

CFTC releases new rules pursuant Dodd-Frank reforms, including whistleblower program

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The Commodities Futures Trading Commission (CFTC), the US Government Agency which regulates the \$601 trillion futures and options trading markets, voted 4-1 yesterday to adopt rules for its new whistleblower program, as well as for mandating that all transactions in those markets be recorded in a database. These rules have been anticipated since they were mandated under the provisions of the 2010 Dodd-Frank Wall Street Reform Act. This Act was passed to rein in the type of financial misconduct that contributed to the 2008 economic crisis by requiring a type of futures called a “swap” to be traded on record rather than in private. It also established a CFTC whistleblower program to encourage those with knowledge of illegal activity to speak up without fear of retaliation. The whistleblower program rules represent a victory for whistleblower advocates. A leading controversy in the debate to establish the rules was whether the rules should include an “administrative exhaustion” requirement, which would reserve financial rewards only to CFTC whistleblowers who had first brought their information to the attention of internal compliance personnel before going to the CFTC. Recognizing that this requirement would significantly deter a whistleblower from coming forward out of fear of retaliation from his or her employer, the CFTC rules strike a compromise, authorizing a panel to award 10 to 30 percent of any amount exceeding \$1 million recovered to a whistleblower, and that the deliberations of the panel on the size of the reward take the whistleblower’s internal compliance efforts into consideration. A final, unanimously approved, rule discarded policies that distinguished agricultural swaps from other types, recognizing no relevant difference for CFTC purposes.