

**ANNUAL REPORT ON THE
WHISTLEBLOWER PROGRAM AND
CUSTOMER EDUCATION INITIATIVES**



**This is a Report of the Staff of the
U.S. Commodity Futures Trading Commission**

to the

**Senate Committee on Agriculture, Nutrition and Forestry
House of Representatives Committee on Agriculture**

October 30, 2013

I. INTRODUCTION

Section 748 of the Dodd-Frank Wall Street Reform and Consumer Protection Act¹ amended the Commodity Exchange Act (“CEA”) by adding Section 23, entitled “Commodity Whistleblower Incentives and Protection.”² CEA Section 23 established a whistleblower program under which the Commodity Futures Trading Commission (“Commission”) will pay awards, based on collected monetary sanctions and under regulations prescribed by the Commission, to eligible whistleblowers who voluntarily provide the Commission with original information about violations of the CEA that lead either to a “covered judicial or administrative action” or a “related action.”³ CEA Section 23 also established the Commodity Futures Trading Commission Customer Protection Fund (“Fund”), which is used to pay whistleblower awards and to fund “customer education initiatives designed to help customers protect themselves against fraud or other violations of [the CEA], or the rules and regulations thereunder.”⁴

CEA Section 23(g)(5) requires the Commission to transmit an annual report to the Committee on Agriculture, Nutrition and Forestry of the Senate, and the Committee on Agriculture of the House of Representatives, on the following:

- the Commission’s whistleblower program, including a description of the number of awards granted and the types of cases in which awards were granted during the preceding fiscal year;
- customer education initiatives that were funded by the Fund during the preceding fiscal year;

¹ Pub. L. No. 111-203, § 748, 124 Stat. 1841 (2010).

² 7 U.S.C. § 26.

³ A “covered judicial or administrative action” is “any judicial or administrative action brought by the Commission under [the CEA] that results in monetary sanctions exceeding \$1,000,000.” 7 U.S.C. § 26(a)(1). The term “related action,” when used with respect to any judicial or administrative action brought by the Commission under the CEA, means “any judicial or administrative action brought by an entity described in [CEA § 23(h)(2)(C)(i)(I)-(VI)] that is based upon the original information provided by a whistleblower pursuant to [CEA § 23(a)] that led to the successful enforcement of the Commission action.” 7 U.S.C. § 26(a)(5).

⁴ 7 U.S.C. § 26(g)(2).

- the balance of the Fund at the beginning of the preceding fiscal year;
- the amounts deposited into or credited to the Fund during the preceding fiscal year;
- the amount of earnings on investments of amounts in the Fund during the preceding fiscal year;
- the amount paid from the Fund during the preceding fiscal year to whistleblowers;
- the amount paid from the Fund during the preceding fiscal year for customer education initiatives;
- the balance of the Fund at the end of the preceding fiscal year; and
- a complete set of audited financial statements, including a balance sheet, income statement,⁵ and cash flow analysis.

This report covers the period from October 1, 2012 through September 30, 2013 (“Period”).

II. WHISTLEBLOWER PROGRAM AND WHISTLEBLOWER AWARDS

The Commission did not pay any whistleblower awards during the Period. During the Period, the Commission issued 22 Final Orders related to whistleblower award applications. All the Final Orders were denial of awards because none of the applicants met the requirements of 7 U.S.C. § 26 and 17 C.F.R. § 165.

During the Period, the Commission’s Whistleblower Office (“WBO”) received 138 whistleblower tips and complaints on Form TCR,⁶ either by mail or facsimile, or through the Commission’s web portal.⁷ The WBO also received an additional 66 separate non-whistleblower tips and complaints, most often by email to whistleblower@cftc.gov. When

⁵ Federal Accounting Standards do not identify an “income statement” as a financial statement applicable to the Federal Government. Instead, the Statement of Federal Financial Accounting Concepts 2 identifies the “statement of net cost” as the equivalent financial statement. See Financial Accounting Standards Advisory Board, FASAB Handbook of Federal Accounting Standards and Other Pronouncements, as Amended, June 30, 2011. A “statement of net cost” is included in the attached audited financial statements.

⁶ Under Rules 165.2(p) and 165.3 of the Commission’s Whistleblower Rules [17 C.F.R. §§ 165.2(p) and 165.3], a “whistleblower” is an individual who submits original information to the Commission on a Form TCR either by mail or facsimile, or through the Commission’s website.

⁷ File a Tip or Complaint: <http://www.cftc.gov/ConsumerProtection/FileaTiporComplaint/index.htm>

appropriate, WBO communicates with non-whistleblower correspondents and invites them to become whistleblowers by submitting a Form TCR. WBO forwards all tips and complaints to the Commission's Division of Enforcement for evaluation and disposition.

During the Period, WBO received tips and complaints regarding activities such as market manipulation, dissemination of false information into the market, misrepresentations to customers regarding the handling of their accounts, physical trading designed to influence price indexes, Ponzi schemes and other off-exchange investment scams involving futures, and wash trades.

WBO posts Notices of Covered Actions ("NCAs") for all judgments and orders entered after July 21, 2010 which impose more than \$1 million in monetary sanctions.⁸ WBO posted 52 NCAs during the Period, and received 12 whistleblower award claims on Form WB-APP.

The Commission hired a new WBO Director in July 2013. The WBO has been working to educate interested stakeholders about the whistleblower program – including whistleblowers and their attorneys, industry and professional groups, other government agencies, self-regulatory organizations and academia – through panel and seminar appearances, webinars, speeches, articles, web postings and by answering questions posed directly to WBO about the program.

III. CUSTOMER EDUCATION INITIATIVES

The Commission undertakes and maintains customer education initiatives through the Office of Consumer Outreach ("OCO"). The Commission currently conducts its outreach efforts largely through its website and print materials, which are general in nature in regards to information about the commodity trading markets and ways to avoid fraud. The Commission is also actively involved with ongoing federal financial literacy efforts, including participating as a

⁸ 17 C.F.R. § 165.7(a).

member of the Financial Literacy and Education Commission. OCO is continuing these efforts, and is also finding areas of collaboration with entities such as state banking, insurance, securities and consumer protection regulators, as well as financial markets, self-regulatory organizations, local governments, public libraries, consumer-focused nonprofits and academia.

Due to the unprecedented number of Ponzi scams affecting the American public, as evidenced by the record number of cases brought by the Commission in recent years, OCO is developing a long-term targeted outreach campaign to help consumers take the necessary steps to protect themselves against fraudulent activity. In the near-term, OCO is undertaking initiatives, including but not limited to, creating educational publications that address scams and list red flags of fraud. The Commission has made preventative efforts, based upon audience segmentation and social marketing principles, a top priority. In FY 2013, OCO procured an integrated marketing services firm to conduct message testing and provide a communications plan. As of September 30, 2013, the firm has conducted qualitative focus groups and provided a detailed report of its findings.

During the Period, OCO obligated and spent approximately \$96,088 on customer education initiatives.

IV. CUSTOMER PROTECTION FUND

As of September 30, 2013, the Fund had an ending balance of \$99,904,291:

Balance of the Fund at the beginning of the Period:	\$99,996,749
Amounts deposited into, or credited to, the Fund during the Period:	\$817,435
Amount of earnings on investments of amounts in the Fund during the Period:	\$50,504
Amount paid from the Fund to whistleblowers during the Period:	\$0
Amount paid from the Fund for customer education initiatives during the Period:	(\$96,088)
Amount of unpaid customer education initiatives expenses incurred during the Period:	(\$60,116)
Amount paid from the Fund for administrative expenses during the Period:	(\$785,368) ⁹
Amount of unpaid administrative expenses incurred during the Period:	(\$18,826) ⁹
Balance of the Fund as of September 30, 2013:	\$99,904,291

Attached as an Appendix to this report are the audited financial statements for the Fund, including a balance sheet, a statement of net cost, a statement of changes in net position, a statement of budgetary resources, and a supplementary cash flow analysis schedule.

⁹ The administrative expenses of WBO and OCO are charged to the Fund pursuant to GAO Decision B-321788, 2011 WL 3510145 (Comp. Gen. Aug. 8, 2011).