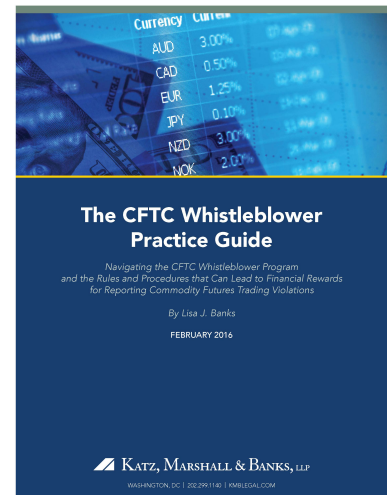


Monetary Sanctions and Award Percentage: Understanding the CFTC Whistleblower Program

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As you know from our [discussion](#) last week that outlined the aims of the Commodity Futures Trading Commission's (CFTC) Whistleblower Program, the 2012 initiative promises to pay CFTC whistleblowers 10% to 30% of monetary sanctions over \$1 million should they provide information that leads to a successful enforcement action. However, it may not be immediately clear what components comprise a monetary sanction or how the Commission goes about deciding a whistleblower's percentage. [Lisa Banks' CFTC Whistleblower Practice Guide](#) sets out to demystify such terms and processes.



What types of sanctions go into meeting the \$1,000,000 threshold that will qualify a whistleblower to a percentage of the amount recovered? There are three categories of funds the Commission incorporates into its calculation of monetary sanctions:

1. Penalties, disgorgement (repayment of ill-gotten gains), restitution, and interest ordered to be paid in a judicial or administrative action all count toward the sanction's total amount recovered.
2. Additionally, a settlement is considered a successful resolution and may lead to an award.
3. Any money deposited in a disgorgement fund under the Sarbanes-Oxley Act of 2002 (SOX) as a result of a CFTC action/settlement is also considered as part of the total.

Further, in response to complaints the CFTC received during its comment stage for the Program, the Commission determined that two or more smaller actions can be combined in considering the amount of monetary sanctions ordered, so long as the actions deal with the "same nucleus of operative facts."

How does the CFTC determine what percentage of the award to allot to the whistleblower(s), within the 10-30% margin? A number of factors go into the Commission's determination of the award amount, some positive and some negative:

1. The CFTC reviews the whistleblower's record, which includes the Form TCR, Form WB-APP, the complaint, and other supplementary documents.
2. Other factors could increase the percentage of the award, such as the significance of the provided information to the success of the action, the degree of assistance the whistleblower (and their legal representative) provided throughout the process, the whistleblower's participation in internal compliance systems, and the program's interests in deterring violations of the Commodities Exchange Act by issuing the award.
3. However, there are detrimental actions the whistleblower could take in the process, including the level of the whistleblower's culpability in the reported misconduct, an [unreasonable reporting delay](#), and a whistleblower's interference with internal compliance systems.

In the case of multiple whistleblowers in the same action (or when multiple smaller actions have been aggregated), the total reward must fall within the 10 to 30% range, but one whistleblower could receive 5% of an award, while another could receive 25%.

For more explanation of the particulars of the Program, consult the [CFTC Whistleblower Practice Guide](#) and stay tuned for continuing blog posts touching on key points of the Guide.