

Update on CFTC Whistleblower Program and Recent Award

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Concerns about whether the Commodities Futures Trading Commission (“CFTC” or “the Commission”) will have the resources to continue administering its whistleblower program were alleviated, at least in the short term, by Senate bill [S. 409](#), signed by President Biden on July 6, 2021. The bill allows for the transfer of \$10 million from the CFTC Customer Protection Fund (“the Fund”) to a separate account to cover the administrative expenses of the CFTC Whistleblower Program, as well as to fund customer education initiatives designed to help customers protect themselves against fraud and other unlawful conduct. Before enactment of S. 409, the Fund’s administrative expenses had to be paid directly from the Fund.

Funding the CFTC Whistleblower Program

Since 1936, the CFTC has regulated the commodity futures market, i.e., fuel commodities, stock indexes, and foreign currency, to name a few, through the [Commodity Exchange Act](#) (“CEA”). The **CFTC Whistleblower Program** was created by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. The Dodd-Frank Act was enacted in response to the 2008 financial collapse, and it strengthened existing whistleblower protection under the Sarbanes-Oxley Act and the [False Claims Act](#), as well as creating the CFTC Whistleblower Program and the [SEC Whistleblower Program](#). In this 2010 legislation, Congress also created the Fund to pay whistleblower awards and the operating expenses of the program. Under the program, whistleblowers who voluntarily provide original information that leads to a successful enforcement action in which the CFTC recovers over \$1,000,000 in monetary sanctions are eligible to receive compensation of 10 to 30 percent of the amount collected. Whistleblower awards are paid from the Fund, which receives deposits from monetary sanctions collected by the Commission that is not otherwise distributed to injured [customers](#).

The Fund is replenished from the sanctions imposed against violators of the CEA, which have increased over the years. Major international and domestic events such as trade wars and political changes can lead to market uncertainty or market downturns, and those often create opportunities for fraudsters which in turn create opportunities for whistleblowers to report wrongdoing. For example, during the 2008 financial crisis and the three years that followed, there was an increase in FBI securities and commodities fraud investigations and CFTC enforcement actions. Similarly, the market vulnerability caused by the coronavirus has caused an increase in whistleblower complaints. According to the CFTC 2020 Whistleblower Program & Customer Education Initiatives [Annual Report](#), CFTC tips increased from 455 in 2019 to 1030 [in 2020](#).

Increase in Awards Paid to Whistleblowers

By all accounts, the CFTC Whistleblower Program has been tremendously successful, with tips leading to more than \$1 billion in monetary recoveries and [awards](#) to whistleblowers totaling more than \$123 million. But the increase in whistleblower tips and awards also has created a potential funding crisis. By statute, the Fund is capped at \$100 million, and can only be replenished when it falls below that amount.

When the CFTC Whistleblower Program began accepting tips in 2012, this \$100 million cap seemed sufficient. That year, only 58 individuals filed complaints that year. The first award, which the CFTC paid in 2014, totaled \$240,000. It appeared then that awards of similar amounts would not jeopardize the Fund's sustainability or prevent the Commission from covering the program's operating expenses. However, the size and number of awards has significantly increased. In July 2018, the CFTC issued a \$30 million [award](#) to a single whistleblower, the largest award in the program's history at the time. The CFTC then issued a string of awards to multiple whistleblowers from March to December 2019 which totaled approximately \$16 million. According to the CFTC Annual Report from September 2020, the Fund's balance was \$117,027,972. At that time, the Commission had 18 additional whistleblower claims pending before it, which it estimated could result in future payments ranging from \$0 to over \$43 million, depending on the Commission's assessment of the merits of each whistleblower's award application.

Replenishing the CFTC Whistleblower Fund

The need to increase the Fund's cap is abundantly clear in light of a recent award recommendation. On May 11, 2021, the Wall Street Journal [reported](#) that the CFTC recommended an award of \$100 million to a whistleblower who presented the CFTC with information about potential violations at Deutsche Bank. The whistleblower's tip led to successful enforcement actions by the Department of Justice, as well as the CFTC, which resulted in an \$800 million [penalty](#) to the CFTC in 2015. Individuals knowledgeable about the program have expressed concern that the Fund cannot replenish itself quickly after such a large payout. The Wall Street Journal article warned that the Commission's whistleblower office staff could end up furloughed if the entire Fund is depleted by large or frequent awards because there would be no money for the administrative costs of running the program.

In response to such concerns, Senate Bill 409 provided some temporary relief because it created a separate account for administrative expenses which can be used if the Fund balance is insufficient to cover both administrative expenses and whistleblower awards that have been ordered under the statute. With this change, the CFTC can continue to operate and process whistleblower complaints without concern that large awards will create payroll issues and slow or temporarily stop the program's operations, including the processing of whistleblower complaints.

Because S. 409 will only be in effect until October 2022, Congress still must consider long-term solutions. In late-2020, the [CFTC Fund Management Act](#) was introduced to the Senate. One of its many objectives was to increase the Fund's limit from \$100 million to \$250 million, but almost a year later the bill has not passed. While S. 409 is a good temporary measure, a

permanent solution needs to be a priority to ensure the continued success of the CFTC Whistleblower Program.