Commodity Futures Trading Commission
Commodity Whistleblower Incentives and Protection

(7 U.S.C. § 26)[i]

§ 26. Commodity whistleblower incentives and protection

(a) Definitions. In this section:

(1) Covered judicial or administrative action. The term "covered judicial or administrative action" means any judicial or administrative action brought by the Commission under this Act [*7 USCS §§ 1* et seq.] that results in monetary sanctions exceeding $ 1,000,000.

(2) Fund. The term "Fund" means the Commodity Futures Trading Commission Customer Protection Fund established under subsection (g).

(3) Monetary sanctions. The term "monetary sanctions", when used with respect to any judicial or administrative action means--

(A) any monies, including penalties, disgorgement, restitution, and interest ordered to be paid; and

(B) any monies deposited into a disgorgement fund or other fund pursuant to section 308(b) of the Sarbanes-Oxley Act of 2002 (*15 U.S.C. 7246(b)*), as a result of such action or any settlement of such action.

(4) Original information. The term "original information" means information that--

(A) is derived from the independent knowledge or analysis of a whistleblower;

(B) is not known to the Commission from any other source, unless the whistleblower is the original source of the information; and

(C) is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is a source of the information.

(5) Related action. The term "related action", when used with respect to any judicial or administrative action brought by the Commission under this Act, means any judicial or administrative action brought by an entity described in subclauses (I) through (VI) of subsection (h)(2)(C) that is based upon the original information provided by a whistleblower pursuant to subsection (a) that led to the successful enforcement of the Commission action.

(6) Successful resolution. The term "successful resolution", when used with respect to any judicial or administrative action brought by the Commission under this Act, includes any settlement of such action.

(7) Whistleblower. The term "whistleblower" means any individual, or 2 or more individuals acting jointly, who provides information relating to a violation of this Act to the Commission, in a manner established by rule or regulation by the Commission.

(b) Awards.

(1) In general. In any covered judicial or administrative action, or related action, the Commission, under regulations prescribed by the Commission and subject to subsection (c), shall pay an award or awards to 1 or more whistleblowers who voluntarily provided original information to the Commission that led to the successful enforcement of the covered judicial or administrative action, or related action, in an aggregate amount equal to--

(A) not less than 10 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions; and

(B) not more than 30 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions.

(2) Payment of awards. Any amount paid under paragraph (1) shall be paid from the Fund.

(c) Determination of amount of award; denial of award.

(1) Determination of amount of award.

(A) Discretion. The determination of the amount of an award made under subsection (b) shall be in the discretion of the Commission.

(B) Criteria. In determining the amount of an award made under subsection (b), the Commission--

(i) shall take into consideration--

(I) the significance of the information provided by the whistleblower to the success of the covered judicial or administrative action;

(II) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in a covered judicial or administrative action;

(III) the programmatic interest of the Commission in deterring violations of the Act [*7 USCS §§ 1* et seq.] (including regulations under the Act) by making awards to whistleblowers who provide information that leads to the successful enforcement of such laws; and

(IV) such additional relevant factors as the Commission may establish by rule or regulation; and

(ii) shall not take into consideration the balance of the Fund.

(2) Denial of award. No award under subsection (b) shall be made--

(A) to any whistleblower who is, or was at the time the whistleblower acquired the original information submitted to the Commission, a member, officer, or employee of--

(i) a appropriate regulatory agency;

(ii) the Department of Justice;

(iii) a registered entity;

(iv) a registered futures association;

(v) a self-regulatory organization as defined in section 3(a) of the Securities Exchange Act of 1934 (*15 U.S.C. 78c(a)*); or

(vi) a law enforcement organization;

(B) to any whistleblower who is convicted of a criminal violation related to the judicial or administrative action for which the whistleblower otherwise could receive an award under this section;

(C) to any whistleblower who submits information to the Commission that is based on the facts underlying the covered action submitted previously by another whistleblower;

(D) to any whistleblower who fails to submit information to the Commission in such form as the Commission may, by rule or regulation, require.

(d) Representation.

(1) Permitted representation. Any whistleblower who makes a claim for an award under subsection (b) may be represented by counsel.

(2) Required representation.

(A) In general. Any whistleblower who anonymously makes a claim for an award under subsection (b) shall be represented by counsel if the whistleblower submits the information upon which the claim is based.

(B) Disclosure of identity. Prior to the payment of an award, a whistleblower shall disclose the identity of the whistleblower and provide such other information as the Commission may require, directly or through counsel for the whistleblower.

(e) No contract necessary. No contract with the Commission is necessary for any whistleblower to receive an award under subsection (b), unless otherwise required by the Commission, by rule or regulation.

(f) Appeals.

(1) In general. Any determination made under this section, including whether, to whom, or in what amount to make awards, shall be in the discretion of the Commission.

(2) Appeals. Any determination described in paragraph (1) may be appealed to the appropriate court of appeals of the United States not more than 30 days after the determination is issued by the Commission.

(3) Review. The court shall review the determination made by the Commission in accordance with section 7064 of title 5, United States Code.

(g) Commodity Futures Trading Commission Customer Protection Fund.

(1) Establishment. There is established in the Treasury of the United States a revolving fund to be known as the "Commodity Futures Trading Commission Customer Protection Fund".

(2) Use of Fund. The Fund shall be available to the Commission, without further appropriation or fiscal year limitation, for--

(A) the payment of awards to whistleblowers as provided in subsection (a); and

(B) the funding of customer education initiatives designed to help customers protect themselves against fraud or other violations of this Act, or the rules and regulations thereunder.

(3) Deposits and credits. There shall be deposited into or credited to the Fund:

(A) Monetary sanctions. Any monetary sanctions collected by the Commission in any covered judicial or administrative action that is not otherwise distributed to victims of a violation of this Act or the rules and regulations thereunder

underlying such action, unless the balance of the Fund at the time the monetary judgment is collected exceeds $ 100,000,000.

(B) Additional amounts. If the amounts deposited into or credited to the Fund under subparagraph (A) are not sufficient to satisfy an award made under subsection (b), there shall be deposited into or credited to the Fund an amount equal to the unsatisfied portion of the award from any monetary sanction collected by the Commission in any judicial or administrative action brought by the Commission under this Act [*7 USCS §§ 1* et seq.] that is based on information provided by a whistleblower.

(C) Investment income. All income from investments made under paragraph (4).

(4) Investments.

(A) Amounts in fund may be invested. The Commission may request the Secretary of the Treasury to invest the portion of the Fund that is not, in the Commission's judgment, required to meet the current needs of the Fund.

(B) Eligible investments. Investments shall be made by the Secretary of the Treasury in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Fund as determined by the Commission.

(C) Interest and proceeds credited. The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to, and form a part of, the Fund.

(5) Reports to Congress. Not later than October 30 of each year, the Commission shall transmit to the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committee on Agriculture of the House of Representatives a report on--

(A) the Commission's whistleblower award program under this section, including a description of the number of awards granted and the types of cases in which awards were granted during the preceding fiscal year;

(B) customer education initiatives described in paragraph (2)(B) that were funded by the Fund during the preceding fiscal year;

(C) the balance of the Fund at the beginning of the preceding fiscal year;

(D) the amounts deposited into or credited to the Fund during the preceding fiscal year;

(E) the amount of earnings on investments of amounts in the Fund during the preceding fiscal year;

(F) the amount paid from the Fund during the preceding fiscal year to whistleblowers pursuant to subsection (b);

(G) the amount paid from the Fund during the preceding fiscal year for customer education initiatives described in paragraph (2)(B);

(H) the balance of the Fund at the end of the preceding fiscal year; and

(I) a complete set of audited financial statements, including a balance sheet, income statement, and cash flow analysis.

(h) Protection of whistleblowers.

(1) Prohibition against retaliation.

(A) In general. No employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower--

(i) in providing information to the Commission in accordance with subsection (b); or

(ii) in assisting in any investigation or judicial or administrative action of the Commission based upon or related to such information.

(B) Enforcement.

(i) Cause of action. An individual who alleges discharge or other discrimination in violation of subparagraph (A) may bring an action under this subsection in the appropriate district court of the United States for the relief provided in subparagraph (C), unless the individual who is alleging discharge or other discrimination in violation of subparagraph (A) is an employee of the Federal Government, in which case the individual shall only bring an action under *section 1221 of title 5, United States Code.*

(ii) Subpoenas. A subpoena requiring the attendance of a witness at a trial or hearing conducted under this subsection may be served at any place in the United States.

(iii) Statute of limitations. An action under this subsection may not be brought more than 2 years after the date on which the violation reported in subparagraph (A) is committed.

(C) Relief. Relief for an individual prevailing in an action brought under subparagraph (B) shall include--

(i) reinstatement with the same seniority status that the individual would have had, but for the discrimination;

(ii) the amount of back pay otherwise owed to the individual, with interest; and

(iii) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney's fees.

(2) Confidentiality.

(A) In general. Except as provided in subparagraphs (B) and (C), the Commission, and any officer or employee of the Commission, shall not disclose any information, including information provided by a whistleblower to the Commission, which could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of *section 552a of title 5, United States Code*, unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Commission or any entity described in subparagraph (C). For purposes of *section 552 of title 5, United States Code*, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(B) Effect. Nothing in this paragraph is intended to limit the ability of the Attorney General to present such evidence to a grand jury or to share such evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

(C) Availability to government agencies.

(i) In general. Without the loss of its status as confidential in the hands of the Commission, all information referred to in subparagraph (A) may, in the discretion of the Commission, when determined by the Commission to be necessary or appropriate to accomplish the purposes of this Act and protect customers and in accordance with clause (ii), be made available to--

(I) the Department of Justice;

(II) an appropriate department or agency of the Federal Government, acting within the scope of its jurisdiction;

(III) a registered entity, registered futures association, or self-regulatory organization as defined in section 3(a) of the Securities Exchange Act of 1934 (*15 U.S.C. 78c(a)*);

(IV) a State attorney general in connection with any criminal investigation;

(V) an appropriate department or agency of any State, acting within the scope of its jurisdiction; and

(VI) a foreign futures authority.

(ii) Maintenance of information. Each of the entities, agencies, or persons described in clause (i) shall maintain information described in that clause as confidential, in accordance with the requirements in subparagraph (A).

(iii) Study on impact of FOIA exemption on Commodity Futures Trading Commission.

(I) Study. The Inspector General of the Commission shall conduct a study--

(aa) on whether the exemption under *section 552(b)(3) of title 5, United States Code* (known as the Freedom of Information Act) established in paragraph (2)(A) aids whistleblowers in disclosing information to the Commission;

(bb) on what impact the exemption has had on the public's ability to access information about the Commission's regulation of commodity futures and option markets; and

(cc) to make any recommendations on whether the Commission should continue to use the exemption.

(II) Report. Not later than 30 months after the date of enactment of this clause [enacted July 21, 2010], the Inspector General shall--

(aa) submit a report on the findings of the study required under this clause to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives; and

(bb) make the report available to the public through publication of a report on the website of the Commission.

(3) Rights retained. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any whistleblower under any Federal or State law, or under any collective bargaining agreement.

(i) Rulemaking authority. The Commission shall have the authority to issue such rules and regulations as may be necessary or appropriate to implement the provisions of this section consistent with the purposes of this section.

(j) Implementing rules. The Commission shall issue final rules or regulations implementing the provisions of this section not later than 270 days after the date of enactment of the Wall Street Transparency and Accountability Act of 2010 [enacted July 21, 2010].

(k) Original information. Information submitted to the Commission by a whistleblower in accordance with rules or regulations implementing this section shall not lose its status as original information solely because the whistleblower submitted such information prior to the effective date of such rules or regulations, provided such information was sub-

mitted after the date of enactment of the Wall Street Transparency and Accountability Act of 2010 [enacted July 21, 2010].

(l) Awards. A whistleblower may receive an award pursuant to this section regardless of whether any violation of a provision of this Act, or a rule or regulation thereunder, underlying the judicial or administrative action upon which the award is based occurred prior to the date of enactment of the Wall Street Transparency and Accountability Act of 2010 [enacted July 21, 2010].

(m) Provision of false information. A whistleblower who knowingly and willfully makes any false, fictitious, or fraudulent statement or representation, or who makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall not be entitled to an award under this section and shall be subject to prosecution under *section 1001 of title 18, United States Code*.

(n) Nonenforceability of certain provisions waiving rights and remedies or requiring arbitration of disputes.

(1) Waiver of rights and remedies. The rights and remedies provided for in this section may not be waived by any agreement, policy form, or condition of employment including by a predispute arbitration agreement.

(2) Predispute arbitration agreements. No predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this section.

---

[i] Last updated Aug. 8, 2014.