CFTC Awards $200 Million to Whistleblower

By Kathryn Evans
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Last month the Commodity Futures Trading Commission (CFTC) announced that it had awarded $200 million to a single whistleblower, by far the largest award it has ever granted. Prior to this award, the largest award given to any individual was about $30 million.

While the US Securities and Exchange Commission (SEC) regulates the stock market, the CFTC regulates the markets for derivatives – financial contracts such as options (which give one party the right to purchase an asset at a set price during a set time window) and futures (which require one party to sell an asset to another at a set price on a set date). After the 2008 stock market crash, the Dodd-Frank Wall Street Reform and Consumer Protection Act created whistleblower award programs for both the SEC and CFTC, to encourage individuals to report market manipulation and other illegal activities to those agencies. When a whistleblower’s information leads to either agency successfully enforcing its law and recovering over $1 million in monetary sanctions in a single action, the whistleblower can recover 10-30% of the money collected by the SEC or CFTC, as well as by other government agencies such as the Department of Justice or state law enforcement agencies if the whistleblower also aided their investigations.

CFTC Whistleblower Awards to Date

From its first whistleblower award in May 2014 through September 2021, the CFTC made 26 whistleblower awards totaling approximately $123 million, based on enforcement actions in which the CFTC collected over $1 billion in total sanctions. With the recent large award in October, the CFTC nearly tripled the size of the award program, in that it has now granted approximately $323 million to 27 individuals, based on enforcement actions that recovered over $3 billion in monetary sanctions from entities that violated the law.[i]

How to Qualify for a Whistleblower Award under Dodd-Frank

To preserve the anonymity of whistleblowers, the CFTC publishes highly redacted versions of its award determinations, but still gives some information about the process for determining the award amount. In the case of the $200 million award, the CFTC’s order states that its Claims Review Staff initially recommended denying the whistleblower any award, because they had not provided enough information in their award application to show that their information led to the successful enforcement action. To qualify for a whistleblower award under Dodd-Frank, an individual must either provide the CFTC with information that causes the agency to initiate an investigation, or if the investigation is already ongoing, the whistleblower must “significantly contribute” to it. The term “significantly contribute” is not defined in the law, which gives the CFTC some discretion in determining who should receive an award. In this case, the investigation was already underway when the whistleblower
provided information to the government, so the staff recommended against an award.

After the initial denial, the whistleblower, through their attorney, requested reconsideration of that decision and provided specific information about the assistance they had provided to both the CFTC and another federal agency, which led the Commission to change its determination. According to the whistleblower's attorneys, the individual had provided the government with information about the manipulation of financial benchmarks that global banks use to set the prices of commodities such as futures and options. The Commission ultimately found that the individual contributed significantly by providing information that led to direct evidence of the violation, which would have been difficult to obtain otherwise.

The whistleblower also assisted in other enforcement actions based on the same information. After submitting information to the CFTC, the whistleblower served as a source in a news article about the same legal violations. Another federal agency and a foreign government agency read the news article and requested from the CFTC the original information that the whistleblower had provided to it. Those agencies then also interviewed the whistleblower, who significantly contributed to their ultimately successful enforcement actions in addition to the CFTC action. The CFTC therefore granted the whistleblower an award based on the sanctions collected by the CFTC, the other federal agency, and the foreign agency. The Commission’s order stated that, because the whistleblower had already voluntarily provided information to the government, the individual could also be credited with providing additional information through the news media which led to the other enforcement actions. This is the first time the CFTC has increased a whistleblower award based on a foreign enforcement action.[ii]

**Determining the Amount of a Whistleblower Award**

Although the award is a very high dollar amount, it appears to have been the lowest award the CFTC could grant within the statutory range of 10-30% of monetary sanctions collected in the enforcement actions. Before the award, the CFTC reported that it had granted whistleblower awards based on enforcement actions that had recovered more than $1 billion in monetary sanctions. That number is now over $3 billion, suggesting that this award was based on an enforcement action that recovered around $2 billion in sanctions, 10% of which would be $200 million. It has been widely speculated that the award was based on enforcement actions brought in 2015 by the CFTC, Department of Justice, and the UK Financial Conduct Authority against Deutsche Bank, which together resulted in $1.9 billion in sanctions. The CFTC’s whistleblower award determination stated that the award percentage was lowered because the individual did not provide direct evidence (although the information led to the discovery of direct evidence); the significance of their assistance was “not readily obvious to Division staff;” the information they provided related to some, but not all of the misconduct found in the covered enforcement action; and the whistleblower had delayed reporting to the government. This all suggests that the approximately $200 million award was at or near 10% of the sanctions collected.

**The CFTC Customer Protection Fund**

Nevertheless, the $200 million award is more money than was contained in the CFTC Customer Protection Fund, from which CFTC whistleblower awards are paid. When the CFTC
collects monetary sanctions from enforcement actions based on whistleblower tips, the money is first used to compensate individual investors who were harmed by the legal violation. Extra money is placed in the Customer Protection Fund, and then into the US Treasury. By law, the fund is capped at $100 million. Although previously the fund was used to cover whistleblower awards and administrative expenses, Congress recently passed a law creating a separate fund for administrative expenses. Still, the CFTC will be required to pay this whistleblower award in at least two separate installments, refilling the fund up to $100 million in between. Senator Grassley previously introduced a bill that would raise the fund’s cap to $250 million, but there have been no actions on the bill since it was introduced in December of 2020. Perhaps this new award will show Congress that it needs to act now.

[i] In comparison, the SEC has awarded approximately $1.1 billion to 226 whistleblowers since 2012, but its largest single award was $114 million, granted in October 2020.

[ii] While a state agency had also brought a successful enforcement action based on the same wrongdoing, the whistleblower did not prove to the CFTC that they had given any information to the state, and therefore did not receive any additional award money based on that enforcement action.