



## COMMODITIES FRAUD

The Commodities Futures Trading Commission ("CFTC") regulates the marketplace for commodities, such as oil, precious metal, and agricultural products, and derivatives, including futures, options, and swaps. Because the CFTC has determined that major cryptocurrencies such as Bitcoin and Ethereum are commodities, it has enforcement authority over much of the fraud involving cryptocurrencies and digital assets.

The CFTC Whistleblower Program, established with the passage of the Dodd-Frank Act in 2010, is designed to encourage individuals with knowledge about violations of the Commodities Exchange Act ("CEA") to report those violations and potentially collect a whistleblower award. Whistleblowers who report commodities fraud to the CFTC may be eligible to receive between 10% to 30% of the recovery, if their reporting led to a successful enforcement action of at least \$1 million.

Whistleblowers play an important role in combatting fraud in the commodities and derivatives market. In fact, since the CFTC Whistleblower Program was implemented in 2014, whistleblower tips have led to monetary recovery of more than \$3 billion from enforcement actions, with more than \$330 million paid to whistleblowers.

### What Type of Fraud is Covered by CFTC Whistleblower Program?

The CFTC Whistleblower Program covers violations of the CEA. Types of commodities fraud include:

- **Ponzi Scheme** - A type of investment fraud that involves the payment of purported returns to existing investors from funds obtained from new investors. Organizers often solicit new investors by promising high returns with little or no risk.
- **Pyramid Scheme** - A type of investment fraud where participants attempt to make money solely by recruiting new participants into the program. Usually there is a promise of high returns for simply handing over your money to the program's organizers and getting others to do the same.
- **Market manipulation** - Intentional conduct designed to deceive investors by controlling or artificially affecting the market for a security. Methods include:

- **Spoofing** – creating large buy or sell orders on a commodity, while intending on canceling such orders before execution, in order to manipulate a commodity's prices
- **Pump and Dump Fraud** – illegal scheme to artificially inflate the price of a commodity or derivative by spreading false or misleading information in order to sell at a high price
- **Insider Trading** – illegal trading based on insider information that is non-public
- **Front running** – illegal trading in which broker dealer trades on advance, non-public information based on pending client order
- **Cryptocurrency fraud** – With the rise of cryptocurrencies and digital assets in the financial market, the CFTC has also taken an active role in combatting fraud involving these assets. Types of cryptocurrency fraud include price manipulation, pump and dump fraud, Ponzi schemes, and pyramid schemes similar to those described above.

### **Who Qualifies as a Whistleblower?**

An individual is eligible for an award under the CFTC Whistleblower Program, if he or she voluntarily provides original information to the CFTC about a possible CEA violation and that information leads to a successful enforcement action. Corporations and organizations are not eligible to be whistleblowers under the program. However, an individual does not need to be a U.S. citizen or resident to be a whistleblower under the CFTC Whistleblower Program. Whistleblowers may qualify for an award even without direct knowledge of the fraud as they may base their report on independent analysis of public information.

Similar to the SEC Whistleblower Program [hyperlink], the CFTC considers a whistleblower's submission "voluntary" if the whistleblower provides the information to the CFTC before the CFTC or other relevant authority (such as Congress) requests or demands information from the whistleblower (or whistleblower's attorney) relating to that submission. A submission is not considered voluntary if the whistleblower was already under a pre-existing legal or contractual duty to disclose the violation.

For information to be original, it must be:

- (i) Derived from the whistleblower's knowledge or independent analysis;
- (ii) Not already known to the Commission from any other source, unless the whistleblower is the original source of the information;
- (iii) 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; and
- (iv) Provided to the Commission for the first time after July 21, 2010.

### **Can a Whistleblower Remain Anonymous?**

Yes. As with the SEC Whistleblower Program, CFTC whistleblowers who are represented by an attorney may remain anonymous.

### **How to Make a Submission Under the CFTC Whistleblower Program**

Like the SEC Whistleblower Program, the CFTC Whistleblower Program requires whistleblowers to report fraud by filing a submission on a Form TCR directly with the CFTC, rather than by filing a lawsuit under seal in federal court.

If you would like to speak to a member of our whistleblower group about a potential whistleblower matter, please contact us to schedule a case evaluation. All case evaluations are confidential and free.