⁷ While she recognized the global nature of derivatives markets, Stump warned that such awards deplete funds otherwise available to domestic actions.⁸ Second, she argued the foreign regulator’s enforcement action was not conclusively based on information the whistleblower provided to the Commission.⁹ Finally, she contended that, even if the record was sufficient to justify an award, the CFTC should have exercised its discretion to disapprove the award in connection with assistance to the foreign futures authority as the whistleblower already is receiving awards due to assistance provided to U.S. regulators.¹⁰

Despite her opposition to the specific award, Stump affirmed her support for the Commission’s whistleblower program, noting it “effectively serves its intended purpose of incentivizing people with knowledge of potential violations of the Commodity Exchange Act (CEA) or the Commission’s rules to report that information to the Commission to investigate as appropriate.”¹¹

The CFTC whistleblower program was established in 2011 by the Dodd Frank Act.¹² Since then, the agency has increasingly relied on the whistleblower program to identify and enforce potential wrongdoing. The agency received a record 1,030 tips in fiscal year 2020, ultimately paying out \$20 million in whistleblower awards on sixteen different applications.¹³ The CFTC now estimates that 30% to 40% of its enforcement actions originate from whistleblower tips.¹⁴

If they meet the applicable conditions, a company’s employees can be eligible for a whistleblower award. Note, however, that outside legal counsel and compliance officers are generally ineligible for such an award.¹⁵

To be eligible for an award, a whistleblower must voluntarily disclose information about a potential violation to the CFTC through Form TCR.¹⁶ The information must be original and “lead to the successful resolution of a covered Commission judicial or administrative action or successful enforcement of a related action.”¹⁷ When a CFTC action results in monetary sanctions exceeding \$1,000,000, the agency will publish a Notice of Covered Action, after which any whistleblower who contributed to the action will have 90 days to file a claim for an award.¹⁸ Whistleblowers connected to an action will receive, in the aggregate, between 10% and 30% of the total monetary sanctions.¹⁹

The nearly \$200 million award represents a milestone for the CFTC and its whistleblower program, now in its tenth year. Companies and observers should expect the number of whistleblower tips to continue increasing year over year, both in light of historical trends and because the risk-reward of doing so will improve as the CFTC’s whistleblower awards increase in value. The success of the whistleblower program provides the CFTC with another tool to detect and enforce violations, increasing the need for companies to implement robust compliance programs. Indeed, with employees eligible for whistleblowing awards, it is increasingly important for companies to implement procedures that facilitate

whistleblowing internally, such as company hotlines, so as to identify and address potentially problematic conduct before it is reported to authorities.

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Please contact [Nicholas M. Berg](#), [Jeremy A. Liabo](#) or the Ropes & Gray attorney who usually advises you with any questions you may have or if you would like additional information.

1. Press Release, *CFTC Awards Nearly \$200 Million to a Whistleblower*, Commodity Futures Trading Comm'n (Oct. 21, 2021), <https://www.cftc.gov/PressRoom/PressReleases/8453-21>.
2. Press Release, *CFTC Announces Its Largest Ever Whistleblower Award of Approximately \$30 Million*, Commodity Futures Trading Comm'n (Jul. 12, 2018), <https://www.cftc.gov/PressRoom/PressReleases/7753-18>.
3. Dean Seal, *CFTC Makes History with \$200M Whistleblower Award*, Law360 (Oct. 21, 2021), https://www.law360.com/securities/articles/1433338/cftc-makes-history-with-200m-whistleblower-award?nl_pk=86aa2f19-0110-4f46-b810-4f60c5943813.
4. Press Release, *supra* note 1.
5. Public Statement & Remarks, *Statement of Commissioner Dawn D. Stump Regarding Claim for Award by Claimant 1 in Connection with Whistleblower Award Determination No. 21-WB-07*, Commodity Futures Trading Comm'n (Oct. 21, 2021), <https://www.cftc.gov/PressRoom/SpeechesTestimony/stumpstatement102121>.
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.*
12. See Dodd-Frank Wall Street Reform & Consumer Protection Act, Pub L. No. 111-203, tit. VII, § 748, 124 Stat. 1376, 1739 (July 21, 2010) (codified at 7 U.S.C. § 23).
13. CFTC, Whistleblower Program & Customer Education Initiative: 2020 Annual Report 2, 8 (Oct. 2020), <https://www.whistleblower.gov/sites/whistleblower/files/2020-11/FY20%20Report%20to%20Congress.pdf>.
14. *Save the CFTC Whistleblower Program*, Nat'l Whistleblower Ctr., <https://www.whistleblowers.org/save-the-cftc-whistleblower-program/> (last visited Oct. 24, 2021).
15. 17 C.F.R. §§ 165.2(g)(2), (5).
16. *Id.* at §§ 165.3, 165.5.
17. *Id.*
18. *Id.* at § 165.7.
19. *Id.* at § 165.8.