

CFTC Grants Whistleblower Award of Over \$2M

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On March 4, 2019, the United States Commodity Futures Trading Commission (CFTC) for the first time awarded a whistleblower [over \\$2 million](#) for providing the Commission with information that led to a successful enforcement action for violations of the Commodity Exchange Act (CEA), and a related action brought by another federal regulator. The award also represents the first CFTC whistleblower award given to an outsider, rather than, for example, a current or former employee.

What is the CFTC Whistleblower Program?

The CFTC is a government agency that regulates futures trading subject to the Commodities Exchange Act, which governs a range of commodities, including agricultural products, such as grain, wheat, or cotton; oil and gas; and financial instruments such as stock index futures. The Commission created a whistleblower program pursuant to the [Dodd-Frank Act](#) of 2010. The CFTC Whistleblower Program provides monetary awards to whistleblowers who provide original information about violations of the CEA, such as fraud, market manipulation, and trade practice violations. The information provided must lead the CFTC to bring a successful enforcement action that results in monetary sanctions over \$1 million. The CFTC will also provide awards to whistleblowers where their information leads to a successful enforcement action by another governmental agency. The award amount will total between 10 and 30 percent of the monetary sanctions.

Who is Eligible for a Whistleblower Award?

The [CFTC whistleblower program](#) requires that original information be either derived from the whistleblower's "independent knowledge or independent analysis." Independent knowledge may come from a whistleblower's own experiences or communications, which is typical where, for example, an employee or contractor observes CFTC violations occurring in their place of employment. Independent analysis, however, constitutes the whistleblower's examination and evaluation of information that may be generally available, where the analysis reveals information that is not generally known or publicly available. The whistleblower program's acceptance of independent analysis demonstrates that industry experts may be able to provide insight and analyses that are valuable to the CFTC in bringing enforcement actions for CEA violations.

Two Important Takeaways for Whistleblowers

The March 4 award was one of the first whistleblower awards to be given to a company outsider who provided information based on independent analysis of market data. A similar outsider whistleblower received an award from the Securities and Exchange Commission in January 2016 for independent analysis under the [SEC's whistleblower program](#). In a March 4 press release, Christopher Ehrman, Director of the CFTC's Whistleblower Office said that the award illustrates two important features of the program: "that an individual doesn't have to be an insider to receive a whistleblower award and the Commission can pay awards based on related actions brought by other regulators." He added, "I expect more awards to be issued to whistleblowers who provide our Enforcement Division with

information based on their expert analysis of market data and to whistleblowers based on related actions.”

Although the details of the specific violations reported and subsequent enforcement actions are confidential, the CFTC order determining the whistleblower award found that the whistleblower had voluntarily provided original information that led to a successful enforcement action under the CEA. Moreover, the information was specific, credible, and timely such that the CFTC could open an investigation into the violations. The whistleblower also assisted the CFTC during the investigation by providing analysis in interpreting data. The CFTC then brought an enforcement action based in part upon the information that the whistleblower submitted. The CFTC further found that the information led to a successful enforcement action by another federal regulatory agency, which factored positively into the award amount.