June 24, 2021 – The House of Representatives yesterday passed a bill affecting whistleblowers, which the Senate approved earlier this month. This bill, when signed into law, will preserve the Whistleblower Program administered by the Commodity Futures Trading Commission (CFTC), which regulates the U.S. futures and derivatives markets.

The CFTC's Whistleblower Program provides monetary incentives to individuals who come forward to report possible violations of the Commodity Exchange Act, usually 10% to 30% of the settlement amount. CFTC has awarded about $123 million to whistleblowers since it was created. It also provides anti-retaliation protections for whistleblowers. The CFTC Whistleblower Program has experienced enormous
growth in recent years. In 2012, 58 whistleblower complaints were filed. In 2020, 1,000 whistleblower complaints were filed.

The CFTC Fund Management Act will allow the creation of a temporary second account to hold funds for the operation of CFTC’s whistleblower program, separate from the funds awarded to whistleblowers, so the CFTC can continue to operate even when whistleblower awards exceed the program fund’s balance. This fix will be temporary until October 1, 2022, at which time the cause of the emergency will be potentially restructured.

The Commission investigates violations of the Commodity Exchange Act and CFTC regulations. Violations can include certain actions or conduct in connection with futures, options, and swaps, or in connection with a contract of sale of any commodity in interstate commerce. Such violations are often exposed by whistleblowers, individuals with knowledge of violations’ occurrence. Whistleblowers might be employees, investors, customers, or competitors. Such individuals can use their inside knowledge to bring the fraud to the government’s attention.

The CFTC’s Whistleblower Program was created by the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Act became effective in 2011 and created a Customer Protection Fund which is capped at $100 million. The fund is used to reward whistleblowers, as well as to cover the office’s operating expenses and initiatives. Fines collected after the account reaches its cap usually go into the U.S. Treasury. If the fund is depleted, the CFTC must close until new funds are deposited.

Since fines and whistleblower rewards related to successful settlements have far exceeded expectations, the legal cap put the CFTC in a bind. If the CFTC obtains a fine and the fund balance goes over $100 million, the amount of the settlement that brings the fund balance over $100 million goes into the U.S. Treasury. However, the CFTC must pay whistleblower awards that correlate with large settlements. Thus, as occurred and led to the Senate’s temporary measure, there is risk that whistleblower awards can deplete the Customer Protection Fund. Recently, the Fund paid more than $100 million to a former Deutsche Bank AG executive. This caused a funding problem, which the Senate fixed and the House passed as well.

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