

# **CFTC Provides More Protection and Broader Eligibility with Changes to Whistleblower Program**

By [Joseph E. Abboud](#)  
September 28, 2017

In the Dodd-Frank Act of 2010, Congress established a [whistleblower program](#) for the Commodity Futures Trading Commission (CFTC), the United States' primary regulator of commodities, in an effort to encourage whistleblowers to report possible violations of the Commodity Exchange Act. On May 22, 2017, the CFTC announced [modifications to the rules](#) governing its whistleblower program that will expand the pool of whistleblowers eligible for an award and provide whistleblowers with greater protections against retaliation.

## **Changes to “Original Source” Requirement**

The CFTC made several changes relaxing the award eligibility standards for whistleblowers. Whistleblowers are, for the most part, not legal experts, so erecting complicated, technical procedural requirements for award eligibility could dissuade whistleblowers from reporting vital information to the government.

Some of the CFTC's rule changes also better reflect the real situations in which CFTC whistleblowers might find themselves. For instance, imagine a whistleblower who discovers her employer might be violating the Commodity Exchange Act. She might report the matter internally to her employer and then later report the information to the CFTC. Under the old rules, if the employer self-reported the violation of law to the CFTC before the whistleblower got to the agency, the whistleblower would be disqualified from receiving an award because she might no longer be the “original source” of the information. The CFTC, recognizing that the whistleblower in this situation should be rewarded for being the driving force in bringing the violation of law to light, amended the rules to provide that whistleblowers may be eligible for an award even if they are not the original source of the information they provide to the agency.

## **Reporting to “Other Qualifying Entities” First**

Similarly, the CFTC has made it easier for a whistleblower to maintain “original source” status even though she reported the violation of law to other qualifying entities (such as Congress or other federal or state regulatory authorities) before going to the CFTC.

Under the old rules, a whistleblower had to file a formal tip with the CFTC within 120 days of reporting the violation of law to other qualifying entities in order to maintain original source status. Under the new rules, a whistleblower has 180 days, making it easier for whistleblowers to maintain original source status.

In addition, recognizing the international nature of the commodities market, whistleblowers who report violations of law to foreign authorities regulating the commodities markets before going to the CFTC may maintain their eligibility for an award.

## Waiving of Procedural Requirements for Award Eligibility

Finally, the CFTC created a catch-all provision, allowing the agency to waive its procedural requirements for award eligibility upon a showing of “extraordinary circumstances.”

All of these changes make it more likely that whistleblowers will be eligible for an award through the CFTC Whistleblower Program and, thus, will likely encourage more individuals with knowledge of wrongdoing to come forward. Even though the CFTC has relaxed its award eligibility standards, potential whistleblowers should consult with an experienced whistleblower attorney before filing a tip to maximize their chances of receiving an award.

## Increasing Retaliation Protections

In addition to expanding the pool of whistleblowers eligible to receive an award through the CFTC whistleblower program, the new rules provide greater protection to whistleblowers who might face retaliation from their employers for reporting to or cooperating with the CFTC.

Under the Dodd-Frank Act’s amendments to the Commodity Exchange Act, employers were prohibited from retaliating against whistleblowers for providing information to the CFTC or for cooperating with a CFTC investigation or enforcement action. This anti-retaliation protection applied even if the whistleblower was not eligible for an award, as long as she had a good faith, reasonable belief that she was reporting a violation of the Commodity Exchange Act. This protection was not very robust, however, because the CFTC initially took the position that it had no power to enforce the anti-retaliation provisions; rather, a whistleblower who faced retaliation had to pursue the action in court on her own.

Under the new rules, the CFTC now recognizes that it can sue employers for violating the anti-retaliation provisions. Furthermore, the CFTC’s new rules prohibit employers from using contractual provisions, like confidentiality or [arbitration agreements](#), to silence whistleblowers who might report violations of law to the CFTC.

These changes show the CFTC’s commitment to the protection of whistleblowers and provide a more effective deterrent to retaliation. An employer contemplating retaliation might assess its risks differently now that it can face a court challenge, not just from the whistleblower herself, but also from a government regulatory agency.

Through its new rules, the CFTC has shown that it values whistleblowers in its mission to [combat fraud in the commodities futures markets](#). By making it easier for whistleblowers to receive awards, and making it harder for employers to retaliate against whistleblowers, the CFTC will hopefully cause more people to come forward and report violations of law that impact investors and consumers worldwide.