

CFTC Whistleblower Award Program Remained Active in 2023

Article By:

Susanna Barron

The Commodity Futures Trading Commission (“CFTC”) has filed its [Annual Report to Congress for FY 2023](#), highlighting the recent successes of its whistleblower program, which was established in 2010 with the passage of the [Dodd-Frank Act](#) to reward individuals with monetary awards when they report possible violations of the Commodity Exchange Act (CEA). To obtain an award under the program, whistleblowers must provide original information that leads to a CFTC enforcement action with total civil penalties in excess of \$1 million.^[1] Individuals who provide such information are then eligible for 10 to 30 percent of the amount collected from the violating company in the covered action and in any related actions by the CFTC or another enforcement agency.

Trends in CFTC Whistleblower Tips

During FY 2023, the CFTC received 1,530 whistleblower tips and complaints, a record high and a nearly 50 percent increase over the number received in FY 2020 and 2021. Tips and complaints are any information submitted to the Commission concerning potential violations of the Commodity Exchange Act. Any individual who is aware of such violations can submit a tip and does not need to be an employee of the company in question. If this information ultimately leads to a covered action, individuals who have submitted information relevant to that action may apply for a whistleblower award.

Most of the tips received by the CFTC in FY 2023 were related to solicitation and misappropriation of cryptocurrency and digital assets, including through pump-and-dump schemes, fraudulent representations, and refusals to honor requests for withdrawal. The volume of crypto-related tips is likely to remain high in FY 2024 as the CFTC continues its efforts to bolster its oversight of cryptocurrency trading, particularly in light of the publicity surrounding [several high-profile CFTC enforcement actions](#) involving digital commodities, including against former FTX CEO Sam Bankman-Fried and cryptocurrency exchange Binance. The Annual Report also highlighted a significant number of tips and complaints concerning romance scams and the CFTC's efforts to address fraud in the voluntary carbon industry, which may result in an increase in related tips in the coming year.

Recent Whistleblower Awards

Since the establishment of the whistleblower program, the CFTC has issued 41 orders granting awards amounting to approximately \$350 million associated with enforcement actions that have resulted in over \$3 billion in sanctions. In FY 2023 the Commission received 181 whistleblower award applications. The CFTC issued five Final Orders granting awards to whistleblowers who provided original information to the Commission, including one granting awards to three individuals in the same matter.

Below are details of the whistleblower awards issued by the CFTC in FY 2023:

- _____
- _____
- _____
- _____
- _____

In granting whistleblower awards, the CFTC considers whether the

information in question was provided voluntarily, whether the information is original and not publicly available or otherwise known to the Commission, and whether the information was based on the individual's independent knowledge.

Whistleblower Program Funding

Monetary awards to CFTC whistleblowers are paid out of the Customer Protection Fund, which is funded by monetary sanctions collected by the CFTC. In 2021, [concerns were raised](#) about the ability of the program to continue providing monetary awards following an increase in the amounts of awards granted, including an award of \$200 million to a single whistleblower in October 2021. These concerns were alleviated somewhat by the creation of a separate account to cover administrative expenses of the program. However, the whistleblower fund remains capped at \$100 million and can only be replenished if it falls below that level.^[2] A [bill](#) was introduced earlier this year to raise this cap to \$300 million, but it has yet to pass. While the CFTC did not grant any awards large enough to create funding issues this year, the possibility of future awards in excess of the \$100 million cap raises questions about the long-term sustainability of the program, despite its successes.

Conclusion

While whistleblower awards issued by the CFTC in FY 2023 were not as high as last year's record-breaking amounts, this year's report shows that the Whistleblower Program continues to be an invaluable part of the Commission's enforcement efforts, particularly as it seeks to ramp up particular areas of enforcement, such as misconduct involving cryptocurrency and digital assets. -Since the Commission is receiving a record number of tips and only a small fraction of those who provide information receive whistleblower awards, it is advisable to consult with an experienced whistleblower attorney to get an evaluation of the information and the best way to present it to maximize the possibility of an award.

[1] 7 U.S.C. § 26(b)

[2] 7 U.S.C. § 26(g)

Katz Banks Kumin LLP Copyright ©

National Law Review, Volumess XIII, Number 325

Source URL: <https://www.natlawreview.com/article/cftc-whistleblower-award-program-remained-active-2023>