

# Federal Agency Announces Million Dollar Award to Culpable Whistleblower

## Whistleblower Claims Best Practices Articles:

[Identify Issues Early: Foster a “Speak Up/Listen Up” Culture](#)

[Ensure That Issues Surface: Implement an Independent Retaliation Prevention and Response System](#)

[Eliminate Confusion: Train Workers and Managers in Whistleblower Rights and Anti-retaliation](#)

[Identify Conflicting Incentives: Measure Results and Mitigate Conflicting Messages](#)

[Monitor Effectiveness: Conduct Independent Audits of the Program](#)

[Build Credibility: Demonstrate Leadership Commitment and Accountability](#)

## What You Need to Know

On July 21, 2020, the Commodity Futures Trading Commission (“CFTC”) announced that it will award more than \$1 million to two whistleblowers, one of whom participated in the underlying scheme. This is the first time that the CFTC has issued an award to a culpable whistleblower. The award signals its embrace of a broader approach to enforcement, which provides incentives for wrongdoers themselves to come forward and reveal fraud.

The CFTC began its investigation after the first whistleblower, who was not involved with the scheme, came forward with information. The second whistleblower then offered new insight gained through his own participation in the underlying conduct. The information from these whistleblowers led the CFTC to a successful enforcement action. In announcing the award, the CFTC’s Whistleblower Office Director, Christopher Ehrman, commented, “[E]ven whistleblowers that have some degree of culpability may be eligible for an award under the Whistleblower Program . . . We will continue to reward eligible whistleblowers and encourage them to come forward to aid in our investigations.”

In addition to the CFTC Whistleblower Program, the programs administered by the Securities and Exchange Commission (“SEC”) and the Internal Revenue Service (“IRS”) also allow awards for culpable whistleblowers. Indeed, in the SEC’s own regulatory guidance promulgated pursuant to Dodd Frank, the Commission expressly states that it intends to “use a rat to catch a rat.” While the CFTC, SEC, and IRS specify culpability as a factor that may decrease a whistleblower’s award, culpable whistleblowers may still be eligible for significant compensation. For example, in August 2016, the SEC granted a \$22 million award to a culpable whistleblower. Similarly, in September 2012, the IRS awarded a whopping \$104 million to whistleblower Bradley Birkenfeld, an American banker who participated in and then exposed a massive tax evasion scheme by UBS. Birkenfeld received the award after he served two and a half years in prison for his role in the fraud. The CFTC, SEC, the IRS and other regulators continue to invite concerns and complaints even from those in the middle of the wrongdoing.

CONTINUED

## What You Need to Do

Now more than ever is the time for employers to develop strong compliance programs and to commit to best practices on handling whistleblower concerns. These include training workers and managers on whistleblower rights and anti-retaliation, expanding existing reporting channels to encourage employees to “speak up,” revising investigation protocols to demonstrate leadership commitment and accountability, and conducting periodic audits to spot and deter any pockets of fraud within the Company.

**For additional guidance on the recent rise in whistleblower claims and what employers can do now to mitigate this threat, please view our recent eBook on the topic by [clicking here](#).**

---

*About the authors: Greg Keating is the chair of Choate’s Labor, Employment & Benefits and Whistleblower Defense Groups and Allison Denton is an associate in Choate’s Litigation Department.*

### LABOR, EMPLOYMENT & BENEFITS TEAM

**Greg Keating**

Practice Group Leader – Labor,  
Employment & Benefits  
617-248-5065 | gkeating@choate.com

**Alison Reif**

Partner  
617-248-5157 | areif@choate.com

**Lyndsey Kruzer**

Principal  
617-248-4790 | lkruzer@choate.com

**Wells Miller**

Principal  
617-248-4838 | wmiller@choate.com