

# Whistleblower News Review

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## Largest CFTC and SEC Whistleblower Awards

By ML McLaren

### BLOWING THE WHISTLE ABOUT FRAUD IN THE FINANCE SECTOR

In spite of a legal framework that vows to encourage transparency, securities and commodities trading fraud are rampant in the U.S. In order to deter fraudsters and protect investors, the Securities and Exchange Commission and the Commodity Futures Trading Commission have both established whistleblower programs.

In the wake of the 2008 crisis, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act enhancing the CFTC's "regulatory authority to oversee the more than \$400 trillion swaps market," and allowing the SEC to exert more control over financial products and corporate governance and disclosure, improving consumer protections and transparency.

Dodd-Frank also gave rise to the above-mentioned whistleblower programs. The 2010 Act established that the CFTC

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— David Kani  
Hochfelsen & Kani

would pay an award to eligible whistleblowers "who voluntarily provide the Commission with original information about a violation of the CEA that leads to the successful enforcement of a covered judicial or administrative action, or a related action." On the other hand, retaliation against tipsters who provide information about potential violations is strictly forbidden.

Since the program's inception, the CFTC has already issued awards to whistleblowers in the amount of \$90 million. The SEC, on the other hand, has paid tipsters in excess of \$385 million.

Under CFTC rules, the agency may authorize whistleblower awards when tips have "led to successful enforcement" due to their "high quality, reliability, and specificity," in connection with "the Commission's ability to successfully complete its investigation, and to either obtain a settlement or prevail in a litigated proceeding."

Both the SEC and the CFTC offer a number of protections to would-be whistleblowers. For Newport Beach's prime whistleblower attorney David Kani, SEC and CFTC awards have been essential in keeping wrongdoers at bay in the financial sector. "Without a financial incentive, whistleblowers wouldn't be coming forward."

Blowing the whistle is a massive commitment. It often involves having to switch careers and being ostracized at work," Kani explains. "This is one of the reasons why it is important to have an experienced attorney on your side if you plan to expose fraud. When our clients decide to embark on this journey, we advise them about everything under the sun, from career choices to how to maintain confidentiality. And we dedicate an arsenal of resources to ensure they get an award that can help them move on with their lives."

Kani, whose firm Hochfelsen & Kani has successfully represented whistleblowers across the state of California, identifies a number of aspects when it comes to successful tipsters. "Whistleblowers who receive awards usually report ongoing or very recent fraud. They mention individuals who participated in the wrongdoing, and they have documents to back up their claims.

Alternatively, they may

have pointed officials in the right direction to find such documents. Finally, nearly half of all successful whistleblowers are employed by the alleged wrongdoer." Kani believes there are workarounds to obtaining awards, even in the most complicated cases.

"We know which cases have the highest chances of receiving an award, often at first glance. But our job is to investigate and unearth evidence that may have not been so obvious. Usually, after our investigation, a whistleblower's odds of success can change dramatically."

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## TOP CFTC WHISTLEBLOWER AWARDS

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### 2019

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#### \$2.5 Million CFTC Million Whistleblower Award

An individual whistleblower received a \$2.5 million award. According to the Commission, the award might have been larger in light of the monetary sanction it facilitated, but the tipster waited too long to report the defendant's violations to the Commission. The CFTC said in a statement that the whistleblower "assisted the CFTC at every step of the investigation."

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### 2018

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#### \$45 Million Multiple CFTC Whistleblower Awards

A month after announcing a \$30 million award, the CFTC said in a press release that it had issued

multiple awards amounting to a total of \$45 million. Details about the alleged misconduct are unknown. At the time, Christopher Ehrman, Director of the Commission's Whistleblower Office said in a statement that, "the sheer magnitude of the \$45 million in monetary awards announced demonstrates the game-changing nature of the Whistleblower Program."

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#### \$30 Million CFTC Whistleblower Award

A man who provided original information leading to a successful enforcement action against JPMorgan Chase received the largest CFTC award to date at \$30 million. According to the allegations, JPMorgan Chase & Co. failed to disclose to clients conflicts of interest involved in certain investment recommendations. According to a spokesperson for the whistleblower, the tip that originated the award led to a \$367 million settlement with the bank in 2015.

SEC, CFTC, and IRS whistleblowers enjoy enhanced confidentiality protections. However, the tipster chose to reveal his identity in a Forbes article. He is Ted Siedle, a man whose whistleblowing career began as far back as 1988. On top of the \$30 million CFTC award, Siedle received a \$50 million award from the SEC, which had also been a party to the settlement with JPMorgan.

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## \$70,000 CFTC Whistleblower Award to Foreign National

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This was a significant award not because of the amount, but because it marked the first time the CFTC issued an award to a whistleblower living outside the U.S. The tipster provided original information that led to a successful settlement.

## 2016

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## \$10 Million CFTC Whistleblower Award

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A whistleblower who provided key evidence in an investigation into Commodity Exchange Act (CEA) violations received a \$10 million award. The specific nature of the alleged wrongdoing is unknown.

## 2015

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## \$290,000 CFTC Whistleblower Award

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A whistleblower who provided original information about CEA violations was awarded \$290,000.

## RECENT CFTC WHISTLEBLOWER ALERTS

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The CFTC periodically issues alerts about frequently encountered types of fraud. If you have information about these types of wrongdoing, it is best to seek counsel from a seasoned whistleblower attorney.

Some of the Commission's most recent fraud alerts include:

- Virtual Currency Fraud
- Foreign Corrupt Practices in the Commodities and Derivatives Markets
- Insider Trading or Improper Use of Information

## HOW THE CFTC AND THE SEC AWARD WHISTLEBLOWERS

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Maintaining anonymity as a whistleblower in the financial industry is key. Historically, tipsters who have been exposed in the media have had a hard time maintaining a low profile after blowing the whistle. Because the majority of whistleblowers alert the CFTC and the SEC about wrongdoing by their own employers, anonymity is key throughout the process, from the beginning of the investigation to the granting of an award.

Under the Commodity Exchange Act, the CFTC cannot disclose "information that could reasonably be expected to reveal the identity of a whistleblower," except when the disclosure is required by a public proceeding or when it is necessary to share identifying information with another agency to protect investors from imminent harm.

For example, the CFTC may disclose the whistleblower's identity to the Department of Justice in connection with a criminal investigation. The entities that receive the information are also

bound by the CEA-mandated confidentiality.

"Our clients," whistleblower attorney David Kani explains, "often choose to keep their identity even from the SEC and the CFTC. Information can be leaked in a myriad ways, and one can never be too careful. Both agencies allow whistleblowers to submit information about violations anonymously. The procedures to submit tips and apply for awards do not vary greatly in these cases. But in order to blow the whistle anonymously, tipsters must be represented by a whistleblower attorney."

Under CFTC rules, however, the whistleblower must invariably reveal their identity when it is time to receive an award. "If the whistleblower submitted the whistleblower's original information to the Commission anonymously, then the whistleblower's identity must be disclosed to the Commission and verified in a form and manner acceptable to the Commission consistent with [specific procedures] prior to Commission's payment of any award," the rule states.

"Legal representation is key to maximize awards," Kani says. "I have seen many courageous whistleblowers in California, who risked everything to protect consumers, and because they didn't seek legal representation, the awards they received were hardly enough to get their

lives back on track. It is very important for willing SEC and CFTC whistleblowers to understand that there is more to success than simply filling a form. It is a long process, sometimes requiring massive resources. At Hochfelsen & Kani, we have put together a team of investigators and forensic accountants who have a long track record of helping whistleblowers secure multi-million-dollar payouts.”

### **WHISTLEBLOWER AWARDS ENCOURAGE TRANSPARENCY AND PROTECT INVESTORS**

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The U.S. is a world leader in whistleblower protections. Taking American whistleblower programs as an example, many other nations are creating similar incentives to deter fraudsters in the financial sector. A few years ago, in Ontario, Canada, the local Securities Commission established a whistleblower program which has already paid out several million dollars to tipsters. Australia recently enhanced whistleblower protections, and policymakers are currently evaluating the possibility of rewarding tipsters financially. Likewise, in the UK, there are certain incentives and protections, but, as yet, no monetary awards for whistleblowers.

Yet the awards make all the difference. People who decide to blow the whistle can feel very

vulnerable without the prospect of a financial backup. Recently, a Goldman Sachs whistleblower from London saw the whole atmosphere change around him after he wrote an email to senior management warning about potential misconduct at the company. He was fired within months.

While some people complain that the prospect of whistleblower awards can lead to pointless investigations and a waste of government resources, for Ted Siedle, who has received some of the largest CFTC and SEC whistleblower awards, these payouts have to be “commensurate with the profiteering.”

David Kani agrees. “There are people in this industry who make millions of dollars every year. They get bonuses and fabulous benefits. It is unthinkable that someone is such a position would risk being fired without a financial incentive that can make them feel safe,” he concludes. ■