

Commodity Futures Trading Commission

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swap dealer] affiliates, from marketing their financial products or services to you based on your personal information that they receive from other [ABC] companies. This information includes your [income], your [account history], and your [credit score].

— Your choice has expired or is about to expire.

To renew your choice to limit marketing for [x] more years, contact us [include all that apply]:

By telephone: 1-877-###-####

On the Web: www.-.com

By mail: check the box and complete the form below, and send the form to:

[Company name]

[Company address]

___ Renew my choice to limit marketing for [x] more years.

A-5 MODEL FORM FOR VOLUNTARY “NO MARKETING” NOTICE

[YOUR CHOICE TO STOP MARKETING]

— [Name of Affiliate] is providing this notice. You may choose to stop all marketing from us and our affiliates.

To stop all marketing offers, contact us [include all that apply]:

By telephone: 1-877-###-####

On the Web: www.-.com

By mail: check the box and complete the form below, and send the form to:

[Company name]

[Company address]

___ Do not market to me.

PART 165—WHISTLEBLOWER RULES

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APPENDIX A TO PART 165—GUIDANCE WITH RESPECT TO THE PROTECTION OF WHISTLEBLOWERS AGAINST RETALIATION

AUTHORITY: 7 U.S.C. 2, 5, 12a(5) and 26, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (July 16, 2010).

SOURCE: 76 FR 53200, Aug. 25, 2011, unless otherwise noted.

§ 165.1 General.

Section 23 of the Commodity Exchange Act, entitled “Commodity Whistleblower Incentives and Protection,” requires the Commission to pay awards, subject to certain limitations and conditions, to whistleblowers who voluntarily provide the Commission with original information about violations of the Commodity Exchange Act. This part 165 describes the whistleblower program that the Commission intends to establish to implement the provisions of Section 23, and explains the procedures the whistleblower will need to follow in order to be eligible for an award. Whistleblowers should read these procedures carefully, because the failure to take certain required steps within the time frames described in this part may result in disqualification from receiving an award. Unless expressly provided for in this part, no person is authorized to make any offer or promise, or otherwise to bind the Commission with respect to the payment of any award or the amount thereof.

§ 165.2 Definitions.

As used in this part:

(a) *Action*. The term “action” generally means a single captioned judicial or administrative proceeding. Notwithstanding the foregoing:

(1) For purposes of making an award under § 165.7, the Commission will treat as a Commission action two or more administrative or judicial proceedings brought by the Commission if these

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proceedings arise out of the same nucleus of operative facts; or

(2) For purposes of determining the payment on an award under §165.14, the Commission will deem as part of the Commission action upon which the award was based any subsequent Commission proceeding that, individually, results in a monetary sanction of \$1,000,000 or less, and that arises out of the same nucleus of operative facts.

(b) *Aggregate amount.* The phrase “aggregate amount” means the total amount of an award granted to one or more whistleblowers pursuant to §165.8.

(c) *Analysis.* The term “analysis” means the whistleblower’s examination and evaluation of information that may be generally available, but which reveals information that is not generally known or available to the public.

(d) *Collected by the Commission.* The phrase “collected by the Commission” refers to any funds received, and confirmed by the U.S. Department of the Treasury, in satisfaction of part or all of a civil monetary penalty, disgorgement obligation, or fine owed to the Commission.

(e) *Covered judicial or administrative action.* The phrase “covered judicial or administrative action” means any judicial or administrative action brought by the Commission under the Commodity Exchange Act whose successful resolution results in monetary sanctions exceeding \$1,000,000.

(f) *Fund.* The term “Fund” means the Commodity Futures Trading Commission Customer Protection Fund.

(g) *Independent knowledge.* The phrase “independent knowledge” means factual information in the whistleblower’s possession that is not generally known or available to the public. The whistleblower may gain independent knowledge from the whistleblower’s experiences, communications and observations in the whistleblower’s personal business or social interactions. The Commission will not consider the whistleblower’s information to be derived from the whistleblower’s independent knowledge if the whistleblower obtained the information:

(1) From sources generally available to the public such as corporate filings and the media, including the Internet;

(2) Through a communication that was subject to the attorney-client privilege, unless the disclosure is otherwise permitted by the applicable federal or state attorney conduct rules;

(3) In connection with the legal representation of a client on whose behalf the whistleblower, or the whistleblower’s employer or firm, have been providing services, and the whistleblower seek to use the information to make a whistleblower submission for the whistleblower’s own benefit, unless disclosure is authorized by the applicable federal or state attorney conduct rules;

(4) Because 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) Because the whistleblower was an employee whose principal duties involved compliance or internal audit responsibilities; or

(6) By a means or in a manner that is determined by a United States court to violate applicable Federal or state criminal law.

(7) *Exceptions.* Paragraphs (g)(4) and (5) of this section shall not apply if:

(i) The whistleblower has a reasonable basis to believe that disclosure of the information to the Commission is necessary to prevent the relevant entity from engaging in conduct that is likely to cause substantial injury to the financial interest or property of the entity or investors;

(ii) The whistleblower has a reasonable basis to believe that the relevant entity is engaging in conduct that will impede an investigation of the misconduct; or

(iii) At least 120 days have elapsed since the whistleblower provided the information to the relevant entity’s audit committee, chief legal officer, chief compliance officer (or their equivalents), or the whistleblower’s supervisor, or since the whistleblower received the information, if the whistleblower received it under circumstances

indicating that the entity's audit committee, chief legal officer, chief compliance officer (or their equivalents), or the whistleblower's supervisor was already aware of the information.

(h) *Independent analysis.* The phrase "independent analysis" means the whistleblower's own analysis, whether done alone or in combination with others.

(i) *Information that led to successful enforcement.* The Commission will consider that the whistleblower provided original information that led to the successful enforcement of a judicial or administrative action, or related action, in the following circumstances:

(1) The whistleblower gave the Commission original information that was sufficiently specific, credible, and timely to cause 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; or

(2) The whistleblower gave the Commission original information about conduct that was already under examination or investigation by the Commission, the Congress, any other authority of the federal government, a state Attorney General or securities regulatory authority, any self-regulatory organization, futures association or the Public Company Accounting Oversight Board (except in cases where the whistleblower was an original source of this information as defined in paragraph (i) of this section), and the whistleblower's submission significantly contributed to the success of the action.

(3) The whistleblower reported original information through an entity's internal whistleblower, legal, or compliance procedures for reporting allegations of possible violations of law before or at the same time the whistleblower reported them to the Commission; the entity later provided the whistleblower's information to the Commission, or provided results of an audit or investigation initiated in

whole or in part in response to information the whistleblower reported to the entity; and the information the entity provided to the Commission satisfies either paragraph (i)(1) or (i)(2) of this section. Under this paragraph (i)(3), the whistleblower must also submit the same information to the Commission in accordance with the procedures set forth in §165.3 within 120 days of providing it to the entity.

(j) *Monetary sanctions.* The phrase "monetary sanctions," when used with respect to any judicial or administrative action, or related action, means—

(1) Any monies, including penalties, disgorgement, restitution, and interest ordered to be paid; and

(2) 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.

(k) *Original information.* The phrase "original information" means information that—

(1) Is derived from the independent knowledge or independent analysis of a whistleblower;

(2) Is not already known to the Commission from any other source, unless the whistleblower is the original source of the information;

(3) 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; and

(4) Is submitted to the Commission for the first time after July 21, 2010 (the date of enactment of the Wall Street Transparency and Accountability Act of 2010).

(5) Original information shall not lose its status as original information solely because the whistleblower submitted such information prior to October 24, 2011, provided such information was submitted after July 21, 2010, the date of enactment of the Wall Street Transparency and Accountability Act of 2010. In order to be eligible for an award, a whistleblower who submits

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original information to the Commission after July 21, 2010, but prior to October 24, 2011, must comply with the procedure set forth in § 165.3(d).

(1) *Original source.* The whistleblower must satisfy the whistleblower's status as the original source of information to the Commission's satisfaction.

(1) *Information obtained from another source.* The Commission will consider the whistleblower to be an "original source" of the same information that the Commission obtains from another source if the information the whistleblower provide satisfies the definition of original information and the other source obtained the information from the whistleblower or the whistleblower's representative.

(i) In order to be considered an original source of information that the Commission receives from Congress, any other federal, state or local authority, or any self-regulatory organization, the whistleblower must have voluntarily given such authorities the information within the meaning of this part. In determining whether the whistleblower is the original source of information, the Commission may seek assistance and confirmation from one of the other entities or authorities described above.

(ii) In the event that the whistleblower claims to be the original source of information that an authority or another entity, other than as set forth in paragraph (1)(1)(i) of this section, provided to the Commission, the Commission may seek assistance and confirmation from such authority or other entity.

(2) *Information first provided to another authority or person.* If the whistleblower provides information to Congress, any other federal or state authority, a registered entity, a registered futures association, a self-regulatory organization, or to any of any of the persons described in paragraphs (g)(4) and (5) of this section, and the whistleblower, within 120 days, make a submission to the Commission pursuant to § 165.3, as the whistleblower must do in order for the whistleblower to be eligible to be considered for an award, then, for purposes of evaluating the whistleblower's claim to an award under § 165.7, the Commission will consider that the

whistleblower provided original information as of the date of the whistleblower's original disclosure, report, or submission to one of these other authorities or persons. The whistleblower must establish the whistleblower's status as the original source of such information, as well as the effective date of any prior disclosure, report, or submission, to the Commission's satisfaction. The Commission may seek assistance and confirmation from the other authority or person in making this determination.

(3) *Information already known by the Commission.* If the Commission already knows some information about a matter from other sources at the time the whistleblower makes the whistleblower's submission, and the whistleblower is not an original source of that information, as described above, the Commission will consider the whistleblower an "original source" of any information the whistleblower separately provides that is original information that materially adds to the information that the Commission already possesses.

(m) *Related action.* The phrase "related action," when used with respect to any judicial or administrative action brought by the Commission under the Commodity Exchange Act, means any judicial or administrative action brought by an entity listed in § 165.11(a) that is based upon the original information voluntarily submitted by a whistleblower to the Commission pursuant to § 165.3 that led to the successful resolution of the Commission action.

(n) *Successful resolution.* The phrase "successful resolution," when used with respect to any judicial or administrative action brought by the Commission under the Commodity Exchange Act, includes any settlement of such action or final judgment in favor of the Commission. It shall also have the same meaning as "successful enforcement."

(o) *Voluntary submission or voluntarily submitted.* (1) The phrase "voluntary submission" or "voluntarily submitted" within the context of submission of original information to the Commission under this part, shall mean 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 futures association, or a self-regulatory organization to the whistleblower or anyone representing the whistleblower (such as an attorney) about a matter to which the information in the whistleblower's submission is relevant. If 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 the whistleblower will not be eligible for an award, even if the whistleblower's response is not compelled by subpoena or other applicable law. For purposes of this paragraph, the whistleblower will be considered to have received a request, inquiry or demand if documents or information from the whistleblower is within the scope of a request, inquiry, or demand that the whistleblower's employer receives, unless, after receiving the documents or information from the whistleblower, the whistleblower's employer fails to provide the whistleblower's documents or information to the requesting authority in a timely manner.

(2) In addition, the whistleblower's submission will not be considered voluntary if the whistleblower is under a pre-existing legal or contractual duty to report the violations that are the subject of the whistleblower's original information to the Commission, Congress, any other federal or state authority, the Department of Justice, a registered entity, a registered futures association, or a self-regulatory organization, or a duty that arises out of a judicial or administrative order.

(p) *Whistleblower(s)*. (1) The term "whistleblower" or "whistleblowers" means any individual, or two (2) or more individuals acting jointly, who provides information relating to a potential violation of the Commodity Exchange Act to the Commission, in the manner established by §165.3. A company or another entity is not eligible to be a whistleblower.

(2) *Prohibition against retaliation*. The anti-retaliation protections under Section 23(h) of the Commodity Exchange

Act apply whether or not the whistleblower satisfies the requirements, procedures and conditions to qualify for an award. For purposes of the anti-retaliation protections afforded by Section 23(h)(1)(A)(i) of the Commodity Exchange Act, the whistleblower is a whistleblower if:

(i) The whistleblower possess a reasonable belief that the information the whistleblower is providing relates to a possible violation of the CEA, or the rules or regulations thereunder, that has occurred, is ongoing, or is about to occur; and

(ii) The whistleblower provides that information in a manner described in §165.3.

§165.3 Procedures for submitting original information.

A whistleblower's submission of information to the Commission will be a two-step process.

(a) First, the whistleblower will need to submit the whistleblower's information to the Commission. The whistleblower may submit the whistleblower's information:

(1) By completing and submitting a Form TCR online and submitting it electronically through the Commission's Web site at <http://www.cftc.gov>; or

(2) By completing the Form TCR and mailing or faxing the form to the Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, Fax (202) 418-5975.

(b) Further, to be eligible for an award, the whistleblower must declare under penalty of perjury at the time the whistleblower submits the whistleblower's information pursuant to paragraph (a)(1) or (2) of this section that the whistleblower's information is true and correct to the best of the whistleblower's knowledge and belief.

(c) Notwithstanding paragraph (b) of this section, 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 the procedure set forth in §165.7(c) prior to Commission's payment of any award.

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(d) If the whistleblower submitted original information in writing to the Commission after July 21, 2010 (the date of enactment of the Wall Street Transparency and Accountability Act of 2010) but before the effective date of these rules, the whistleblower will be eligible for an award only in the event that the whistleblower provided the original information to the Commission in a format or manner other than that described in paragraph (a) of this section, the whistleblower submits a completed Form TCR within 120 days of the effective date of these rules and otherwise follows the procedures set forth above in paragraphs (a) and (b) of this section.

§ 165.4 Confidentiality.

(a) *In general.* Section 23(h)(2) of the Commodity Exchange Act requires that the Commission not disclose information that could reasonably be expected to reveal the identity of a whistleblower, except that the Commission may disclose such information in the following circumstances:

(1) When disclosure is required to a defendant or respondent in connection with a public proceeding that the Commission institutes or in another public proceeding that is filed by an authority to which the Commission provides the information, as described below;

(2) When the Commission determines that it is necessary to accomplish the purposes of the Commodity Exchange Act and to protect customers, it may provide whistleblower information to: The Department of Justice; an appropriate department or agency of the Federal Government, acting within the scope of its jurisdiction; a registered entity, registered futures association, or a self-regulatory organization; a state attorney general in connection with a criminal investigation; any appropriate state department or agency, acting within the scope of its jurisdiction; or a foreign futures authority; and

(3) The Commission may make disclosures in accordance with the Privacy Act of 1974 (5 U.S.C. 552a).

(b) *Anonymous whistleblowers.* A whistleblower may anonymously submit information to the Commission, however, the whistleblower must follow the pro-

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cedures in §165.3(c) for submitting original information anonymously. Such whistleblower who anonymously submits information to the Commission must also follow the procedures in §165.7(c) in submitting to the Commission an application for a whistleblower award.

§ 165.5 Prerequisites to the consideration of an award.

(a) Subject to the eligibility requirements described in these rules, the Commission will pay an award to one or more whistleblowers who:

(1) Provide a voluntary submission to the Commission;

(2) That contains original information; and

(3) That leads to the successful resolution of a covered Commission judicial or administrative action or successful enforcement of a related action; and

(b) In order to be eligible, the whistleblower must:

(1) Have given the Commission original information in the form and manner that the Commission requires in §165.3 and be the original source of information;

(2) Provide the Commission, upon its staff's request, certain additional information, including: explanations and other assistance, in the manner and form that staff may request, in order that the staff may evaluate the use of the information submitted; all additional information in the whistleblower's possession that is related to the subject matter of the whistleblower's submission; and testimony or other evidence acceptable to the staff relating to the whistleblower's eligibility for an award; and

(3) If requested by Commission staff, enter into a confidentiality agreement in a form acceptable to the Commission, including a provision that a violation of the confidentiality agreement may lead to the whistleblower's ineligibility to receive an award.

§ 165.6 Whistleblowers ineligible for an award.

(a) No award under §165.7 shall be made:

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(1) 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: the Commission; the Board of Governors of the Federal Reserve System; the Office of the Comptroller of the Currency; the Board of Directors of the Federal Deposit Insurance Corporation; the Director of the Office of Thrift Supervision; the National Credit Union Administration Board; the Securities and Exchange Commission; the Department of Justice; a registered entity; a registered futures association; a self-regulatory organization; or a law enforcement organization;

(2) 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 § 165.7;

(3) To any whistleblower who submits information to the Commission that is based on the facts underlying the covered judicial or administrative action submitted previously by another whistleblower;

(4) To any whistleblower who acquired the information the whistleblower gave the Commission from any of the individuals described in paragraphs (a)(1), (2), (3) or (6) of this section;

(5) To any whistleblower who, in the whistleblower's submission, the whistleblower's other dealings with the Commission, or the whistleblower's dealings with another authority in connection with a related action, knowingly and willfully makes any false, fictitious, or fraudulent statement or representation, or uses any false writing or document, knowing that it contains any false, fictitious, or fraudulent statement or entry, or omitted any material fact, where, in the absence of such fact, other statements or representations made by the whistleblower would be misleading;

(6) To any whistleblower who acquired the original information reported to the Commission as a result of the whistleblower's role as a member, officer or employee of either a foreign regulatory authority or law enforcement organization;

(7) 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 a foreign regulatory authority or law enforcement organization; or

(8) To any whistleblower who acquired the original information the whistleblower gave the Commission from any other person with the intent to evade any provision of these rules.

(b) Notwithstanding a whistleblower's ineligibility for an award for any reason set forth in paragraph (a) of this section, the whistleblower will remain eligible for the anti-retaliation protections set forth in Section 23(h)(1) of the Commodity Exchange Act.

§ 165.7 Procedures for award applications and Commission award determinations.

(a) Whenever a Commission judicial or administrative action results in monetary sanctions totaling more than \$1,000,000 (*i.e.*, a covered judicial or administrative action) the Commission will publish on the Commission's Web site a "Notice of Covered Action." Such Notice of Covered Action will be published subsequent to the entry of a final judgment or order that alone, or collectively with other judgments or orders previously entered in the Commission covered administrative or judicial action, exceeds \$1,000,000 in monetary sanctions. The Commission will not contact whistleblower claimants directly as to Notices of Covered Actions; prospective claimants should monitor the Commission Web site for such Notices. A whistleblower claimant will have 90 days from the date of the Notice of Covered Action to file a claim for an award based on that action, or the claim will be barred.

(b) To file a claim for a whistleblower award, the whistleblower must file Form WB-APP, *Application for Award for Original Information Provided Pursuant to Section 23 of the Commodity Exchange Act*. The whistleblower must sign this form as the claimant and submit it to the Commission by mail or fax to Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, Fax (202) 418-5975. The Form WB-

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APP, including any attachments, must be received by the Commission within 90 calendar days of the date of the Notice of Covered Action or 90 calendar days following the date of a final judgment in a related action in order to be considered for an award.

(c) If the whistleblower provided the whistleblower's original information to the Commission anonymously pursuant to §§165.3 and 165.4 and:

(1) The whistleblower is making the whistleblower's claim for a whistleblower award on a disclosed basis, the whistleblower must disclose the whistleblower's identity on the Form WB-APP. The whistleblower's identity must be verified in a form and manner that is acceptable to the Commission prior to the payment of any award; or

(2) The whistleblower is making the whistleblower's claim for a whistleblower award on an anonymous basis, the whistleblower must be represented by counsel. The whistleblower must provide the whistleblower's counsel with a completed Form WB-APP that is signed by the whistleblower by no later than the date upon which the whistleblower's counsel submits to the Commission a copy of the Form WB-APP that does not disclose the whistleblower's identity and is signed solely by the whistleblower's counsel. In addition, the whistleblower's counsel must retain the signed original of the whistleblower's Form WB-APP in counsel's records. Upon request of the Commission staff, whistleblower's counsel must produce to the Commission the whistleblower's signed original WB-APP and the whistleblower's identity must be verified in a form and manner that is acceptable to the Commission prior to the payment of any award.

(d) Once the time for filing any appeals of the Commission's judicial or administrative action and all related actions has expired, or, where an appeal has been filed, after all appeals in the judicial, administrative and related actions have concluded, the Commission will evaluate all timely whistleblower award claims submitted on Form WB-APP in accordance with the criteria set forth in this part 165. In connection with this process, the Commission may require that the whistleblower provide additional information

relating to the whistleblower's eligibility for an award or satisfaction of any of the conditions for an award, as set forth in §165.5(b). Following that evaluation, the Commission will send the whistleblower a Final Order setting forth whether the claim is allowed or denied and, if allowed, setting forth the award percentage amount.

(e) The Commission's Office of the Secretariat will provide the whistleblower with the Final Order of the Commission.

§ 165.8 Amount of award.

If all of the conditions are met for a whistleblower award in connection with a covered judicial or administrative action or a related action, the Commission will then decide the amount of the award pursuant to the procedure set forth in §165.7.

(a) Whistleblower awards shall be in an aggregate amount equal to—

(1) Not less than 10 percent, in total, of what has been collected of the monetary sanctions imposed in the covered judicial or administrative action or related actions; and

(2) Not more than 30 percent, in total, of what has been collected of the monetary sanctions imposed in the covered judicial or administrative action or related actions.

(b) If the Commission makes awards to 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.

§ 165.9 Criteria for determining amount of award.

The determination of the amount of an award shall be in the discretion of the Commission. The Commission may exercise this discretion directly or through delegated authority pursuant to §165.15.

(a) In determining the amount of an award, the Commission shall take into consideration—

(1) The significance of the information provided by the whistleblower to

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the success of the covered judicial or administrative action or related action;

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

(3) The programmatic interest of the Commission in deterring violations of the Commodity Exchange Act by making awards to whistleblowers who provide information that leads to the successful enforcement of such laws;

(4) Whether the award otherwise enhances the Commission's ability to enforce the Commodity Exchange Act, protect customers, and encourage the submission of high quality information from whistleblowers; and

(5) Potential adverse incentives from oversize awards.

(b) *Factors that may increase the amount of a whistleblower's award.* In determining whether to increase the amount of an award, the Commission will consider the following factors, which are not listed in order of importance.

(1) *Significance of the information provided by the whistleblower.* The Commission will assess the significance of the information provided by a whistleblower to the success of the Commission action or related action. In considering this factor, the Commission may take into account, among other things:

(i) The nature of the information provided by the whistleblower and how it related to the successful enforcement action, including whether the reliability and completeness of the information provided to the Commission by the whistleblower resulted in the conservation of Commission resources; and

(ii) The degree to which the information provided by the whistleblower supported one or more successful claims brought in the Commission action or related action.

(2) *Assistance provided by the whistleblower.* The Commission will assess the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in the Commission action or related action. In considering this factor, the Commission may take into account, among other things:

(i) Whether the whistleblower provided ongoing, extensive, and timely cooperation and assistance by, for example, helping to explain complex transactions, interpreting key evidence, or identifying new and productive lines of inquiry;

(ii) The timeliness of the whistleblower's initial report to the Commission or to an internal compliance or reporting system of business organizations committing, or impacted by, the violations of the Commodity Exchange Act, where appropriate;

(iii) The resources conserved as a result of the whistleblower's assistance;

(iv) Whether the whistleblower appropriately encouraged or authorized others to assist the staff of the Commission who might otherwise not have participated in the investigation or related action;

(v) The efforts undertaken by the whistleblower to remediate the harm caused by the violations of the Commodity Exchange Act, including assisting the authorities in the recovery of the fruits and instrumentalities of the violations; and

(vi) Any unique hardships experienced by the whistleblower as a result of his or her reporting and assisting in the enforcement action.

(3) *Law enforcement interest.* The Commission will assess its programmatic interest in deterring violations of the Commodity Exchange Act by making awards to whistleblowers who provide information that leads to the successful enforcement of such laws. In considering this factor, the Commission may take into account, among other things:

(i) The degree to which an award enhances the Commission's ability to enforce the commodity laws;

(ii) The degree to which an award encourages the submission of high quality information from whistleblowers by appropriately rewarding whistleblower submissions of significant information and assistance, even in cases where the monetary sanctions available for collection are limited or potential monetary sanctions were reduced or eliminated by the Commission because an entity self-reported a commodities violation following the whistleblower's related internal disclosure, report, or submission;

(iii) Whether the subject matter of the action is a Commission priority, whether the reported misconduct involves regulated entities or fiduciaries, whether the whistleblower exposed an industry-wide practice, the type and severity of the commodity violations, the age and duration of misconduct, the number of violations, and the isolated, repetitive, or ongoing nature of the violations;

(iv) The dangers to market participants or others presented by the underlying violations involved in the enforcement action, including the amount of harm or potential harm caused by the underlying violations, the type of harm resulting from or threatened by the underlying violations, and the number of individuals or entities harmed; and

(v) The degree, reliability and effectiveness of the whistleblower's assistance, including the consideration of the whistleblower's complete, timely truthful assistance to the Commission and criminal authorities.

(4) *Participation in internal compliance systems.* The Commission will assess whether, and the extent to which, the whistleblower and any legal representative of the whistleblower participated in internal compliance systems. In considering this factor, the Commission may take into account, among other things:

(i) Whether, and the extent to which, a whistleblower reported the possible Commodity Exchange Act violations through internal whistleblower, legal or compliance procedures before, or at the same time as, reporting them to the Commission; and

(ii) Whether, and the extent to which, a whistleblower assisted any internal investigation or inquiry concerning the reported Commodity Exchange Act violations.

(c) *Factors that may decrease the amount of a whistleblower's award.* In determining whether to decrease the amount of an award, the Commission will consider the following factors, which are not listed in order of importance.

(1) *Culpability.* The Commission will assess the culpability or involvement of the whistleblower in matters associated with the Commission's action or

related actions. In considering this factor, the Commission may take into account, among other things:

(i) The whistleblower's role in the Commodity Exchange Act violations;

(ii) The whistleblower's education, training, experience, and position of responsibility at the time the violations occurred;

(iii) Whether the whistleblower acted with scienter, both generally and in relation to others who participated in the violations;

(iv) Whether the whistleblower financially benefitted from the violations;

(v) Whether the whistleblower is a recidivist;

(vi) The egregiousness of any wrongdoing committed by the whistleblower; and

(vii) Whether the whistleblower knowingly interfered with the Commission's investigation of the violations or related enforcement actions.

(2) *Unreasonable reporting delay.* The Commission will assess whether the whistleblower unreasonably delayed reporting the Commodity Exchange Act violations. In considering this factor, the Commission may take into account, among other things:

(i) Whether the whistleblower was aware of the relevant facts but failed to take reasonable steps to report or prevent the violations from occurring or continuing;

(ii) Whether the whistleblower was aware of the relevant facts but only reported them after learning about a related inquiry, investigation, or enforcement action; and

(iii) Whether there was a legitimate reason for the whistleblower to delay reporting the violations.

(3) *Interference with internal compliance and reporting systems.* The Commission will assess, in cases where the whistleblower interacted with his or her entity's internal compliance or reporting system, whether the whistleblower undermined the integrity of such system. In considering this factor, the Commission will take into account whether there is evidence provided to the Commission that the whistleblower knowingly:

(1) Interfered with an entity's established legal, compliance, or audit procedures to prevent or delay detection

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of the reported Commodity Exchange Act violation;

(ii) Made any material false, fictitious, or fraudulent statements or representations that hindered an entity's efforts to detect, investigate, or remediate the reported Commodity Exchange Act violations; or

(iii) Provided any false writing or document knowing the writing or document contained any false, fictitious or fraudulent statements or entries that hindered an entity's efforts to detect, investigate, or remediate the reported Commodity Exchange Act violations.

(d) The Commission shall not take into consideration the balance of the Fund in determining the amount of an award.

§ 165.10 Contents of record for award determinations.

(a) The following items constitute the record upon which the award determination under §165.7 shall be made:

(1) The whistleblower's Form TCR, "Tip, Complaint or Referral," including related attachments, and other documentation provided by the whistleblower to the Commission;

(2) The whistleblower's Form WB-APP, "Application for Award for Original Information Provided Pursuant to Section 23 of the Commodity Exchange Act," and related attachments;

(3) The complaint, notice of hearing, answers and any amendments thereto;

(4) The final judgment, consent order, or administrative speaking order;

(5) The transcript of the related administrative hearing or civil injunctive proceeding, including any exhibits entered at the hearing or proceeding;

(6) Any other documents that appear on the docket of the proceeding; and

(7) Sworn declarations (including attachments) from the Commission's Division of Enforcement staff regarding any matters relevant to the award determination.

(b) The record upon which the award determinations under §165.7 shall be made shall not include any Commission pre-decisional, attorney-client privilege, attorney work product privilege, or internal deliberative process materials related to the Commission or its staff's determination: To file or settle the related covered judicial or ad-

ministrative action; and/or whether, to whom and in what amount to make a whistleblower award. Further, the record upon which the award determination under §165.7 shall be made shall not include any other entity's pre-decisional, attorney-client privilege, attorney work product privilege, or internal deliberative process materials related to its or its staff's determination to file or settle a related action.

§ 165.11 Awards based upon related actions.

Provided that a whistleblower or whistleblowers comply with the requirements in §§165.3, 165.5 and 165.7, and pursuant to §165.8, the Commission or its delegate may grant an award based on the amount of monetary sanctions collected in a "related action" or "related actions" rather than on the amount collected in a covered judicial or administrative action, where:

(a) A "related action" is a judicial or administrative action that is brought by:

(1) The Department of Justice;

(2) An 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; and

(b) The "related action" is based on the same original information that the whistleblower voluntarily submitted to the Commission and led to a successful resolution of the Commission judicial or administrative action.

§ 165.12 Payment of awards from the Fund, financing of customer education initiatives, and deposits and credits to the Fund.

(a) The Commission shall pay awards to whistleblowers from the Fund.

(b) The Commission shall deposit into or credit to the Fund:

(1) Any monetary sanctions collected by the Commission in any covered judicial or administrative action that is not otherwise distributed, or ordered to be distributed, to victims of a violation

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of the Commodity Exchange Act underlying such action, unless the balance of the Fund at the time the monetary sanctions are collected exceeds \$100,000,000. In the event the Fund's value exceeds \$100,000,000, any monetary sanctions collected by the Commission in a covered judicial or administrative action that is not otherwise distributed, or ordered to be distributed, to victims of violations of the Commodity Exchange Act or the rules and regulations thereunder underlying such action, shall be deposited into the general fund of the U.S. Treasury.

(2) In the event that the amounts deposited into or credited to the Fund under paragraph (b)(1) of this section are not sufficient to satisfy an award made pursuant to §165.7, then, pursuant to Section 23(g)(3)(B) of the Commodity Exchange Act;

(i) An amount equal to the unsatisfied portion of the award;

(ii) Shall be deposited into or credited to the Fund;

(iii) From any monetary sanction collected by the Commission in any judicial or administrative action brought by the Commission under the Commodity Exchange Act, regardless of whether it qualifies as a "covered judicial or administrative action"; *provided*, however, that such judicial or administrative action is based on information provided by a whistleblower.

(c) *Office of Consumer Outreach.* The Commission shall undertake and maintain customer education initiatives through its Office of Consumer Outreach. The initiatives shall be designed to help customers protect themselves against fraud or other violations of the Commodity Exchange Act, or the rules or regulations thereunder. The Commission shall fund the initiatives and may utilize funds deposited into the Fund during any fiscal year in which the beginning (October 1) balance of the Fund is greater than \$10,000,000. The Commission shall budget, on an annual basis, the amount used to finance customer education initiatives, taking into consideration the balance of the Fund.

§ 165.13 Appeals.

(a) Any Final Order of the Commission relating to a whistleblower award

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determination, including whether, to whom, or in what amount to make whistleblower awards, may be appealed to the appropriate court of appeals of the United States not more than 30 days after the Final Order of the Commission is issued.

(b) The record on appeal shall consist of:

(1) The Contents of Record for Award Determinations, as set forth in §165.9; and

(2) The Final Order of the Commission, as set forth in §165.7.

§ 165.14 Procedures applicable to the payment of awards.

(a) A recipient of a whistleblower award is entitled to payment on the award only to the extent that the monetary sanction upon which the award is based is collected in the Commission judicial or administrative action or in a related action.

(b) Payment of a whistleblower award for a monetary sanction collected in a Commission action or related action shall be made within a reasonable time following the later of:

(1) The date on which the monetary sanction is collected; or

(2) The completion of the appeals process for all whistleblower award claims arising from:

(i) The Notice of Covered Action, in the case of any payment of an award for a monetary sanction collected in a covered judicial or administrative action; or

(ii) The related action, in the case of any payment of an award for a monetary sanction collected in a related action.

(c) If there are insufficient amounts available in the Fund to pay the entire amount of an award payment within a reasonable period of time from the time for payment specified by paragraph (b) of this section, then subject to the following terms, the balance of the payment shall be paid when amounts become available in the Fund, as follows:

(1) Where multiple whistleblowers are owed payments from the Fund based on awards that do not arise from the same Notice of Covered Action (or related action), priority in making these payments will be determined

based upon the date that the Final Order of the Commission is made. If two or more of these Final Orders of the Commission are entered on the same date, then those whistleblowers owed payments will be paid on a pro rata basis until sufficient amounts become available in the Fund to pay their entire payments.

(2) Where multiple whistleblowers are owed payments from the Fund based on awards that arise from the same Notice of Covered Action (or related action), they will share the same payment priority and will be paid on a pro rata basis until sufficient amounts become available in the Fund to pay their entire payments.

§ 165.15 Delegations of authority.

(a) *Delegation of authority to the Executive Director.* The Commission hereby delegates, until such time as the Commission orders otherwise, to the Executive Director or to any Commission employee under the Executive Director's supervision as he or she may designate, the authority to take the following actions to carry out this part 165 and the requirements of Section 23(h) of Commodity Exchange Act.

(1) *Delegated authority under § 165.12(a), (b).* The Executive Director's delegated authority to deposit into or credit collected monetary sanctions to the Fund and the payment of awards therefrom shall be with the concurrence of the General Counsel and the Director of the Division of Enforcement or of their respective designees.

(2) *Delegated authority to select a Whistleblower Award Determination Panel that shall be composed of three of the Commission's Offices or Divisions.* The Whistleblower Award Determination Panel shall include neither the Division of Enforcement nor the Office of General Counsel.

(b) *Delegation of Authority to Whistleblower Award Determination Panel.* The Commission hereby delegates, until such time as the Commission orders otherwise, to the Whistleblower Award Determination Panel the authority to make whistleblower award determinations under this part 165, including the determinations as whether, to whom, or in what amount to make awards. Award determinations in matters in-

volving monetary sanctions in either the Commission's action or a related action that total more than \$15,000,000 (*i.e.*, matters with a maximum potential whistleblower award greater than \$5,000,000) must be determined by the heads of the Offices or Divisions comprising the Whistleblower Award Determination Panel. In all other matters, award determinations may be determined by the employee designees of the heads of the Offices or Divisions comprising the Whistleblower Award Determination Panel.

(c) *Delegation of Authority to the Whistleblower Office.* With the exception of § 165.12, the Commission hereby delegates, until such time as the Commission orders otherwise, to the head of the Whistleblower Office the authority to take any action under this part 165 that is not otherwise delegated to either the Executive Director or the Whistleblower Award Determination Panel under this section, including the authority to administer the Commission's whistleblower program and liaise with whistleblowers.

§ 165.16 No immunity.

The Commodity Whistleblower Incentives and Protections provisions set forth in Section 23(h) of Commodity Exchange Act and this part 165 do not provide individuals who provide information to the Commission with immunity from prosecution. The fact that an individual may become a whistleblower and assist in Commission investigations and enforcement actions does not preclude the Commission from bringing an action against the whistleblower based upon the whistleblower's own conduct in connection with violations of the Commodity Exchange Act and the Commission's regulations. If such an action is determined to be appropriate, however, the Commission's Division of Enforcement will take the whistleblower's cooperation into consideration in accordance with its sanction recommendations to the Commission.

§ 165.17 Awards to whistleblowers who engage in culpable conduct.

In determining whether the required \$1,000,000 threshold has been satisfied for purposes of making any award, the

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Commission will not take into account any monetary sanctions that the whistleblower is ordered to pay, or that is ordered against any entity whose liability is based primarily on conduct that the whistleblower principally directed, planned, or initiated. Similarly, if the Commission determines that a whistleblower is eligible for an award, any amounts that the whistleblower or such an entity pay in sanctions as a result of the action or related actions will not be included within the calculation of the amounts collected for purposes of making payments pursuant to § 165.14.

§ 165.18 Staff communications with whistleblowers from represented entities.

If the whistleblower is a whistleblower who is a director, officer, member, agent, or employee of an entity that has counsel, and the whistleblower has initiated communication with the Commission relating to a potential violation of the Commodity Exchange Act, the Commission's staff is authorized to communicate directly with the whistleblower regarding the subject of the whistleblower's communication without seeking the consent of the entity's counsel.

§ 165.19 Nonenforceability of certain provisions waiving rights and remedies or requiring arbitration of disputes.

The rights and remedies provided for in this part 165 of the Commission's regulations may not be waived by any agreement, policy, form, or condition of employment, including by a predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if the agreement requires arbitration of a dispute arising under this part.

APPENDIX A TO PART 165—GUIDANCE WITH RESPECT TO THE PROTECTION OF WHISTLEBLOWERS AGAINST RETALIATION

Section 23(h)(1) of Commodity Exchange Act prohibits employers from engaging in retaliation against whistleblowers. This provision provides whistleblowers with certain protections against retaliation, including: A federal cause of action against the employer,

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which must be filed in the appropriate district court of the United States within two (2) years of the employer's retaliatory act; and potential relief for prevailing whistleblowers, including reinstatement, back pay, and compensation for other expenses, including reasonable attorney's fees.

(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—

(1) In providing information to the Commission in accordance with this part 165; or

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

(b) *Enforcement—(1) Cause of Action.*—An individual who alleges discharge or other discrimination in violation of section 23(h)(1)(A) of the Commodity Exchange Act may bring an action under section 23(h)(1)(B) of the Commodity Exchange Act in the appropriate district court of the United States for the relief provided in section 23(h)(1)(C) of the Commodity Exchange Act, unless the individual who is alleging discharge or other discrimination in violation of section 23(h)(1)(A) of the Commodity Exchange Act 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.

(2) *Subpoenas.*—A subpoena requiring the attendance of a witness at a trial or hearing conducted under section 23(h)(1)(A) of the Commodity Exchange Act may be served at any place in the United States.

(3) *Statute of Limitations.*—An action under section 23(h)(1)(B) of the Commodity Exchange Act may not be brought more than 2 years after the date on which the violation reported in Section 23(h)(1)(A) of the Commodity Exchange Act is committed.

(c) *Relief.*—Relief for an individual prevailing in an action brought under section 23(h)(1)(B) of the Commodity Exchange Act shall include—

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

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

(3) 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.

UNITED STATES
 COMMODITY FUTURES TRADING COMMISSION
 Washington, DC 20581

FORM TCR
 TIP, COMPLAINT OR REFERRAL

A. INFORMATION ABOUT YOU			
COMPLAINANT 1:			
2. Street Address			Apartment/ Unit #
City	State/ Province	ZIP/ Postal Code	Country
3. Telephone	Alt. Phone	E-mail Address	Preferred Method of Communication
4. Occupation			
COMPLAINANT 2:			
1. Last Name		First	M.I.
2. Street Address			Apartment/ Unit #
City	State/ Province	ZIP/ Postal Code	Country
3. Telephone	Alt. Phone	E-mail Address	Preferred Method of Communication
4. Occupation			
B. ATTORNEY'S INFORMATION (If Applicable - See Instructions)			
1. Attorney's Name			

2. Firm Name			
3. Street Address			
City	State/ Province	ZIP/ Postal Code	Country
4. Telephone	Fax	E-mail Address	
C. TELL US ABOUT THE INDIVIDUAL AND/OR ENTITY THE WHISTLEBLOWER HAS A COMPLAINT AGAINST			
INDIVIDUAL/ENTITY 1:			
1. Type: <input type="checkbox"/> Individual <input type="checkbox"/> Entity		If An Individual, Specify Profession: If An Entity, Specify Type:	
2. Name			
3. Street Address			Apartment/ Unit #
City	State/ Province	ZIP/ Postal Code	Country
4. Phone	E-mail Address	Internet Address	
INDIVIDUAL/ENTITY 2:			
1. Type: <input type="checkbox"/> Individual <input type="checkbox"/> Entity		If an individual, specify profession: If an entity, specify type:	
2. Name			
3. Street Address			Apartment/ Unit #
City	State/ Province	ZIP/ Postal Code	Country

4. Phone	E-mail Address	Internet Address
D. TELL US ABOUT THE WHISTLEBLOWER'S COMPLAINT		
1. Occurrence Date (mm/dd/yyyy): / /	2. Nature of Complaint:	
3a. Has the complainant or counsel had any prior communication(s) with the CFTC concerning this matter? YES <input type="checkbox"/> NO <input type="checkbox"/>		
3b. If the answer to 3a is "Yes," name of CFTC staff member with whom the complainant or counsel communicated.		
4a. Have you or your counsel provided the information to any other agency or organization, or has any other agency or organization requested the information or related information from you? YES <input type="checkbox"/> NO <input type="checkbox"/>		
4b. If the answer to 4a is "Yes," please provide details. Use additional sheets, if necessary.		
4c. Name and contact information for point of contact at other agency or organization, if known.		
5a. Does this complaint relate to an entity of which the complainant is or was an officer, director, counsel, employee, consultant or contractor? YES <input type="checkbox"/> NO <input type="checkbox"/>		
5b. If the answer to question 5a is "yes," has the complainant reported this violation to his or her supervisor, compliance office, whistleblower hotline, ombudsman, or any other available mechanism at the entity for reporting violations? YES <input type="checkbox"/> NO <input type="checkbox"/>		
5c. If the answer to question 5b is "yes," please provide details. Use additional sheets, if necessary.		

5d. Date on which the complainant took the action(s) described in question 5b (mm/dd/yyyy):

6a. Have you taken any other action regarding your complaint?

YES NO

6b. If the answer to question 6a is "yes," please provide details. Use additional sheets, if necessary.

7a. Type of financial product or investment, if relevant.

7b. Name of financial product or investment, if relevant.

8. State in detail all facts pertinent to the alleged violation. Explain why the complainant believes the facts described constitute a violation of the Commodity Exchange Act (CEA). Use additional sheets, if necessary.

9. Describe all supporting materials in the complainant's possession and the availability and location of any additional supporting materials not in complainant's possession. Use additional sheets, if necessary.

10. Describe how and from whom the complainant obtained the information that supports this claim. If any information was obtained from an attorney or in a communication where an attorney was present, identify such information with as much particularity as possible. In addition, if any information was obtained from a public source, identify the source with as much particularity as possible. Use additional sheets, if necessary.

11. Identify with particularity any documents or other information in the whistleblower's submission that the whistleblower believes could reasonably be expected to reveal the whistleblower's identity and explain the basis for the whistleblower's belief that the whistleblower's identity would be revealed if the documents or information were disclosed to a third party.

12. Provide any additional information the whistleblower thinks may be relevant.

E. ELIGIBILITY REQUIREMENTS AND OTHER INFORMATION

1. Are you, or was the whistleblower at the time the whistleblower acquired the original information the whistleblower is submitting to the Commission a member, officer or employee of the Department of Justice, the Commodity Futures Trading Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, the Securities and Exchange Commission, a registered entity, a registered futures association, a self-regulatory organization, or any law enforcement organization?

YES

NO

2. Is the whistleblower providing this information pursuant to a cooperation agreement with the Commodity Futures Trading Commission or another agency or organization?
 YES NO

3. Is the whistleblower providing this information before the whistleblower (or anyone representing you) received any request, inquiry or demand that relates to the subject matter of the whistleblower's submission (i) from the Commodity Futures Trading Commission, (ii) in connection with an investigation, inspection or examination by any registered entity, registered futures association or self-regulatory organization, or (iii) in connection with an investigation by the Congress, or any other federal or state authority?
 YES NO

4. Is the whistleblower currently a subject or target of a criminal investigation, or have the whistleblower been convicted of a criminal violation, in connection with the information the whistleblower is submitting to the Commodity Futures Trading Commission?
 YES
 NO

5. Did the whistleblower acquire the information being provided to us from any person described in questions E1 through E5?
 YES NO

6. Are you, or was the whistleblower at the time the whistleblower acquired the original information the whistleblower is submitting to the Commission a member, officer, or employee of a foreign regulatory authority or law enforcement organization.
 YES NO

7. Use this space to provide additional details relating to the whistleblower's responses to questions 1 through 5. Use additional sheets, if necessary.

F. WHISTLEBLOWER'S DECLARATION
 I declare under penalty of perjury under the laws of the United States that the information contained herein is true, correct and complete to the best of my knowledge, information and belief. I fully understand that I may be subject to prosecution and ineligible for a whistleblower award if, in my submission of information, my other dealings with the Commodity Futures Trading Commission, or my dealings with another authority in connection with a related action, I knowingly and willfully make any false, fictitious, or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious, or fraudulent statement or entry.

Print Name _____
 Signature _____ Date _____

G. COUNSEL CERTIFICATION

I certify that I have reviewed this form for completeness and accuracy and that the information contained herein is true, correct and complete to the best of my knowledge, information and belief. I further certify that I have verified the identity of the whistleblower on whose behalf this form is being submitted by viewing the whistleblower's valid, unexpired government issued identification (e.g., driver's license, passport) and will retain an original, signed copy of this form, with Section F signed by the whistleblower, in my records. I further certify that I have obtained the whistleblower's non-waiveable consent to provide the Commodity Futures Trading Commission with his or her original signed Form TCR upon request in the event that the Commodity Futures Trading Commission requests it due to concerns that the whistleblower may have knowingly and willfully made false, fictitious, or fraudulent statements or representations, or used any false writing or document knowing that the writing or document contains any false fictitious or fraudulent statement or entry; and that I consent to be legally obligated to do so within 7 calendar days of receiving such a request from the Commodity Futures Trading Commission.

Signature	Date
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PRIVACY ACT STATEMENT

This notice is given under the Privacy Act of 1974. The Privacy Act requires that the Commodity Futures Trading Commission (CFTC or Commission) inform individuals of the following when asking for information. This form may be used by anyone wishing to provide the CFTC with information concerning a violation of the Commodity Exchange Act or the Commission's regulations. If the whistleblower is submitting this information for the Commission's whistleblower award program pursuant to Section 23 of the Commodity Exchange Act, the information provided will enable the Commission to determine the whistleblower's eligibility for payment of an award. This information may be disclosed to Federal, state, local, or foreign agencies responsible for investigating, prosecuting, enforcing, or implementing laws, rules, or regulations implicated by the information consistent with the confidentiality requirements set forth therein, including pursuant to Section 23 of the Commodity Exchange Act and Part 165 of the Commission's regulations thereunder. Furnishing the information is voluntary, but a decision not to do so may result in the whistleblower not being eligible for award consideration.

Questions concerning this form may be directed to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUBMISSION PROCEDURES

- After completing this Form TCR, please send it electronically, by mail, e-mail or delivery to the Commission: electronically via the Commission's Web site; by mail or delivery to the Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street, NW., Washington, DC 20581; by e-mail

to XXXXX.gov; or by facsimile to (202) XXX-XXXX.

- The whistleblower has the right to submit information anonymously.
- If the whistleblower is submitting information for the Commission's whistleblower award program, the whistleblower must submit the whistleblower's information using this Form TCR.

INSTRUCTIONS FOR COMPLETING FORM TCR

Section A: Information About You

Questions 1-4: Please provide the following information about yourself:

- Last name, first name, and middle initial;
- Complete address, including city, state and zip code;
- Telephone number and, if available, an alternate number where the whistleblower can be reached;
- The whistleblower's e-mail address (to facilitate communications, we strongly encourage the whistleblower to provide the whistleblower's email address);
- The whistleblower's preferred method of communication; and
- The whistleblower's occupation.

Section B: Information about the Whistleblower's Attorney. Complete this Section Only if the Whistleblower is Represented by an Attorney in this Matter

Questions 1-4: Provide the following information about the attorney representing the whistleblower in this matter:

- Attorney's name;
- Firm name;
- Complete address, including city, state and zip code;
- Telephone number and fax number; and
- E-mail address.

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Section C: Tell Us About the Individual and/or Entity The Whistleblower Has a Complaint Against

If the whistleblower's complaint relates to more than two individuals and/or entities, the whistleblower may use additional sheets, if necessary.

Question 1: Choose one of the following that best describes the individual's profession or entity's type to which the whistleblower's complaint relates:

- *For Individuals:* Accountant, analyst, associated person, attorney, auditor, broker, commodity trading advisor, commodity pool operator, compliance officer, employee, executing broker, executive officer or director, financial planner, floor broker, floor trader, trader, unknown, or other (specify).

- *For Entities:* Bank, commodity trading advisor, commodity pool operator, commodity pool, futures commission merchant, hedge fund, introducing broker, major swap participant, retail foreign exchange dealer, swap dealer, unknown, or other (specify).

Questions 2-4: For each individual and/or entity, provide the following information, if known:

- Full name;
- Complete address, including city, state and zip code;
- Telephone number;
- E-mail address; and
- Internet address, if applicable.

Section D: Tell Us About the Whistleblower's Complaint

Question 1: State the date (mm/dd/yyyy) that the alleged conduct began.

Question 2: Choose the option that the whistleblower believes best describes the nature of the whistleblower's complaint. If the whistleblower is alleging more than one violation, please list all that the whistleblower believes may apply. Use additional sheets, if necessary.

- Theft/misappropriation;
- Misrepresentation/omission (*i.e.*, false/misleading marketing/sales literature; inaccurate, misleading or non-disclosure by commodity pool operator, commodity trading advisor, futures commission merchant, introducing broker, retail foreign exchange dealer, major swap participant, swap dealer, or their associated person(s); false/material misstatements in any report or statement);
- Ponzi/pyramid scheme;
- Off-exchange foreign currency, commodity, or precious metal fraud;
- Registration violations (including unregistered commodity pool operator; commodity trading advisor; futures commission merchant; introducing broker; retail foreign exchange dealer; swap dealer; or their associated person(s));
- Trading (after hours trading; algorithmic trading; disruptive trading; front running;

insider trading; manipulation/attempted manipulation of commodity prices; market timing; inaccurate quotes/pricing information; program trading; trading suspensions; volatility);

- Fees/mark-ups/commissions (excessive, unnecessary or unearned administrative, commission or sales fees; failure to disclose fees; insufficient notice of change in fees; excessive or otherwise improper spreads or fills);

- Sales and advisory practices (background information on past violations/integrity; breach of fiduciary duty/responsibility; churning/excessive trading; cold calling; conflict of interest; abuse of authority in discretionary trading; failure to respond to client, customer or participant; guarantee against loss; promise to profit; high pressure sales techniques; instructions by client, customer or participant not followed; investment objectives not followed; solicitation methods (e.g., cold calling, seminars);

- Customer accounts (unauthorized trading); identity theft affecting account; inaccurate valuation of Net Asset Value; or

- Other (analyst complaints; market maker activities; employer/employee disputes; specify other).

Question 3a: State whether the whistleblower or the whistleblower's counsel has had any prior communications with the CFTC concerning this matter.

Question 3b: If the answer to question 3a is yes, provide the name of the CFTC staff member with whom the whistleblower or the whistleblower's counsel communicated.

Question 4a: Indicate whether the whistleblower or the whistleblower's counsel has provided the information the whistleblower is providing to the CFTC to any other agency or organization.

Question 4b: If the answer to question 4a is yes, provide details.

Question 4c: Provide the name and contact information of the point of contact at the other agency or organization, if known.

Question 5a: Indicate whether the whistleblower's complaint relates to an entity of which the whistleblower is, or was in the past, an officer, director, counsel, employee, consultant, or contractor.

Question 5b: If the answer to question 5a is yes, state whether the whistleblower has reported this violation to the whistleblower's supervisor, compliance office, whistleblower hotline, ombudsman, or any other available mechanism at the entity for reporting violations.

Question 5c: If the answer to question 5b is yes, provide details.

Question 5d: Provide the date on which the whistleblower took the actions described in questions 5a and 5b.

Question 6a: Indicate whether the whistleblower has taken any other action regarding the whistleblower's complaint, including

whether the whistleblower complained to the Commission, another regulator, a law enforcement agency, or any other agency or organization; initiated legal action, mediation or arbitration, or initiated any other action.

Question 6b: If the whistleblower answered yes to question 6a, provide details, including the date on which the whistleblower took the action(s) described, the name of the person or entity to whom the whistleblower directed any report or complaint and contact information for the person or entity, if known, and the complete case name, case number, and forum of any legal action the whistleblower has taken. Use additional sheets, if necessary.

Question 7a: Choose from the following the option that the whistleblower believes best describes the type of financial product or investment at issue, if applicable:

- Commodity futures;
- Options on commodity futures;
- Commodity options;
- Foreign currency transactions;
- Swaps; or
- Other (specify).

Question 7b: Provide the name of the financial product or investment, if applicable.

Question 8: State in detail all the facts pertinent to the alleged violation. Explain why the whistleblower believes the facts described constitute a violation of the Commodity Exchange Act. Use additional sheets, if necessary.

Question 9: Describe all supporting materials in the whistleblower's possession, custody or control, and the availability and location of additional supporting materials not in the whistleblower's possession, custody or control. Use additional sheets, if necessary.

Question 10: Describe how the whistleblower obtained the information that supports the whistleblower's allegation. If any information was obtained from an attorney or in a communication where an attorney was present, identify such information with as much particularity as possible. In addition, if any information was obtained from a public source, identify the source with as much particularity as possible. Use additional sheets, if necessary.

Question 11: The whistleblower may use this space to identify any documents or other information in the whistleblower's submission on this Form TCR that the whistleblower believes could reasonably be expected to reveal the whistleblower's identity. Explain the basis for the whistleblower's belief that the whistleblower's identity would be revealed if the documents or information were disclosed to a third party.

Question 12: Provide any additional information the whistleblower thinks may be relevant.

Section E: Eligibility Requirements

Question 1: State whether the whistleblower is currently, or was at the time the whistleblower acquired the original information that the whistleblower is submitting to the Commodity Futures Trading Commission, a member, officer or employee of the Department of Justice, the Commodity Futures Trading Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, a registered entity, a registered futures association, a self-regulatory organization, or any law enforcement organization.

Question 2: State whether the whistleblower is providing the information pursuant to a cooperation agreement with the Commodity Futures Trading Commission or with any other agency or organization.

Question 3: State whether the whistleblower is providing this information before the whistleblower (or anyone representing you) received any request, inquiry or demand that relates to the subject matter of the whistleblower's submission: (i) From the CFTC; (ii) in connection with an investigation, inspection or examination by any registered entity, registered futures association or self-regulatory organization; or (iii) in connection with an investigation by the Congress, or any other federal or state authority.

Question 4: State whether the whistleblower is currently a subject or target of a criminal investigation, or has the whistleblower been convicted of a criminal violation, in connection with the information the whistleblower is submitting to the Commodity Futures Trading Commission.

Question 5: State whether the whistleblower acquired the information the whistleblower is providing to the Securities and Exchange Commission from any individual described in Questions 1 through 5 of this Section.

Question 6: State whether the whistleblower is currently, or was at the time the whistleblower acquired the original information that the whistleblower is submitting to the Commodity Futures Trading Commission, a member, officer, or employee of a foreign regulatory authority or law enforcement organization.

Question 7: Use this space to provide additional details relating to the whistleblower's responses to questions 1 through 6. Use additional sheets, if necessary.

Section F: Whistleblower's Declaration

The whistleblower must sign this Declaration if the whistleblower is submitting this information pursuant to the Commodity Futures Trading Commission whistleblower

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program and wish to be considered for an award. If the whistleblower is submitting the whistleblower's information anonymously, the whistleblower must still sign this Declaration, and the whistleblower must provide the whistleblower's attorney with the original of this signed form.

If the whistleblower is not submitting the whistleblower's information pursuant to the Commodity Futures Trading Commission whistleblower program, the whistleblower do not need to sign this Declaration.

Section G: Counsel Certification

If the whistleblower is submitting this information pursuant to the Commodity Futures Trading Commission whistleblower program and is doing so anonymously through an attorney, the whistleblower's attorney must sign the Counsel Certification section.

If the whistleblower is represented in this matter but the whistleblower is *not* submitting the whistleblower's information pursuant to the Commodity Futures Trading Commission whistleblower program, the whistleblower's attorney does not need to sign the Counsel Certification Section.

UNITED STATES
 COMMODITY FUTURES TRADING COMMISSION
 Washington, DC 20581

FORM WB-APP

APPLICATION FOR AWARD FOR ORIGINAL INFORMATION SUBMITTED
 PURSUANT TO SECTION 23 OF THE COMMODITY EXCHANGE ACT

A. APPLICANT'S INFORMATION (REQUIRED FOR ALL SUBMISSIONS)			
1. Last Name	First	M.I.	Social Security No.
2. Street Address			Apartment/ Unit #
City	State/ Province	ZIP/ Postal Code	Country
3. Telephone	Alt. Phone	E-mail Address	
B. ATTORNEY'S INFORMATION (IF APPLICABLE - SEE INSTRUCTIONS)			
1. Attorney's Name			
2. Firm Name			
3. Street Address			
City	State/ Province	Zip/ Postal Code	Country
4. Telephone	Fax	E-mail Address	
C. TIP/COMPLAINT DETAILS			
1. Manner in which original information was submitted to CFTC CFTC website <input type="checkbox"/> Mail <input type="checkbox"/> Fax <input type="checkbox"/> Other <input type="checkbox"/>			
2a. Tip, Complaint or Referral (TCR) Number		2b. Date TCR referred to in 2a submitted to CFTC / /	
2c. Subject(s) of the Tip, Complaint or Referral:			
D. NOTICE OF COVERED ACTION			

1. Date of Notice of Covered Action to Which Claim Relates ____/____/____		2. Notice Number:	
3a. Case Name		3b. Case Number	
E. CLAIMS PERTAINING TO RELATED ACTIONS			
1. Name of agency or organization to which the whistleblower provided the whistleblower's information.			
2. Name and contact information for point of contact at agency or organization, if known.			
3a. Date the whistleblower provided the whistleblower's information (mm/dd/yyyy) ____/____/____		3b. Date action filed by agency/organization (mm/dd/yyyy) ____/____/____	
4a. Case Name		4b. Case Number	
F. ELIGIBILITY REQUIREMENTS AND OTHER INFORMATION			
1. Is the whistleblower currently, or was the whistleblower at the time the whistleblower acquired the original information the whistleblower submitted to the CFTC, a member, officer or employee of the Department of Justice, the Commodity Futures Trading Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, the Securities and Exchange Commission, a registered entity, a registered futures association, a self-regulatory organization, any law enforcement organization, or a foreign regulatory authority or law enforcement organization? YES <input type="checkbox"/> NO <input type="checkbox"/>			
2. Did the whistleblower provide the information identified in Section C above pursuant to a cooperation agreement with the CFTC or another agency or organization? YES <input type="checkbox"/> NO <input type="checkbox"/>			
3. Did the whistleblower acquire the information the whistleblower provided to the CFTC from any person described in questions F1 through F2? YES <input type="checkbox"/> NO <input type="checkbox"/>			
4. If the whistleblower answered "yes" to any of questions 1 through 3 above, please provide details. Use additional sheets, if necessary.			
5a. Did the whistleblower provide the information identified in Section C above before the whistleblower (or anyone representing you) received any request, inquiry or demand that relates to the subject matter of the whistleblower's submission: (i) from the CFTC; (ii) in connection with an investigation, inspection or examination by any registered entity, registered futures association or self-regulatory organization; or (iii) in connection with an investigation by the Congress, or any other federal or state authority? YES <input type="checkbox"/> NO <input type="checkbox"/>			

5b. If the whistleblower answered "yes" to question 5a, please provide details. Use additional sheets, if necessary.

6a. Is the whistleblower currently a subject or target of a criminal investigation, or have the whistleblower been convicted of a criminal violation, in connection with the information identified in Section C above and upon which the whistleblower's application for an award is based?
 YES NO

6b. If the whistleblower answered "Yes" to question 6a, please provide details. Use additional sheets, if necessary.

G. ENTITLEMENT TO AWARD
 Explain the basis for the whistleblower's belief that the whistleblower is entitled to an award in connection with the whistleblower's submission of information to the CFTC, or to another agency in a related action. Provide any additional information the whistleblower thinks may be relevant in light of the criteria for determining the amount of an award set forth in Section 23 of the Commodities Exchange Act and Part 165 of the Commission's Regulations thereunder. Include any supporting documents in the whistleblower's possession or control, and use additional sheets, if necessary.

H. DECLARATION
 I declare under penalty of perjury under the laws of the United States that the information contained herein is true, correct and complete to the best of my knowledge, information and belief. I fully understand that I may be subject to prosecution and ineligible for a whistleblower award if, in my submission of information, my other dealings with the CFTC, or my dealings with another authority in connection with a related action, I knowingly and willfully make any false, fictitious, or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious, or fraudulent statement or entry.

Print Name	Print Name
Signature	Date

PRIVACY ACT STATEMENT

This notice is given under the Privacy Act of 1974. The Privacy Act requires that the Commodity Futures Trading Commission (CFTC or Commission) inform individuals of the following when asking for information. The information provided will enable the Commission to determine the whistleblower's eligibility for payment of an award pursuant to Section 23 of the Commodity Exchange Act. This information may be dis-

closed to Federal, state, local, or foreign agencies responsible for investigating, prosecuting, enforcing, or implementing laws, rules, or regulations implicated by the information consistent with the confidentiality requirements set forth in Section 23 of the Commodity Exchange Act and Part 165 of the Commission's Regulations thereunder. Furnishing the information is voluntary, but a decision not to do so may result in the whistleblower not being eligible for award consideration.

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Questions concerning this form may be directed to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

GENERAL

- This form should be used by persons making a claim for a whistleblower award in connection with information provided to the CFTC or to another agency in a related action. In order to be deemed eligible for an award, the whistleblower must meet all the requirements set forth in Section 23 of the Commodities Exchange Act and the rules thereunder.

- The whistleblower must sign the Form WB-APP as the claimant. If the whistleblower provided the whistleblower's information to the CFTC anonymously, the whistleblower must now disclose the whistleblower's identity on this form and the whistleblower's identity must be verified in a form and manner that is acceptable to the CFTC prior to the payment of any award.

- If the whistleblower is filing the whistleblower's claim in connection with information that the whistleblower provided to the CFTC, then the whistleblower's Form WB-APP, and any attachments thereto, must be received by the CFTC within ninety (90) days of the date of the Notice of Covered Action or the date of a final judgment in a related action to which the claim relates.

- If the whistleblower is filing the whistleblower's claim in connection with information the whistleblower provided to another agency in a related action, then the whistleblower's Form WB-APP, and any attachments there to, must be received by the Commodity Futures Trading Commission as follows:

- If a final order imposing monetary sanctions has been entered in a related action at the time the whistleblower submits the whistleblower's claim for an award in connection with a Commission action, the whistleblower must submit the whistleblower's claim for an award in that related action on the same Form WB-APP that the whistleblower uses for the Commission action.

- If a final order imposing monetary sanctions in a related action has not been entered at the time the whistleblower submits the whistleblower's claim for an award in connection with a Commission action, the whistleblower must submit the whistleblower's claim on Form WB-APP within ninety (90) days of the issuance of a final order imposing sanctions in the related action.

- The whistleblower must submit the whistleblower's Form WB-APP to us in one of the following two ways:

- By mailing or delivering the signed form to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581; or

- By faxing the signed form to (202) XXX-XXXX.

INSTRUCTIONS FOR COMPLETING FORM WB-APP

Section A: Applicant's Information

Questions 1-3: Provide the following information about yourself:

- First and last name, and middle initial, and social security number;
- Complete address, including city, state and zip code;
- Telephone number and, if available, an alternate number where the whistleblower can be reached; and
- E-mail address.

Section B: Attorney's Information

If the whistleblower is represented by an attorney in this matter, provide the information requested. If the whistleblower is not represented by an attorney in this matter, leave this Section blank.

Questions 1-4: Provide the following information about the attorney representing the whistleblower in this matter:

- Attorney's name;
- Firm name;
- Complete address, including city, state and zip code;
- Telephone number and fax number; and
- E-mail address.

Section C: Tip/Complaint Details

Question 1: Indicate the manner in which the whistleblower's original information was submitted to the CFTC.

Question 2a: Include the TCR (Tip, Complaint or Referral) number to which this claim relates.

Question 2b: Provide the date on which the whistleblower submitted the whistleblower's information to the CFTC.

Question 2c: Provide the name of the individual(s) or entity(s) to which the whistleblower's tip, complaint, or referral related.

Section D: Notice of Covered Action

The process for making a claim for a whistleblower award begins with the publication of a "Notice of a Covered Action" on the Commission's Web site. This Notice is published whenever a judicial or administrative action brought by the Commission results in the imposition of monetary sanctions exceeding \$1,000,000. The Notice is published on the Commission's Web site subsequent to the entry of a final judgment or order in the action that by itself, or collectively with other judgments or orders previously entered in the action, exceeds the \$1,000,000 threshold required for a whistleblower to be potentially eligible for an award. The Commission

will not contact whistleblower claimants directly as to Notices of Covered Actions; prospective claimants should monitor the Commission Web site for such Notices.

Question 1: Provide the date of the Notice of Covered Action to which this claim relates.

Question 2: Provide the notice number of the Notice of Covered Action.

Question 3a: Provide the case name referenced in Notice of Covered Action.

Question 3b: Provide the case number referenced in Notice of Covered Action.

Section E: Claims Pertaining to Related Actions

Question 1: Provide the name of the agency or organization to which the whistleblower provided the whistleblower's information.

Question 2: Provide the name and contact information for the whistleblower's point of contact at the agency or organization, if known.

Question 3a: Provide the date on which that the whistleblower provided the whistleblower's information to the agency or organization referenced in question E1.

Question 3b: Provide the date on which the agency or organization referenced in question E1 filed the related action that was based upon the information the whistleblower provided.

Question 4a: Provide the case name of the related action.

Question 4b: Provide the case number of the related action.

Section F: Eligibility Requirements and Other Information

Question 1: State whether the whistleblower is currently, or was at the time the whistleblower acquired the original information that the whistleblower submitted to the CFTC, a member, officer or employee of the Department of Justice, the Commodity Futures Trading Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, the Securities and Exchange Commission, a registered entity, a registered futures association, a self-regulatory organization, any law enforcement organization, or a foreign regulatory authority or law enforcement organization.

Question 2: State whether the whistleblower provided the information submitted to the CFTC pursuant to a cooperation agreement with the CFTC or with any other agency or organization.

Question 3: State whether the whistleblower acquired the information the whistleblower provided to the CFTC from any individual described in Question 1 through 2 of this Section.

Question 5: If the whistleblower answered "yes" to questions 1 through 3 of this Section, please provide details.

Question 5a: State whether the whistleblower provided the information submitted to the CFTC before the whistleblower (or anyone representing the whistleblower) received any request, inquiry or demand that relates to the subject matter of the whistleblower's submission: (i) From the CFTC; (ii) in connection with an investigation, inspection or examination by any registered entity, registered futures association or self-regulatory organization; or (iii) in connection with an investigation by the Congress, or any other federal or state authority.

Question 5b: If the whistleblower answered "yes" to questions 5a, please provide details. Use additional sheets if necessary.

Question 6a: State whether the whistleblower is the subject or target of a criminal investigation, or has been convicted of a criminal violation, in connection with the information upon which the whistleblower's application for an award is based.

Question 6b: If the whistleblower answered "yes" to question 6a, please provide details, including the name of the agency or organization that conducted the investigation or initiated the action against you, the name and telephone number of the whistleblower's point of contact at the agency or organization, if available, and the investigation/case name and number, if applicable. Use additional sheets, if necessary.

Section G: Entitlement to Award

This section is optional. Use this section to explain the basis for the whistleblower's belief that the whistleblower is entitled to an award in connection with the whistleblower's submission of information to the Commission or to another agency in connection with a related action. Specifically, address how the whistleblower believes the whistleblower voluntarily provided the Commission with original information that led to the successful enforcement of a judicial or administrative action filed by the Commission, or a related action. Refer to §165.11 of Part 165 of the Commission's Regulations for further information concerning the relevant award criteria. The whistleblower may use additional sheets, if necessary.

Section 23(c)(1)(B) of the CEA requires the Commission to consider in determining the amount of an award the following factors: (a) The significance of the information provided by a whistleblower to the success of the Commission action or related action; (b) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in the Commission action or related action; (c) the programmatic interest of the Commission in deterring violations of the Commodity Exchange Act (including Regulations under the Act) by making

awards to whistleblowers who provide information that leads to the successful enforcement of such laws; and (d) whether the award otherwise enhances the Commission's ability to enforce the Commodity Exchange Act, protect customers, and encourage the submission of high quality information from whistleblowers. Address these factors in the whistleblower's response as well.

Section H: Declaration

This section must be signed by the claimant.

PART 166—CUSTOMER PROTECTION RULES

Sec.

- 166.1 Definitions.
- 166.2 Authorization to trade.
- 166.3 Supervision.
- 166.4 Branch offices.
- 166.5 Dispute settlement procedures.

AUTHORITY: 7 U.S.C. 1a, 2, 6b, 6c, 6d, 6g, 6h, 6k, 6l, 6o, 7, 12a, 21, and 23, as amended by the Commodity Futures Modernization Act of 2000, appendix E of Pub. L. 106-554, 114 Stat. 2763 (2000).

§ 166.1 Definitions.

(a) The term *Commission registrant* as used in this part means any person who is registered or required to be registered with the Commission pursuant to the Act or any rule, regulation, or order thereunder.

(b) [Reserved]

(c) The term *customer* as used in this part means any person trading, intending to trade, or receiving or seeking advice concerning any commodity interest, including any existing or prospective client or subscriber of a commodity trading advisor or existing or prospective participant in a commodity pool, but the term does not include a person who is acting in the capacity of a Commission registrant with respect to the trade.

(d) The term *commodity account* as used in this part means the account of a customer in which any commodity interest is, or is intended to be, traded.

[43 FR 31886, July 24, 1978, as amended at 46 FR 54535, Nov. 3, 1981; 52 FR 29003, Aug. 5, 1987; 72 FR 63979, Nov. 14, 2007]

§ 166.2 Authorization to trade.

No futures commission merchant, retail foreign exchange dealer, intro-

ducing broker or any of their associated persons may directly or indirectly effect a transaction in a commodity interest for the account of any customer unless before the transaction the customer, or person designated by the customer to control the account:

(a) With respect to any commodity interest as defined in §1.3(yy)(1) through (3) of this chapter, specifically authorized the futures commission merchant, retail foreign exchange dealer, introducing broker or any of their associated persons to effect the transaction (a transaction is "specifically authorized" if the customer or person designated by the customer to control the account specifies—

(1) The precise commodity interest to be purchased or sold; and

(2) The exact amount of the commodity interest to be purchased or sold); or

(b) With respect to any commodity interest as defined in §1.3(yy)(1) or (2) of this chapter, authorized in writing the futures commission merchant, introducing broker or any of their associated persons to effect transactions in commodity interests for the account without the customer's specific authorization; Provided, however, That if any such futures commission merchant, introducing broker or any of their associated persons is also authorized to effect transactions in foreign futures or foreign options without the customer's specific authorization, such authorization must be expressly documented.

[75 FR 55451, Sept. 10, 2010]

§ 166.3 Supervision.

Each Commission registrant, except an associated person who has no supervisory duties, must diligently supervise the handling by its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities of its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) relating to its business as a Commission registrant.

[48 FR 35304, Aug. 3, 1983]