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# CFTC WHISTLEBLOWERS: LEGAL PERILS AND PITFALLS

*By David Kovel and Lauren Wands*[1]

## I. Introduction

When a whistleblower provides reliable information related to potential violations of the Commodity Exchange Act (the "CEA") to the Commodity Futures Trading Commission (the "CFTC" or the "Commission"), he or she may be eligible to receive an award under the CFTC's Whistleblower Program. Under the Program, a whistleblower is entitled to receive between ten (10) and thirty (30) percent, in total, of any monetary sanctions imposed by the CFTC or other agencies.[2] In 2021, for example, the CFTC awarded a whistleblower *nearly $200 million* for providing "information [that] led the CFTC to important, direct evidence of wrongdoing,"[3] representing "a percentage of recoveries achieved in connection with the CFTC as well as . . . related settlements."[4] So, the logical conclusion is that if you or your client has evidence of potential violations of the CEA, you should immediately report the evidence to the CFTC to receive easy money, right? Not so fast.

From 2012 through 2016, Edwin Johnson, who served as Chief Risk Officer for 3Red Trading, LLC ("3Red") until his termination in 2013, provided the CFTC with information about 3Red's founder and principal trader Igor Oystacher's trading practices.[5] In 2011, the Commission, suspecting that Oystacher was spoofing in several different futures markets, had opened an investigation into the trading practices of 3Red and Oystacher.[6] In 2015, the Commission filed a civil enforcement action against 3Red and Oystacher, "alleging improper trading in several futures markets, including crude oil, copper, natural gas, S&P 500, and VIX"[7]—the exact trading and markets on which Johnson had reported to the Commission.[8] After the district court found that Oystacher and 3Red had repeatedly engaged in spoofing, and imposed a $2,500,000 penalty, Johnson applied for a whistleblower award under the CEA.[9] But in 2022, despite the assistance he provided to the CFTC in connection with its investigation, the Commission entered a final order denying Johnson's claim for a whistleblower award.[10] The reason? "Johnson provided information about Oystacher's improper trading *after* the Commission sent him a document preservation request and multiple subpoenas as part of an existing investigation into 3Red."[11]

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Likewise, in 2007, Victor Hong worked at a subsidiary of the Royal Bank of Scotland ("RBS") for six weeks, resigning because of "what he believed to be unlawful practices engaged in by [RBS] in connection with its portfolio of residential mortgage-backed securities."[12] In 2014, Hong provided information to the Securities and Exchange Commission (the "SEC") about RBS's misconduct-information which the SEC passed along to the Department of Justice (the "DOJ") and the Federal Housing Finance Agency (the "FHFA"). Although the SEC itself took no action against RBS, the DOJ and FHFA obtained additional information and documents from Hong by subpoena.[13] In 2017 and 2018, FHFA and DOJ, respectively, entered into settlements with RBS related to the same conduct on which Hong had reported to the agencies.[14] The settlements required RBS to make payments to FHFA and DOJ totaling over $10 billion.[15] When Hong applied to the SEC for an award under its whistleblower program in connection with the tips he provided to the SEC that led to the successful DOJ and FHFA actions, however, he was denied. The reason? The SEC did not itself bring an action against RBS.

The Johnson and Hong cases provide just two examples of the various legal pitfalls and issues faced by whistleblowers in connection with the CFTC's whistleblower program. This article first provides a brief overview of the CFTC's Whistleblower Program and its attendant Whistleblower Rules, before delving deeper into some of the specific legal pitfalls and issues faced by whistleblowers in connection with information provided to the Commission.[16]

## II. A Brief Overview of the CFTC's Whistleblower Program and Whistleblower Rules

The CFTC's Whistleblower Program "provides monetary incentives to individuals who report possible violations of the [CEA] that lead to a successful enforcement action."[17] The CFTC Whistleblower Program was created by Section 23 of the CEA,[18] and the Whistleblower Rules[19] implement Section 23 of the CEA.[20]

The first step for a whistleblower to become eligible for an award from the Commission is to submit a tip, complaint, or referral on a Form TCR containing information about a potential violation of the CEA.[21] A whistleblower need not be a company insider; anyone, including market observers, investors, customers, fraud victims, and corporate insiders, can be whistleblowers.

The Whistleblower Rules "describe[] the whistleblower program" and "explain[] the procedures the whistleblower will need to follow in order to be eligible for an award."[22] This includes providing, *inter alia*: (1) the procedures for submitting original information as a whistleblower,[23] (2) the requirements for consideration of a whistleblower award,[24] (3) how a whistleblower can be made ineligible for an award,[25] (4) guidelines regarding the amount of the award,[26] and (5) the process for appealing the CFTC's final order relating to a whistleblower award determination.[27] These rules, particularly the requirements for consideration of a whistleblower award, are discussed more thoroughly in Part III, *infra*.

So long as a whistleblower complies with all relevant procedures and eligibility requirements, the CFTC may also grant an award based on the

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monetary sanctions collected in a Related Action or Related Actions provided that the Related Action is based on the information that the whistleblower voluntarily provided to the CFTC regarding a potential violation of the CEA *and* led to a successful resolution of the CFTC action.[28] The Whistleblower Rules define a Related Action as any judicial or administrative action brought by: (1) the Department of Justice, (2) "[a]n appropriate department or agency of the Federal Government, acting within the scope of its jurisdiction," (3) "[a] registered entity, registered futures association, or self-regulatory organization," (4) "[a] State criminal or appropriate civil agency, acting within the scope of its jurisdiction," or (5) [a] foreign futures authority."[29]

In addition to submitting a TCR, to be eligible for an award, a whistleblower must "[h]ave submitted a claim in response to a Notice of Covered Action or a final judgment in a Related Action or both."[30] A Notice of Covered Action is posted when the CFTC obtains a final judgment or settlement that results in more than $1 million in monetary sanctions.[31] Once the Notice of Covered Action is posted, whistleblowers who provided the CFTC with information related to the underlying enforcement action and submitted a Form TCR have ninety (90) days to apply for an award.[32]

Whistleblower awards will amount to between ten (10) percent and thirty (30) percent of the total monetary sanctions collected in the covered judicial or administrative action or related actions.[33] Where the Commission awards more than one whistleblower in connection with the same action or related action, "the Commission will determine an individual percentage award for each whistleblower, but in no event will the total amount awarded to all whistleblowers as a group be less than 10 percent or greater than 30 percent of the amount the Commission or the other authorities collect."[34]

The Whistleblower Rules additionally provide certain factors that can, in the CFTC's discretion, increase or decrease the amount of the whistleblower's award. Factors that may increase the amount of a whistleblower's award include: (1) the significance of the whistleblower's information to the success of the CFTC or Related Action, (2) the degree of assistance provided by the whistleblower or his or her legal representative, (3) the CFTC's interest in deterring violations of the CEA, and (4) whether, and the extent to which, the whistleblower and/or his or her legal representative participated in internal compliance systems.[35] Factors that may decrease the amount of a whistleblower's award, on the other hand, include: (1) the whistleblower's culpability or involvement in the CEA violations, (2) whether the whistleblower unreasonably delayed in reporting the CEA violations, and (3) whether the whistleblower undermined the integrity of his or her entity's internal compliance or reporting system.[36]

The CFTC has awarded approximately $365 million to whistleblowers since issuing its first award in 2014.[37]

## III. Legal Pitfalls and Issues faced by Whistleblowers

The Whistleblower Rules provide certain eligibility requirements that must be met before a whistleblower will be deemed eligible to receive an award. The Commission will only pay an award to whistleblowers who: "(1) Provide a voluntary submission to the Commission; (2) That

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contains original information; and (3) That leads to the successful resolution of a covered judicial or administrative action or successful enforcement of a Related Action or both[.]" Additionally, the whistleblower must: "(1) Have voluntarily provided the Commission original information in the form and manner that the Commission requires. . .; (2) Have submitted a claim in response to a Notice of Covered Action or a final judgment in a Related Action or both; (3) Provide the Commission, upon its staff's request, certain additional information. . .; and (4) If requested by the Whistleblower Office, enter into a confidentiality agreement . . . ."

These eligibility requirements-and their attendant pitfalls-are discussed in further detail below.

### A. The Whistleblower's Submission Must be "Voluntary"

The Whistleblower Rules define "voluntary submission" or "voluntarily submitted" as the "provision of information made prior to any request from the Commission, Congress, any other federal or state authority, the Department of Justice, a registered entity, a registered association, or a self-regulatory organization."[38] Accordingly, "[i]f the Commission or any of these other authorities makes a request, inquiry, or demand to the whistleblower or the whistleblower's representative first, the whistleblower's submission will not be considered voluntary," and thus, the whistleblower will be ineligible to receive an award.[39]

This was the issue that Edwin Johnson faced in the 3Red and Oystacher case described in the introduction. In that case, after the CFTC denied Johnson's request for a whistleblower award on the grounds that his submissions to the Commission were not "voluntary," Johnson appealed the case to the Seventh Circuit. Even though Johnson provided information to the Commission *after* receiving subpoenas from the CFTC, Johnson made two arguments to support his contention that his submissions were nonetheless voluntary: (1) "that his submissions went beyond the scope of any request or subpoena by the Commission and were, therefore, voluntary;" and (2) "the Commission would not have gotten the requested information without Johnson's cooperation" because "3Red failed to respond to a subpoena that it received."[40]

The Seventh Circuit was not persuaded by either argument. As to the first argument, the court stated that "[e]ven assuming the . . . information was beyond the scope of every request and demand made by the Commission, it was *relevant* to them," and, crucially, "[r]elevant submissions after a request from the Commission are not voluntary 'even if the whistleblower's response is not compelled by subpoena or other applicable law.' "[41] And, as to the second argument, the court found it was based on an "untenable" reading of the Whistleblower Rules, where, according to Johnson, "the subpoena issued to 3Red somehow cancelled out the subpoena issued to him in his individual capacity."[42]

Johnson made another argument in addition to those specifically regarding voluntariness that warrants discussion-he argued, under penalty of perjury in his application for a whistleblower award, that Rosemary Hollinger, the Deputy Director of the Commission's Division of Enforcement, "told him that 'if he voluntarily provided information relevant to the CFTC's investigation [of 3Red and Oystacher], he would qualify as a whistleblower and possibly be entitled to a


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whistleblower award.' "[43] The Seventh Circuit again was not persuaded for three (3) reasons: (1) "no member of the agency was 'authorized to make any offer or promise . . . with respect to the payment of any award"; (2) "[e]ven if Hollinger was so authorized, by Johnson's own account of the promise, she indicated that Johnson would 'possibly' be eligible for an award"; and, as discussed previously, (3) "Johnson's submissions were not voluntary under the regulations."[44] Because the Seventh Circuit found all of Johnson's arguments to be unavailing, it denied Johnson's petition for review.

### B. The Information Provided by the Whistleblower Must be "Original"

The Whistleblower Rules define "original information" as information that "[i]s derived from the independent knowledge or independent analysis of a whistleblower."[45] "Independent knowledge" encompasses "factual information in the whistleblower's possession that is not generally known or available to the public,"[46] whereas "independent analysis" "means the whistleblower's own analysis, whether done alone or in combination with others."[47] "Original information" must also not be previously "known to the Commission from any other source."[48]

Importantly, the Whistleblower Rules provide that the whistleblower's information will not be considered to have been derived from the whistleblower's "independent knowledge" if the information was obtained: (1) "[f]rom sources generally available to the public such as corporate filings and the media, including the Internet"; (2) "[t]hrough a communication that was subject to the attorney-client privilege"; (3) "[i]n connection with the legal representation of a client"; (4) "[b]ecause the whistleblower was an officer, director, trustee, or partner of an entity and another person informed the whistleblower of allegations of misconduct, or the whistleblower learned the information in connection with the entity's processes for identifying, reporting, and addressing possible violations of law"; (5) "[b]ecause the whistleblower was an employee whose principal duties involved compliance or internal audit responsibilities"; and (6) "[b]y a means or in a manner that is determined by a United States court to violate applicable Federal or state criminal law."[49] So, for example, if a whistleblower were to obtain information about potential violations of the CEA through blackmail, fraud, or extortion, he or she would be ineligible for a whistleblower award as the information would not be considered to be derived from the whistleblower's "independent knowledge."

Between 2010 and 2014, the SEC obtained information from several persons in connection with its investigation into misstatements in Deutsche Bank's financial statements.[50] In June 2013, an unidentified claimant submitted an expert report to the SEC which had been prepared by the Kilgour Williams Group ("KWG"), a consulting firm owned by Colin Kilgour and Daniel Williams.[51] This report was "absolutely critical to [the] investigation," and KWG continued to provide information to the SEC that helped the SEC's position vis-???-vis Deutsche Bank.[52] In August 2014, the unidentified claimant authorized Kilgour and Williams to make an independent TCR submission to the SEC so that they would be eligible to receive an award; the submission reiterated the information that had been commissioned by the unidentified claimant and which had previously been submitted to the SEC.[53] When Kilgour and Williams applied for an award, the SEC rejected their claim because

they did not provide "original information" nor did they qualify as the "original source" of the information "because they had both previously interacted with the SEC in their capacity as [the unidentified claimant's] experts."[54] The Second Circuit agreed with the SEC, noting that "by the time they submitted their Form TCR, all the information contained therein was already known to the [SEC], having been provided by Kilgour and Williams earlier to support [the unidentified claimant's] submissions."[55]

In 2022, the D.C. Circuit analyzed the meaning of "original information" in the context of a petition for judicial review of an SEC order granting that two former coworkers must divide a whistleblower award equally as joint whistleblowers.[56] Michael Johnston led a financial advisory team at Citi Smith Barney, a subsidiary of Citigroup, Inc.; the team consisted of Johnston, Michael Mittman, and John Arnold.[57] While preparing for an arbitration proceeding against Citigroup before FINRA, Johnston claims he alone discovered that Citigroup made misrepresentations about "tests conducted to verify Citi's risk assessment of the ASTA/MAT and Falcon funds using historical investment data."[58] Johnston and his team subsequently submitted a 25-page report to the SEC detailing the problem, and in follow-up meetings with the SEC, Johnston and Mittman presented the team's findings.[59] After the SEC brought a successful enforcement action, and issued a related Notice of Covered Action, both Johnston and Mittman submitted timely claims, but Johnston's claim stated it was submitted on behalf of the team as a whole.[60] The SEC issued an order granting Johnston and Mittman, as joint whistleblowers, $27 million to be divided equally.[61] Johnston challenged the order, arguing, in part, that "Mittman was not eligible for an award because he provided no original information."[62]

The D.C. Circuit made two (2) important holdings with respect to what it means to provide "original information." First, that "[a] whistleblower may be two or more persons acting jointly."[63] In so holding, the court examined the plain language of the Whistleblower Rules, which "explicitly defines the term" whistleblower to include "2 or more individuals acting jointly."[64] Second, that "[a]n applicant for an award need not have developed the information he provided."[65] The court found that the SEC "can receive information from a team of people acting together . . . and consider that information to be original information from a 'whistleblower' . . . ."[66] And, crucially, the court declined to adopt Johnston's argument that the SEC must consider who "developed" the information in making an award determination.[67]

### C. The Information Provided by the Whistleblower Must "Lead To" the Successful Enforcement of a Covered Judicial or Administrative Action

The Whistleblower Rules also require that a whistleblower provide information "[t]hat leads to the successful resolution of a covered judicial or administrative action or successful enforcement of a Related Action or both."[68] "[I]mplicit in the requirement . . . that a whistleblower's information 'led to successful enforcement' is the additional expectation that the information, because of its high quality, reliability, and specificity, has a meaningful nexus to the Commission's ability to successfully complete its investigation, and to either obtain a settlement or prevail in a litigated proceeding."[69]


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This requirement can be met in two different ways: (1) the whistleblower's information "cause[d] the Commission staff to commence an examination, open an investigation, reopen an investigation that the Commission had closed, or to inquire concerning different conduct as part of a current examination or investigation, and the Commission brought a successful judicial or administrative action based in whole or in part on conduct that was the subject of the whistleblower's original information,"[70] or (2) "the whistleblower's submission significantly contributed to the success of the action."[71]

Important to this requirement is that the CFTC *actually uses* a whistleblower's tip-it is not enough that a whistleblower submit a tip that "*could have led* or *may have led* or *would have led* to a successful enforcement" if only the CFTC had used it.[72] For example, in February 2013, Renato De Miranda Granzoti "blew the whistle [to the SEC] on a pyramid scheme conducted by TelexFree, Inc."[73] In January 2014, the SEC opened an investigation into TelexFree for "running a pyramid scheme," and in May 2017, the SEC obtained a final judgment against TelexFree from the U.S. District Court for the District of Massachusetts.[74] Granzoti applied for a whistleblower award, but the SEC denied his claim because "Granzoti's information 'was never provided to or used by staff handling the Covered Action or underlying investigation (or examination) and those staff members otherwise had no contact with' Granzoti."[75] In holding that the SEC reasonably denied Granzoti's request for a whistleblower award, the Eleventh Circuit stated simply: "The long and the short of it is that the evidence supported a finding that the SEC never used Granzoti's tip. And because it never used his tip, the information couldn't have led to the successful action against TelexFree."[76]

Because the CFTC must *actually use* a whistleblower's tip in order for a whistleblower to be deemed eligible for an award, the credibility of the whistleblower is an important consideration prior to making a TCR submission. The CFTC has the freedom to choose which tips it believes to be the most credible when determining what information to use in its investigations, so the more credible a whistleblower, the more likely his or her tip will be used by the CFTC.

That the information must lead to a "covered judicial or administrative action, or related action" was also the issue faced by Victor Hong in the RBS case described in the introduction. In that case, "Hong's eligibility for a whistleblower award turn[ed] on whether the information he provided to the SEC led to the successful enforcement of a 'covered judicial or administrative action'—that is, an 'action' of some kind that was 'brought by the [SEC] under the securities laws'—or a 'related action' " where "the record [was] plain that the [SEC] did not sue [RBS], formally initiate an enforcement proceeding against it, or enter into a settlement with it."[77] The Second Circuit ultimately adopted the SEC's interpretation of its own whistleblower rules, holding that "for an action to be 'brought by the [SEC],' the SEC must have led that action in some respect,"[78] and "that an SEC action is a prerequisite to the existence of a 'related action.' "[79] As discussed *supra*, Section II, this same requirement is codified in the CFTC's Whistleblower Rules, which define "related action" as "any judicial or administrative action . . . that is based upon the original information voluntarily submitted by a whistleblower to the Commission . . .

that *led to the successful resolution of the Commission action*."[80]

## IV. Takeaways and Insights

The biggest takeaway from this article should be the same as the directive included in the introduction to the Whistleblower Rules-that "[w]histleblowers should read [the Whistleblower Rules] carefully, because the failure to take certain required steps . . . may result in disqualification from receiving an award."[81] To that end, although it is not mandatory except when filing anonymously, he or she still may want to consider retaining counsel intimately familiar with the CFTC Whistleblower Rules and submission process, as such counsel can be invaluable in ensuring a whistleblower is recognized under the award system, and does not lose out on an award for failing to comply with the appropriate rules. For example, one potential pitfall is that a whistleblower may fail to submit an award application within the prescribed ninety (90) days after the posting of a Notice of Covered Action—counsel will know these deadlines, and ensure the whistleblower does not lose out on an award for failing to timely comply.

Whistleblowers and their counsel should also become familiar with the procedures for appealing an award determination, both internally with the CFTC and externally in the federal appellate courts. For example, once the Commission reviews a whistleblower's award application, it will issue a preliminary assessment as to whether the whistleblower's claim should be granted or denied, and a proposed award percentage amount.[82] If the whistleblower wishes to contest the preliminary determination, he or she may submit, within sixty (60) days of the date of the preliminary determination, a written response to the CFTC's whistleblower office providing grounds for the whistleblower's objection and any documentation or other evidentiary support for such grounds.[83] If the CFTC nonetheless issues a final order relating to a whistleblower award determination, such a final order may be appealed to the appropriate United State court of appeals not more than thirty (30) days after the final order is issued, provided that all administrative remedies were exhausted.[84]

Although not discussed above, another potential pitfall that may deter whistleblowers from providing information about potential violations of the CEA to the CFTC is the fear of retaliation from the whistleblower's employers. For this reason, the CFTC takes great pains to protect the confidentiality of whistleblowers.[85] To ameliorate this risk further, whistleblowers "may anonymously submit information to the Commission"[86] by having counsel submit the whistleblower's Form TCR, as well as the whistleblower's award application.[87] But, in any event, Section 23(h) of the CEA specifically prohibits employers from retaliating against whistleblowers.[88] If an employer nevertheless retaliates against a whistleblower, a whistleblower may sue the employer in a federal district court,[89] and may be entitled to reinstatement with the employer, back pay, and compensation for any special damages sustained due to the discharge or discrimination.[90]

**ENDNOTES:**

[2]17 C.F.R. § 165.8(a).

[3]https://www.cftc.gov/PressRoom/PressReleases/8453-21; *see also* https://www.kmllp.com/cases-investigations/cftc-whistleblower-award-no-21-wb-07.

[4]https://www.kmllp.com/cases-investigation

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s/cftc-whistleblower-award-no-21-wb-07.

[5]*Johnson v. Commodity Futures Trading Commission*, Comm. Fut. L. Rep. (CCH) P 35227, 2023 WL 2155920, at *1-2 (7th Cir. 2023).

[6]*Id.* at *1.

[7]*Id.* at *2.

[8]*See id.* at *1-2.

[9]*Id.* at *2.

[10]*Id.* at *3.

[11]*Id.* (emphasis in original).

[12]*Hong v. United States Securities and Exchange Commission*, 41 F.4th 83, 87, Fed. Sec. L. Rep. (CCH) P 101430 (2d Cir. 2022), cert. denied, 143 S. Ct. 450, 214 L. Ed. 2d 256 (2022).

[13]*Id.*

[14]*Id.*

[15]*Id.*

[16]Although this article is focused on the CFTC Whistleblower Program, due to the dearth of appeals from CFTC whistleblower award decisions, appeals from SEC whistleblower award decisions will also be used as examples because, even though the SEC and CFTC whistleblower regulations differ in some respects, "the CFTC's award claims review process largely mirrors that of the SEC's Whistleblower Program." *See* https://www.whistleblower.gov/overview.

[17]https://www.whistleblower.gov/.

[18]7 U.S.C.A. § 26; *see also* 7 U.S.C.A. § 26(b)(1) ("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 . . . .").

[19]17 C.F.R. § 165.

[20]*See* 7 U.S.C.A. § 26(i) ("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.").

[21]*See* https://www.whistleblower.gov/overview/submitatip.

[22]17 C.F.R. § 165.1.

[23]17 C.F.R. § 165.3.

[24]17 C.F.R. § 165.5.

[25]17 C.F.R. § 165.6.

[26]17 C.F.R. § 165.8.

[27]17 C.F.R. § 165.13.

[28]17 C.F.R. § 165.11(a).

[29]17 C.F.R. § 165.11(1)(i)-(v).

[30]17 C.F.R. § 165.5(b)(2).

[31]https://www.whistleblower.gov/overview/orderseligible.

[32]https://www.whistleblower.gov/notices.

[33] 17 C.F.R. § 165.8(a).

[34]17 C.F.R. § 165.8(b).

[35]17 C.F.R. § 165.9(b).

[36]17 C.F.R. § 165.9(c).

[37]https://www.whistleblower.gov/.

[38]17 C.F.R. § 165.2(o)(1).

[39]*See id.*

[40]*Id.* at *3-4.

[41]*Id.* at *3 (citing 17 C.F.R. § 165.2(o)(1)).

[42]*Id.* at *4.

[43]*Id.* at *2 (alteration in original).

[44]*Id.* at *4.

[45]17 C.F.R. § 165.2(k)(1).

[46]17 C.F.R. § 165.2(g).

[47]17 C.F.R. § 165.2(h).

[48]17 C.F.R. § 165.2(k)(2).

[49]17 C.F.R. § 165.2(g)(1)-(6).

[50]*Kilgour v. Securities and Exchange Commission*, 942 F.3d 113, 116, Fed. Sec. L. Rep. (CCH) P 100603 (2d Cir. 2019).

[51]*Id.* at 118.

[52]*Id.*

[53]*Id.*

[54]*Id.* at 119.

[55]*Id.* at 125.

[56]*Johnston v. Securities and Exchange Commission*, 49 F.4th 569, Fed. Sec. L. Rep. (CCH) P 101468 (D.C. Cir. 2022).

[57]*Id.* at 572.

[58]*Id.* at 573.

[59]*Id.*

[60]*Id.*

[61]*Id.*

[62]*Id.* at 574.

[63]*Id.* at 575-76.

[64]*Id.* at 576.

[65]*Id.* at 576-77.

[66]*Id.* at 576.

[67]*Id.* at 576-77.

[68]17 C.F.R. § 165.5(a)(3).

[69]76 Fed. Reg. 53172 at 53177.

[70]17 C.F.R. § 165.2(i)(1).

[71]17 C.F.R. § 165.2(i)(2).

[72]*Granzoti v. Securities and Exchange Commission*, Fed. Sec. L. Rep. (CCH) P 101653, 2023 WL 5193503, at *3 (11th Cir. 2023).

[73]*Id.* At *1.

[74]*Id.*

[75]*Id.*

[76]*Id.* At *5.

[77]*Hong*, 41 F.4th at 94.

[78]*Id.* At 98.

[79]*Id.* At 99.

[80]17 C.F.R. § 165.2(m) (emphasis added); *see also* https://www.whistleblower.gov/overview/orderseligible ("Whistleblowers may also be eligible for awards based on Related Actions brought by certain other entities *if there is also a successful CFTC action.*" (emphasis added)).

[81]17 C.F.R. § 165.1.

[82]17 C.F.R. § 165.7(g)(1).

[83]17 C.F.R. § 165.4(g)(2).

[84]17 C.F.R. § 165.13(a).

[85]*See* 7 U.S.C.A. § 26(h)(2) ("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 . . . unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding").

[86]17 C.F.R. § 165.4(b).

[87]*See* 17 C.F.R. § 165.7(c).

[88]7 U.S.C.A. § 26(h)(1)(A) ("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. . .; or (ii) in assisting in any investigation or judicial or administrative action of the Commission based upon or related to such information.").

[89]7 U.S.C.A. § 26(h)(1)(B)(i).

[90]7 U.S.C.A. § 26(h)(1)(C).


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