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Whistle-Blowers

CFTC Authorized to File Whistle-Blower Retaliation Claims



By Richard Hill

The CFTC may file enforcement actions against employers that retaliate against whistle-blowers, under rule changes adopted May 22.

The amendments to the Commodity Futures Trading Commission's whistle-blower regulations also bar employers from preemptively forbidding their employees to communicate with the agency. The new rules, adopted

unanimously by the two-member commission, additionally create a claims review process that will make initial determinations about whether a whistle-blower award should be granted or denied.

The rule amendments are intended to nudge reluctant whistle-blowers into coming forward with their suspicions. Companies, however, may be concerned that would-be whistle-blowers will be further encouraged to bypass internal compliance procedures and go straight to the government with insider information.

CFTC Found Its Authority

When it first adopted its whistle-blower rules in 2011, the CFTC said it didn't have statutory authority to bring an enforcement case against an employer for violating anti-retaliation prohibitions. Now, however, the agency said it believes it has the "general authority" to prosecute such cases as violations of the Commodity Exchange Act. Nothing in the whistle-blower rules suggest that a private right of action by a whistle-blower is exclusive, the CFTC said.

The new interpretation should encourage more whistle-blowers to come forward, Erika Kelton, a partner at Phillips & Cohen, Washington, who represents whistle-blowers, told Bloomberg BNA in an email. The rule changes "indicate that the CFTC under the new administration is committed to protecting whistle-blowers, which whistle-blowers should find encouraging," she said.

The rules against employee agreements mirror those of the Securities and Exchange Commission, Kelton said. "The SEC has actively enforced those rules and levied penalties, and I expect the CFTC to do the same," she said.

The new rules will go into effect 60 days after they are published in the Federal Register.

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Snapshot

- CFTC says it has 'general authority' to file actions for violations of Commodity Exchange Act
- Amended rule also bars prior agreements barring employee's communications with agency

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ISSN 1524-7902

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