6351-01-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 165

RIN 3038-AF74

Whistleblower Award Determination

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing for public comment to amend its rules implementing a section of the Commodity Exchange Act ("CEA"). The relevant section provides, among other things, that the Commission shall pay an award—under regulations prescribed by the Commission and subject to certain limitations—to eligible whistleblowers who voluntarily provide the Commission with original information about a violation of the CEA, or regulations thereunder, that leads to the successful enforcement of a covered judicial or administrative action, or a related action. The Commission expects the proposed substantive amendment, which is modeled on a similar provision in the Securities and Exchange Commission's ("SEC's") regulations, to increase the efficiency, transparency, and predictability of whistleblower claims processing, thereby protecting and enhancing the program's effectiveness in incentivizing whistleblowers to report. The Commission is also incorporating technical corrections to the whistleblower rules to update regulatory references to reflect the Whistleblower Office's ("WBO's") move in 2025, consistent with its adjudicatory functions, to the Office of the General Counsel.

DATES: Comments must be received by [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, specifically referencing "Whistleblower Award Determination," and RIN 3038-AF74, by any of the following methods:

- **Regulations.gov:** Go to *https://www.regulations.gov* and press the "Search" button, then proceed as follows:

1. Under Refine Documents Results – check the box to "Only show documents open for comment";

2. Under Agency – select "See More" and check the box for "Commodity Futures Trading Commission," then press the Apply button;

3. Identify this proposal in the list of CFTC documents open for comment, press the "Comment" button to open the submission form, and follow the instructions on the form.

Alternatively, if you are viewing this proposal on *www.federalregister.gov*, click the "Submit A Public Comment" button at the top of the page to open the comment form. Follow the instructions on the form to submit your comment to Regulations.gov.

- **Mail:** Send to – Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- **Hand Delivery/Courier:** Address to – CFTC Comment Submission, Attn: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through Regulations.gov are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Do not include in your comment text or attachments any personal identifying information or business information that you do not want published online. Comments (regardless of submission method) will be published without review for, and without

removal of, any personal identifying information or information your business may consider confidential.

If you wish to submit confidential information for the Commission's consideration, please contact the CFTC personnel listed in this document under FOR FURTHER INFORMATION CONTACT before making any submission. Please also carefully review the Commission's procedures in 17 CFR 145.9 for requesting confidential treatment under the Freedom of Information Act ("FOIA") of information submitted to the Commission.

The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, or redact all or any part of your comment submission. The CFTC also reserves the right, without further notification, to refuse to publish or to remove from public view all or any part of your submission to the extent it contains content inappropriate for publication in a comment file, such as – without limitation – obscene language, threats of violence, solicitations for commercial sales or illegal activity, or obvious spam. If a submission that is refused for or withdrawn from publication because of inappropriate content also contains comments on the merits of this proposal, such submission will be retained in the record for the matter and will be considered as required under the Administrative Procedure Act ("APA") and other applicable laws, and may be accessible under the FOIA.

Pursuant to the APA, 5 U.S.C. 553(b)(4), a plain language summary of the proposed rule is available at Regulations.gov.

FOR FURTHER INFORMATION CONTACT: Stephen Andrews, Deputy General Counsel for Regulation, Office of the General Counsel, 202-308-7563, *rulemaking@cftc.gov*; Raagnee Beri, Director, Whistleblower Office, 202-418-5986, *rberi@cftc.gov*.

SUPPLEMENTARY INFORMATION:

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I. Background

The Commission's whistleblower program ("Program") serves an important role in upholding the fairness and integrity of the nation's commodities markets. By providing a means to financially reward individuals who come forward and provide original information about illegal conduct to the Commission, the Program enhances the Commission's enforcement effort, in turn deterring legal noncompliance.

The Program derives from section 23 of the CEA; part 165 of the Commission's regulations (the "regulations") further defines its framework.[1] That framework provides for the payment of awards, subject to certain limitations and conditions, to whistleblowers who provide the Commission useful information. More specifically, to qualify for an award, a whistleblower must voluntarily provide original information about a violation of the CEA or the regulations that leads to a successful Commission enforcement action (judicial or administrative) that results in monetary sanctions over $1 million ("Covered Action"), or the successful enforcement of an action brought by specified entities or organizations such as the Department of Justice ("Related Action").[2] The aggregate award amount for all successful claimants, which is paid from the CFTC

[1] 7 U.S.C. 26; 17 CFR part 165.

[2] *See* 7 U.S.C. 26(a)(1), (5), (b)(1); 17 CFR 165.2(e) (defining "covered judicial or administrative action"); 165.2(m) (defining "related action"); 165.5 (requirements for consideration of an award); 165.7 (procedures for award applications in Commission actions and related actions); 165.11(a) (awards based on related actions).

Customer Protection Fund ("CPF"),[3] must be between 10 and 30 percent of the amount of monetary sanctions collected in the Covered Action and/or a Related Action.[4] Throughout the process, whistleblowers who make a claim for an award have a right to be represented by counsel.[5]

The Commission has discretion regarding the amount it awards to a whistleblower.[6] In exercising this discretion, it must consider certain statutorily specified factors, but it may not consider the CPF balance.[7] Rule 165.9(b) and (c) reiterates and elaborates on the factors the Commission considers in determining whether to increase or decrease a whistleblower award amount.[8] Positive factors include: the significance of the information provided by the whistleblower, the degree of assistance provided by the whistleblower, furtherance of the Commission's law enforcement interest, and the whistleblower's participation in internal compliance systems.[9] Negative factors include whistleblower culpability, unreasonable reporting delay, and interference with internal

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[3] 7 U.S.C. 26(b)(2). The CPF is funded through certain monetary sanctions that the Commission collects and can receive deposits or credits when the balance is at or below $100 million. 7 U.S.C. 26(g)(3)(A). In contrast, the SEC Investor Protection Fund—the counterpart to the CPF for funding SEC whistleblower awards—has a higher $300 million threshold. 15 U.S.C. 780-6(g)(a)(3)(A)(i). If amounts deposited or credited to the CPF are insufficient to pay a whistleblower award, additional collected monetary sanctions equal to the unsatisfied portion of the award are to be deposited or credited to the CPF. 7 U.S.C. 26(g)(3)(B). Besides funding whistleblower awards, the CPF also funds the operation of the WBO and the Office of Customer Education and Outreach. *See id*. at (g)(2); U.S. Commodity Futures Trading Commission—Availability of the Customer Protection Fund, B-321788 (GAO Aug. 8, 2011).

[4] 7 U.S.C. 26(b); 17 CFR 165.8 (amount of award).

[5] 7 U.S.C. 26(d)(1).

[6] 7 U.S.C. 26(c)(1)(A); 17 CFR 165.9.

[7] 7 U.S.C. 26(c)(1)(B)(i)(I)-(III) (specifying the following for consideration: information's significance; degree of the assistance; programmatic interest; and enhanced ability to enforce the CEA, protect customers, and encourage the submission of high-quality information); and potential adverse incentives from oversize awards; *id.* 26(c)(1)(B)(ii) (prohibiting consideration of the CPF balance); *see also id.* 26(c)(1)(B)(i)(IV) (authorizing the Commission to consider other factors established by rule or regulation); 17 CFR 165.9(a)(5) (prescribing "potential adverse incentives from oversize awards" as an additional factor for consideration..

[8] 17 CFR 165.9(b), (c).

[9] *Id.* at 165.9(b). The rule specifies subfactors that the Commission may consider is assessing each positive factor.

compliance and reporting systems.[10] In promulgating rule 165.9, the Commission expressed its intent that whistleblower award amounts be determined based on an individualized review of the circumstances surrounding each award.[11]

Part 165 also sets out the process by which Program awards are made, with the WBO serving as administrator. Among other duties,[12] the WBO processes whistleblower claims and prepares packages with detailed legal analyses and award/denial recommendations. In doing so, the WBO reviews the circumstances surrounding each claim and award individually (at times necessitating requests for additional relevant information from claimants and outreach to Division of Enforcement staff or, if a Related Action, staff of the other agency[13]). If a claimant appears eligible for an award, the analysis will consider and address each of the factors set out in CEA section 23(c) and rule 165.9. The Claims Review Staff ("CRS")—three to five individuals from various Commission divisions and offices—issues a preliminary determination ("Preliminary Determination") based on the WBO's analysis and recommendations. A Preliminary Determination reflects the CRS's assessment of whether a claim should be granted, and, if so, the proposed percentage amount of award.[14] Upon receipt of a copy of the Preliminary Determination, a claimant may contest it by submitting a written response to the WBO.[15] The CRS considers timely-submitted responses before making a proposed final determination ("Proposed Final Determination"). The WBO will notify the

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[10] *Id.* at 165.9(c). The rule specifies subfactors that the Commission may consider is assessing each negative factor.

[11] *See* Whistleblower Incentives and Protection, 76 FR 53172, 53188 (Aug. 25, 2011) ("The Commission anticipates that the determination of award amounts…will involve highly individualized review of the circumstances surrounding each award.").

[12] *See* 17 CFR 165.7(e)(1), (2), (f)(2), (g), (j) (specifying various WBO duties).

[13] *Id.* 165.7(f)(2).

[14] *See id.* 165.7(g)(1), (i); *id.* 165.15(a)(2).

[15] *Id.* 165. 7(g)(2). A claimant's failure to submit a timely response to the Preliminary Determination results in the Preliminary Determination becoming either the Final Order of the Commission or, if an award was recommended, a Proposed Final Determination. *Id.* 165.7(h).

Commission of each Proposed Final Determination, and, within 30 calendar days, any Commissioner may request that the Proposed Final Determination be reviewed by the Commission.[16] The Proposed Final Determination automatically becomes a final order of the Commission ("Final Order") if no commissioner requests review by the full Commission. If a commissioner does request a review, the Commission will review the record relied upon by staff in making its determinations, and issue its Final Order.[17] The Office of General Counsel reviews all Preliminary Determinations and Proposed Final Determinations for legal sufficiency before their issuance.[18]

By many metrics, the Program has been a success since it began operating in 2011. The awards that the Commission paid through the end of calendar year 2025 reflect that whistleblower-provided information has contributed to successful enforcement actions resulting in over $3.3 billion in financial remedies;[19] ill-gotten gains earmarked for return to victims account for approximately $160 million (excluding added interest) of this amount. In fiscal year ("FY") 2024, about 42 percent of the Commission's enforcement actions involved whistleblowers. Between 2014, when the Commission issued its first whistleblower award, and the end of calendar year 2025, the Commission granted 73 awards in 56 matters, totaling over $395 million in award payments. As a Director of Enforcement at the time noted, "[t]imely reports to the CFTC are critical for enforcement [as they] help prevent further harm to customers or market participants and hold wrongdoers accountable to the fullest extent possible."[20]

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[16] *Id.* 165.7(j).

[17] *Id.* 165.7(i), (j).

[18] *Id.* 165.7(k).

[19] This figure reflects awards in Commission enforcement actions and Related Actions as defined in 7 U.S.C. 26(a)(5) and 17 CFR 165.2(m).

[20] Press Release, CFTC, CFTC Awards $4M to Two Whistleblowers (Nov. 12, 2024), available at *https://www.cftc.gov/PressRoom/PressReleases/9006-24*.

Notwithstanding the Program's success, however, an important area for improvement exists—the time required to process and award meritorious claims. Since 2012, the average time from the deadline for prospective whistleblowers to submit award claims to the date of the Commission's Final Order granting the award to meritorious claimants is over two-and-one-half years. The length of the lag between claim submission and award is a concern for Program participants—as well as the Commission and legislators—and could dampen incentives for potential whistleblower to participate in the Program in the future.[21] The proposed amendment is intended to address the whistleblower claim processing delays as well as improve process transparency—improvements designed to safeguard and enhance the Program's continued success by reinforcing whistleblowers' incentives to participate in it.

Currently, precise award percentages are determined through a process that is indifferent to the size of the claim, requiring essentially the same degree of Commission staff time and attention to determine award percentage levels with exactitude for both large and smaller awards. Under part 165 currently, Commission staff needs to analyze the factors that may increase the amount of a whistleblower's award regardless of the size of an award.[22] At times, this analysis and review by WBO and other Commission staff triggers discussions about what award the Commission should grant in the 10-30 percent statutory range. These discussions can occur even when the maximum 30 percent award yields a relatively small payout.[23] And when they occur, they can delay whistleblower award payments and consume resources that otherwise could be devoted to resolving

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[21] *See, e.g.,* Testimony of Michael Selig, Chairman of the CFTC, before House Agriculture Committee (April 14, 2026) (remarks of Congressman Zach Nunn) available at, *https://www.pbs.org/newshour/politics/watch-live-cftc-chairman-testifies-before-house-panel-amid-scrutiny-of-prediction-markets*, 3:16:28 mark); Whistleblower Program Improvements Act, S. 2529, 116th Cong. sec. 3(a)(1)(3)(A) (2019-2020) (specifying a general one-year deadline for CFTC whistleblower claim dispositions).

[22] *See* 17 CFR 165.9(b).

[23] *See* 7 U.S.C. 26(c)(1)(A), 17 CFR 165.9.

larger, more complex matters. Additionally, when a Preliminary Determination is issued that recommends an award of less than the maximum 30 percent in a matter with a single claimant, that claimant may contest it in an effort to receive a higher award percentage—an option that may appear attractive depending on the award amount perceived to be at stake.[24] Addressing such contestations, or reconsideration requests, consumes additional Commission time and resources.

The Commission expects the proposed rule changes to shorten the time needed to resolve and pay on small meritorious whistleblower claims by limiting the scope of analysis over (and the need for extended intra-agency discussion about) the appropriate award percentage, as well as reconsideration requests. The resource savings for matters with small awards would, in turn, free Commission staff to concentrate more on larger awards, facilitating the Commission's ability to assess and pay larger awards more quickly. And, as explained below, the Commission expects a shortened award timeframe and more transparent, predictable process to reinforce whistleblowers' incentives to participate in the Program as well.[25]

II. Overview of the Proposed Amendments

The Commission proposes to amend part 165 of its regulations to increase the Program's overall efficiency, transparency, and predictability, thereby helping to preserve—and potentially enhance—whistleblowers' incentives to report unlawful conduct. Specifically, it proposes to add new rule 165.9(d) as described below and to redesignate existing § 165.9(d) as § 165.9(e). Proposed new rule 165.9(d) is modeled on an existing provision in the SEC's whistleblower program that includes a presumption for

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[24] *See* 17 CFR 165.7(g)(2).

[25] To the extent delay may soften whistleblower incentives to come forward, reducing it should help counter this tendency.

awarding meritorious whistleblower claims not exceeding $5 million at the 30-percent level, the statutory maximum.

Proposed new rule 165.9(d) provides that, subject to Commission discretion and its analysis of relevant regulatory factors, where the statutory maximum award of 30 percent of the monetary sanctions collected would total $5 million or less for all actions involving the whistleblower's original information, the award amount will be set conditionally at the 30 percent statutory maximum ("30 Percent Presumption").[26] The 30 Percent Presumption may be overridden if the claimant's conduct fails to meet any of three conditions set out in proposed new rule 165.9(d)(1)(ii)-(iv). Specifically, it would not apply if: (1) the claimant was culpable or involved in the violation, or interfered with internal compliance or reporting system or the claim triggers rule 165.17 (concerning awards to whistleblowers who engage in culpable conduct); (2) the claimant engaged in unreasonable reporting delay under rule 165.9(c)(1);[27] or, (3) if in the Commission's discretion 30 percent would be either inappropriate because the claimant's assistance was limited or inconsistent with public interests. If there are multiple claimants who qualify for an award within the $5 million monetary-damages threshold and at least one's application meets the conditions of proposed new rule 165.9(d)(1)(ii)-(iv), the aggregate award will be set at the maximum 30 percent level. If not every meritorious claimant satisfies the conditions in proposed new rule 165.9(d)(1)(ii) and (iii), the Commission

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[26] *See* proposed new § 165.9(d)(1), (2). A $5 million threshold for a 30% award corresponds to approximately $16.66 million in collected monetary sanctions. Collections would fall under $16.66 million if the total monetary sanctions imposed are less than this amount. Even if monetary sanctions exceed this amount, Division of Enforcement staff who worked on an action may have learned enough about the assets of the responsible parties to reasonably anticipate that less than $16.66 million will ever be collected. If so, this fact would appear in the record supporting the Proposed Final Determination and enable the Commission to "determine[] that it does not reasonably anticipate that future collections would cause the statutory maximum award to be paid to any whistleblower to exceed $5 million in the aggregate" under proposed new rule 165.9(d)(1)(i).

[27] This exclusion may be waived at the Commission's discretion based upon the claimant demonstrating that, in the circumstances, doing so is consistent with the public interest and the Program's objectives.

will allocate more of the 30 percent award to the meritorious claimant(s) who do(es) satisfy them.

The Commission views this proposed amendment as warranted and appropriate for several reasons.

First, it expects that proposed new rule 165.9(d) will materially reduce the time for award determinations by improving the Commission staff's efficiency in processing award applications, which in turn should enable the Commission to process more claims than previously over the same time period. The reasons for the Commission's expectation are described below.

The SEC's experience under its similar rule. The SEC's experience after it promulgated its rule 21F-6(c) to incorporate a similar 30 percent presumption is consistent with the Commission's expectation for improved efficiency and shortened award times.[28] A year after promulgating rule 21F-6(c), which codifies a similar presumption to that in proposed new rule 165.9(d), the SEC reported that the "30% presumption has had a significant impact on [its] whistleblower program," "allowed for increased consistency among awards and greater transparency to claimants and their counsel," and "assisted ... in expediting the processing of award claims."[29]

A significant portion of meritorious whistleblower claimants are likely to fall within the 30 Percent Presumption. As discussed in more detail in the Cost-Benefit Consideration, below,[30] the Commission's historical experience suggests that the 30 Percent Presumption is likely to apply to a sizeable portion (*i.e.,* around 82 percent) of meritorious whistleblower claims. For those 30-Percent-Presumption claims, the staff-

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[28] Whistleblower Program Rules, 85 FR 70898, 70911 - 70912 (Nov. 5, 2020) (promulgating, among other rules, SEC rule 21F-6(c), codified at 17 CFR 240.21F-6).

[29] Securities and Exchange Commission, 2021 Annual Report to Congress Whistleblower Program, 18 (2021), available at *https://www.sec.gov/reports?aId=edit-tid&year=All&field_article_sub_type_secart_value=Reports+and+Publications-AnnualReports&tid=59*.

[30] Section IV.C., *infra.*

intensive, frequently time-consuming process of arriving at the precise percentage award level within the statutorily prescribed 20-percentage-point range should be truncated because, as described further below, the scope of necessary award-determination analysis and policy discussion will be narrowed.

Narrowed award-determination analysis and policy discussion for a significant portion of meritorious whistleblower claims. Unlike currently, the only rule 165.9(b) factor Commission staff will need to consider for award determinations in claims within proposed new rule 165.9(d)'s $5 million threshold is whether the whistleblower's assistance was more than "limited."[31] The staff will not need to more finely assess the whistleblower's degree of assistance.[32] Nor will staff need to make recommendations relating to the significance of the whistleblower's information, the Commission's law enforcement interest, or the whistleblower's participation in internal compliance systems.[33] As a result, WBO staff will spend less time analyzing reasons for increasing the whistleblower's award and engaging in policy discussions over the appropriate amount of a whistleblower award within the statutory range of 10 to 30 percent; the Office of General Counsel's legal sufficiency review also will be simplified.[34]

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[31] Proposed new rule 165.9(d)(1)(iii).

[32] *See* 17 CFR 165.9(b)(2).

[33] *See* 17 CFR 165.9(b)(1), (3), (4).

[34] One reason for part 165 policy discussions over exact award percentages is to better assure—as a matter of fairness and to avoid resource-consuming Preliminary Determination contests—that awards are finely honed to an exact percentage point consistent with all prior awards. Because each matter has unique underlying circumstances, staff views may differ over what exact percentage point between 10 and 30 best reflects the desired consistency in a particular case. By designating a 30 percent maximum award for all matters within the $5 million threshold unless the 30 Percent Presumption is overcome, proposed new rule 165.9(d) would limit the scope for policy discussions about award levels—not only for matters of $5 million or less that would fall within the presumption, but for larger matters as well. For, with respect to matters above the $5 million threshold, there is likely to be a narrowed basis (assuming, as the Commission expects, that the 30 Percent Presumption will encompass a significant portion of meritorious whistleblower claims) for claimants contesting awards below 30 percent to argue that a sub-30 percentage level is inconsistent with how staff or the Commission assessed and applied the rule 165.9(b) and (c) factors in matters receiving higher award. Stated another way, because operation of the 30 Percent Presumption is likely to apply to a significant portion of meritorious whistleblower claims that the Commission awards, the portion of 30 percent awards that are not a product of the 30 Percent Presumption—*i.e.,* those that claimants contesting awards below 30 percent presumably would need rely upon for comparison purposes—is likely to be significantly smaller as well.

A reduced portion of meritorious whistleblowers will have reason to contest the Preliminary Determination award percentage and request reconsideration. Application of the 30 Percent Presumption to the portion of meritorious claims entitled to it should largely eliminate the impetus for those claimants to contest the Preliminary Determination award percentage and request reconsideration since the award will already be set at the statutory cap.[35] Any reconsideration request requires additional staff time and resources to consider the issues and grounds advanced in the claimant's response (along with any supporting documentation the claimant provided),[36] analysis of all the rule 165.9(b) positive factors, and invites policy discussions about the appropriate award percentage. Avoiding the potential for them in the portion of claims benefiting from the 30 Percent Presumption should speed award times in that (a) claimants that are direct beneficiaries of the presumption can be awarded without additional time and/or resource expenditure and (b) Commission staff resources that otherwise would be needed to handle the avoided reconsiderations will be freed to more expeditiously process awards in other matters.

Streamlining the award process for 30-Percent-Presumption claimants will free resources to process and issue awards in larger matters in a shortened timeframe. By reducing the staff time and resources to process and issue awards in the significant portion of meritorious claims that the Commission expects to qualify for the 30 Percent Presumption, more resources can be devoted to other whistleblower matters. This includes assessing and awarding claims in larger matters. With the benefit of more

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[35] Analysis of the distribution of past awards indicates that, had proposed new rule 165.9(d) been in effect, approximately 30 percent of the matters with awards of $5 million or less would likely have resulted in higher award payments. Assuming this 30 percent of the award population would have qualified for operation of the 30 Percent Presumption, they would have had no reason to contest the award; in actuality, a portion of them did.

[36] *See* 17 CFR 165.7(i).

focused staff attention, the Commission expects accelerated processing of these other matters as well.

The Commission's second reason for considering proposed new 165.9(d) warranted and appropriate is that it anticipates that the amendment will help guard against erosion of whistleblowers' incentives to report violations to the Commission. As discussed in the Cost-Benefit Consideration section and reflecting the time value of money, extended delays in granting awards following a whistleblower's claim submission diminish the overall value of the award.[37] This reduction may adversely affect the incentive for individuals to report illegal activity. Consequently, significant delays may lead prospective whistleblowers to determine that the reduced valuation resulting from longer wait times does not justify the associated risks of disclosure. To the extent that the 30 Percent Presumption reduces award application processing times as the Commission expects, potential whistleblowers will be more likely to find it worth the time and effort to report a violation and apply for an award.

Third, by designing proposed new rule 165.9(d) to enhance Program transparency, and predictability about the likely percentage applicable to claims for matters within the $5 million award threshold, the Commission seeks to enhance the incentives for whistleblowers to report violations to the Commission. The factors considered in determining award amounts are publicly available on the Commission's whistleblower website, making them easily accessible to potential whistleblowers and their counsel.[38] With visibility to understand upfront that the 30 Percent Presumption will

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[37] *See* Section IV.C., *infra.*

[38] *See* Commodity Futures Trading Commission Whistleblower Program, Preliminary Decisions, *https://www.whistleblower.gov/overview/preliminarydeterminations* (FAQs: "What factors does the CFTC consider in determining the amount of the award"). *See also* 7 U.S.C. 26(d) (delineating whistleblowers' right to be represented by counsel). Because attorneys—who may submit tips and other information to the Program for their anonymous clients (*see id.* 26(d)(2))—frequently represent whistleblowers on a contingency basis, the Program's process and award-size potential affects attorneys' incentives as well as whistleblowers'.

apply to a meritorious application for an award at or below the $5 million cap—whistleblowers have reason to view the Program as more predictable and less burdensome. This, in turn, may increase their willingness to participate. Analysis of the distribution of past awards further supports proposed new rule 165.9(d)'s potential to encourage whistleblower participation. That analysis indicates that, had proposed new rule 165.9(d) been in effect, approximately 30 percent of the matters with awards of $5 million or less would likely have resulted in higher award payments, while in some of the other matters that yielded 30 percent awards, the 30 Percent Presumption would have reduced the amount of review by Commission staff needed to arrive at those awards.

Fourth, proposed new rule 165.9(d) is purposefully tailored to improve Program efficiency, transparency, and predictability without sacrificing Program integrity or public interests. This tailoring is achieved in two ways: (1) conditioning operation of the 30 Percent Presumption on satisfaction of the specific safeguarding criteria articulated in paragraphs (d)(1)(ii)-(iii) and (2) the Commission's explicit retained discretion in paragraphs (d)(1)(iii) and (iv). With respect to the first, the Commission considers it inappropriate to extend the benefit of the presumption to claimants who had any culpability or involvement in the violation, who interfered to a degree with internal compliance or reporting systems, or (absent justifying case-specific circumstances) delayed reporting. Moreover, the delayed reporting condition is designed to spur prompt reporting. With respect to the second, the Commission's retained discretion is intended in paragraph (d)(1)(iv)(A) to incentivize strong and sustained whistleblower assistance in the Covered Action or Related Action and in paragraph (d)(1)(iv)(B) to provide an overarching safeguard against the 30 Percent Presumption unintentionally operating to undermine the public interest and/or Program integrity.[39]

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[39] The Commission equates the meaning of the term "public interest" in paragraphs (d)(1)(iii)'s and (iv)'s to the considerations delineated in CEA section 15(a)(2), 7 U.S.C. 19(a)(2)—*i.e.*, protection of market

Finally, proposed new rule 165.9(d)—consistent with the spirit of the Memorandum of Understanding between the CFTC and SEC to guide inter-agency coordination and collaboration[40]—would better align the CFTC's and the SEC's respective whistleblower programs. As noted above, SEC rule 21F-6(c) currently articulates a conditional 30 percent presumption mechanism for matters where collected monetary sanctions are $5 million or less and was the model for proposed new rule 165.9(d).[41] Because it is not unusual for affiliated market participants or entities to be subject to regulation or oversight by the CFTC as well as the SEC (and not inconceivable that financial-sector illegal conduct could be sufficiently broad to implicate the jurisdiction of both agencies), the Commission views consistency between the two whistleblower programs' as appropriate.[42] By modeling proposed new rule 165.9(d) on the SEC's corresponding provision, the Commission intends to guard against potential whistleblowers foregoing participation in the Program because they perceive it as less worthwhile compared to the SEC's whistleblower program.

The Commission also considers the proposed part 165 amendment preferable on cost-benefit grounds to the alternatives it assessed. Namely, these alternatives were to: (1) hire more WBO staff to improve the processing rate, (2) apply the 30 Percent Presumption in matters where the award at the 30 percent maximum would be $2 million or less, or (3) apply the 30 Percent Presumption in matters where the award at the 30

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participants and the public; efficiency, competitiveness, and financial integrity of markets; price discovery; sound risk management practices; and other public interest considerations.

[40] Memorandum of Understanding between the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission Regarding Harmonization in Areas of Common Regulatory Interest (March 11, 2026).

[41] *Cf.* Whistleblower Incentives and Protections, 91 FR 16328, 16339 (April 1, 2026) (Department of the Treasury, Financial Crimes Enforcement Network NPRM) (proposing that 30 percent presumption apply when 30 percent of aggregate monetary sanctions are $15 million or less).

[42] This is particularly true since members of the legal bar that represent whistleblowers, many of whom are knowledgeable about both agencies' whistleblower programs, may be less likely to seek potential whistleblower clients for, or represent whistleblowers in, the CFTC's Program if they view it as less desirable than the SEC's.

percent maximum would be $15 million or less. Briefly, the Commission considers the first option—*i.e.*, hiring more WBO staff—less desirable relative to the option of the WBO operating more efficiently. With respect to the options of adjusting the award threshold downward or upward, the Commission believes, based on its assessment of past award determinations, that a level of $5 million or less will be effective in serving the Program's needs while better harmonizing the Commission's regulations with the SEC's. Section IV.C. ("Consideration of Costs and Benefits"), below, expands on the Commission's cost-benefit rationale for proposed new rule 165.9(d).

The Commission is also making technical corrections to its rules to update references in part 165 to reflect the WBO's move in 2025 from the Division of Enforcement to the Office of the General Counsel in light of the WBO's adjudicatory functions.[43] As a result of the WBO's transfer, several references to the office's placement within the Commission's operating structure in part 165 have become outdated. Accordingly, the Commission is removing several references to the Division of Enforcement and revising part 165 to reflect the office's placement within the Office of the General Counsel.

III. Request for Comment

The Commission generally requests comment on all aspects of the proposed amendments and its analysis of them, including issues identified and discussed in the "Related Matters" sections, IV.A.-E., below.[44]

IV. Related Matters

A. Regulatory Flexibility Analysis

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[43] Keynote Address of Acting Chairman Caroline D. Pham, ISDA Annual General Meeting (May 15, 2025).

[44] Section IV.C. ("Consideration of Costs and Benefits"), incorporates additional specific requests for comment.

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–612, requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact. RFA section 603(a), 5 U.S.C. 603(a), requires the Commission to undertake an initial regulatory flexibility analysis of a proposed rule on small entities unless the Chairman certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

Only individuals are eligible for participation in the Commission's whistleblower program. The proposed amendments would apply only to an individual, or individuals acting jointly, who provide information relating to the violation of the CEA or Commission regulations. By definition, companies and other entities cannot be whistleblowers.[45] Consequently, the persons that would be subject to the proposed rule amendments are not "small entities" under the RFA.

Accordingly, the Chairman, on behalf of the Commission, hereby certifies under 5 U.S.C. 605(b) that the proposed rules would not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501–3521, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The Commission believes that the proposed amendments, if adopted, would not impose new recordkeeping or information collection requirements that require approval by the Office of Management and Budget under the PRA.

Accordingly, the requirements of the PRA do not apply to this rulemaking.

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[45] 7 U.S.C. 26(1)(7).

C. Cost-Benefit Considerations

1. Introduction

CEA section 15(a) requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.[46] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five factors: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The discussion below—framed to conform to Executive Order 12866's directives for assessing costs and benefits before promulgating a regulation—addresses the Commission's statutory CEA section 15(a) obligation.[47]

As described above, the Commission is proposing to amend part 165 by adding proposed new rule 165.9(d) to improve the efficiency, transparency, and predictability of processing whistleblower award applications and align the Commission's approach with SEC rule 21F-6(c).[48] Under the current framework, every meritorious claim, regardless of award size, undergoes an individualized, factor-by-factor percentage review. This approach, designed to ensure tailored and fair outcomes, has served the Program across matters of varying complexity. For smaller-dollar matters, however, applying the same amount of analysis can be disproportionately resource-intensive and extend timelines for

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[46] 7 U.S.C. 19(a).

[47] Executive Order 12866 (as supplemented and amended) directs executive agencies to regulate in a manner consistent with the philosophy and principles articulated in it. Executive Order 12866, 58 FR 51735 (Oct. 4, 1993) ("Regulatory Planning and Review") (as amended by Executive Order 14215, 90 FR 10447 (Feb. 24, 2025) ("Ensuring Accountability for All Agencies") ("E.O. 14215") (sec. 3(a) of E.O. 14215 amends the definition of "agency" in E.O. 12866 sec. 3(b) to bring independent regulatory agencies within E.O. 12866's scope)); Executive Order 13563, 76 FR 3821 (Jan. 21, 2011) ("Improving Regulation and Regulatory Review") ("E.O. 13563") (supplementing and reaffirming E.O. 12866).

[48] The proposed amendments would also redesignate current § 165.9(d) as new § 165.9(e) and make technical corrections in part 165 to update regulatory references to reflect the WBO's 2025 move, consistent with its adjudicatory functions, from the Division of Enforcement to the Office of the General Counsel. These amendments are ministerial and not expected to generate costs or benefits.

issuing final awards, which, in turn, potentially weakens incentives for individuals to report violations. Reduced whistleblowing activity, should it occur, could impair the Commission's ability to enforce the CEA and its regulations effectively, diminish deterrence, and ultimately hinder the Commission's broader mission of protecting market participants and the public; supporting market efficiency, competitiveness and market integrity; and ensuring sound price discovery and risk management. For reasons discussed below, the Commission sees proposed new rule 165.9(d) as the best option from a cost-benefit standpoint.

2. Baseline for Assessment

The Commission assesses the potential costs and benefits of the amendments under consideration relative to the baseline of current conditions. Specifically, these are the statutory and regulatory conditions specified in existing CEA section 23 and part 165 of the Commission's regulations and reflected in summary statistics that describe the annual distribution of tips, applications and awards paid by the Program under the existing rules;[49] as well as present operating conditions that affect whistleblower award timelines.[50]

Section 23 of the CEA directs the Commission to pay awards, in an amount ranging from 10 to 30 percent of collected monetary sanctions, to eligible whistleblowers who voluntarily provide original information leading to a successful Covered Action or Related Action. The Commission's implementing regulations reside in part 165, including rule 165.9, which sets out the criteria and procedures for determining award amounts. Under the current rules, claims of all sizes are subject to the same individualized, multi-factor evaluation based on the regulatory criteria addressing

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[49] These summary statistics are available in Tables 1-3, *infra*.

[50] Under the current framework, rule 165.9 requires an individualized, factor-by-factor review of award-percentage considerations for claims of any size, contributing to processing queues (backlog) in lower-dollar matters.

significance of information, degree of assistance provided, programmatic considerations, and negative factors such as culpability, unreasonable delay, or interference with internal compliance systems. In short, it is a regulatory structure that includes detailed review procedures uncalibrated to the economic impact of individual cases. Historically, the average interval from claim-submission deadline to final award order has been over two-and-one-half years.[51]

Tables 1-3, below, show Program baseline performance metrics. They are labeled as follows to provide common references for the metrics presented: "awards" refers to award payments issued to individual awardees; "orders granting awards" refers to Commission actions issuing formal decisions that confer awards in specific enforcement matters where a single order may cover multiple awardees; "percent of total award dollars" refers to percentage calculated against aggregate dollars paid in whistleblower awards during the stated period. Table 1 presents the distribution of the number of whistleblower tips (received via Form TCR[52]), award applications (received via Form WB-APP[53]), awards, and orders granting awards from fiscal year 2012 through the first quarter of fiscal year 2026.[54] Table 2 presents the distribution of whistleblower awards received by each awardee across award size buckets during the same time period. Table 3 presents the distribution of orders granting whistleblower awards (a given order might have multiple awardees) across award size buckets during the same period.

Table 1. Distribution of the Number of Whistleblower Tips, Award Applications, Awards, and Orders Granting Awards FY 2012-Q1, FY 2026 (ending December 31, 2025)

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[51] Multi-claimant matters and those in which Preliminary Determinations are contested are likely to exceed this average.

[52] *See* 17 CFR 165.3(a) (prescribing that whistleblowers submit original information via a Form TCR to be eligible for award); *id.* part 165 App. B (Form TCR and Form WP-APP).

[53] *See id.* 165.7(b) (prescribing that whistleblowers submit a Form WB-APP to file a claim to receive a whistleblower award); *id.* part 165 App. B (Form TCR and Form WP-APP).

[54] That is, through December 3, 2025.

FY	Forms TCR	Forms WB-APP	Awards	Orders Granting Awards
2012	58	16	0	0
2013	138	12	0	0
2014	227	38	1	1
2015	232	47	1	1
2016	273	59	2	2
2017	465	74	0	0
2018	760	120	5	5
2019	455	117	5	5
2020	1,030	140	16	11
2021	961	140	6	6
2022	1,506	152	10	5
2023	1,530	301	7	5
2024	1,744	317	15	12
2025	1,697	203	3	2
2026 Q1	360	18	2	1

Table 2. Distribution of Whistleblower Awards Received by Each Awardee across Award Size Buckets(through December 31, 2025)

Range	Number of Awards	% of total award count	% of total award dollars*
$2M and below	52	71%	4%
$2M+ to $5M	8	11%	6%
$5M+ to $10M	6	8%	12%
$10M+ to $15M	3	4%	10%
$15M+ to $25M	2	3%	11%
$25M and above	2	3%	56%
Total	73	100%	100%

* Figures do not sum to 100% due to rounding.

Table 3. Distribution of Orders Granting Whistleblower Awards across Award Size Buckets (through December 31, 2025)

Range	Number of orders	% of total order count*	% of total award dollars*
$2M and below	34	61%	3%
$2M+ to $5M	9	16%	7%
$5M+ to $10M	6	11%	12%
$10M+ to $15M	3	5%	10%
$15M+ to $25M	2	4%	11%
$25M and above	2	4%	56%
Total	56	100%	100%

* Figures do not sum to 100% due to rounding.

Based on awards the Commission issued through calendar year 2025, whistleblower submissions have contributed to legal judgments calling for more than $3.3 billion in financial remedies and the return of approximately $160 million to harmed customers. From 2014, the year of the Commission's first whistleblower award, through calendar year 2025, the Commission granted 73 awards across 56 orders, amounting to more than $395 million. In fiscal year 2024, whistleblowers were involved in approximately 42 percent of the Commission's enforcement actions.[55] These figures demonstrate that the program is firmly established, widely used, and integral to the Commission's enforcement objectives.

The distribution of the whistleblower awards across award size buckets further shows that the distribution of awards is highly skewed towards lower dollar amounts, with the majority of awards falling below $5 million. Approximately 71 percent of awards were at or under $2 million, collectively representing about four percent of total award dollars paid to whistleblowers. When measured by the Commission's formal orders granting awards, about 61 percent of these orders were for $2 million or less, making up roughly three percent of total payouts. Approximately 82 percent of awards were at or under $5 million and collectively represented about 10 percent of total award dollars paid to whistleblowers. Similarly, 77 percent of orders granting awards were for $5 million or less, accounting for about 10 percent of total payouts.[56] Conversely, a small number of large awards, primarily those exceeding $15 million, account for the largest share of total award payments.

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[55] *See* Commodity Futures Trading Commission Whistleblower Program, Customer Education Initiatives 2024 Annual Report, 8 (Oct. 2024), available at *https://www.whistleblower.gov/sites/whistleblower/files/2024-11/FY24%20Customer%20Protection%20Fund%20Annual%20Report%20to%20Congress.pdf*.

[56] The Commission has continued to resolve Covered Actions for which the imposed monetary sanctions are small enough that a 30 percent award would not exceed $5 million.

In fiscal year 2025, the Program received 203 award applications and 1,697 tips. As part 165 requires a fully individualized assessment for every claim and award amount, including those with low-value sanctions, the staff review process is labor-intensive and time-consuming, resulting in extended wait-times for award applicants. The longer the interval between the claim deadline and claim-award resolution, the greater the reduction of an expected award's present value, which may diminish the economic incentives for individuals to report potential violations. Challenges to Preliminary Determinations, particularly in small cases, can impose additional wait-times for award applicants. Significant amounts of staff time devoted to reviewing challenges in low-value cases, divert efforts that otherwise would be expended towards processing other claims, potentially ones with greater impact or significance. As a result, resources spent on smaller matters may delay the resolution of other cases, ultimately extending overall award processing times and reducing the Program's effectiveness.[57]

The absence of any streamlined mechanism for small claims contrasts with the SEC's whistleblower program, which, as amended in 2020, includes a presumption for awarding qualifying claimants in matters involving total awards of $5 million or less at the statutory 30 percent maximum.[58] Given the potential overlap between commodities and securities enforcement matters, divergence between the two federal whistleblower programs has the potential to create uncertainty and inconsistent incentives that could dissuade potential whistleblowers.

3. Proposed New Rule 165.9(d) and Other Alternatives Considered

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[57] *See* 17 CFR 165.7(g)(2) (process for claimants to contest preliminary award); *id.* 165.13(a) (claimants' right to appeal final Commission order). Unlike the amount of an SEC whistleblower award, the amount of a CFTC whistleblower award is subject to judicial challenge. *Cf.* 15 U.S.C. 78u-6(f) *with* 7 U.S.C. 26(f)(2).

[58] Whistleblower Program Rules, 85 FR 70898, 70911 - 70912 (Nov. 5, 2020) (promulgating, among other rules, SEC rule 21F-6(c), codified at 17 CFR 240.21F-6).

The Commission is proposing to amend rule 165.9 by adding proposed new 165.9(d) to establish a presumption that the Commission will set the award at 30 percent, the statutory maximum, in matters where the total awards in the Covered Action and any Related Actions do not exceed $5 million *(*the 30 Percent Presumption) unless certain negative factors are present. That is, subject to meeting the conditions set out in proposed new rule 165.9(d)(1)(ii)-(iii) and the Commission's continued discretion to override the presumption for limited assistance or public interest/Program objective concerns (*see* proposed new rule 165.9(d)(1)(iv)), the award amount will be set at the 30 percent statutory maximum. Under the proposed rule, the presumption would be unavailable if the claimant engaged in culpable conduct, unreasonably delayed reporting, or interfered with an entity's internal compliance system, or where the Commission deems application of the presumption inappropriate due to limited assistance or conflicts with the public interest or the objectives of the whistleblower program.

In addition, in cases where multiple whistleblowers qualify for an award in a matter at or below the $5 million threshold, the Commission would set the total, aggregate award at 30 percent and would allocate the award among eligible claimants, taking into account the potential that not all awardees may satisfy the conditions for the presumption in proposed new rule 165.9(d)(1)(ii)–(iii). The Commission believes the proposed amendments will increase transparency, predictability, and efficiency in the adjudication of whistleblower claims and more closely align the CFTC's whistleblower rules with the SEC's approach.

In determining to propose new rule 165.9(d), the Commission also assessed its costs and benefits relative to three alternatives: (1) hiring more WBO staff to address the existing backlog and improve processing times, (2) applying the 30 Percent Presumption in matters where the resulting award based on collected monetary sanctions would be $2 million or less, or (3) applying the 30 Percent Presumption in matters where such an

award would total up to $15 million. The assessment of various thresholds relies on historical Program data and reflects observed patterns in claim volume, award size distribution, and administrative resource demands.[59] For 2014 through calendar year 2025, approximately 71 percent of awards fall in the $2 million-and-below category, but those awards account for only about 4 percent of total award dollars. Expanding the threshold to $5 million increases the affected population substantially—to 82 percent of awards—while still implicating only about 10 percent of total award dollars. By contrast, extending the threshold to $15 million captures about 94 percent of awards, but increases the associated award dollars affected to approximately 32 percent. Based on this comparison, the Commission preliminarily believes that applying the 30 Percent Presumption to matters with awards of up to $5 million would capture a large proportion of whistleblowers while helping ensure that raising the threshold does not significantly increase the total amount of awards distributed, thereby balancing administrative efficiency with the Program's incentive objectives. The Commission recognizes, however, that significant structural changes continue to occur in the financial markets within its jurisdiction, and that the number, nature, and complexity of future enforcement matters—and related whistleblower claims—cannot be predicted with precision. As a result, any estimate of the net effects of the proposed amendment is subject to uncertainty and cannot be expressed with a narrow confidence interval. Recognizing this limitation, the Commission preliminarily believes, based on the information presently available and subject to consideration of public comments, that proposed new rule 165.9(d) represents the most effective and appropriate option from a cost-benefit standpoint.

4. Assessment of Proposed New Rule 165.9(d)'s Benefits

[59] *See* Tables 2 and 3, *supra*.

Relative to the baseline and subject to consideration of comments, the Commission preliminarily believes that proposed new rule 165.9(d) would improve the efficiency of whistleblower-award processing; reduce the potential for some administrative and judicial contests; enhance the predictability and procedural clarity of the award process for prospective whistleblowers; strengthen incentives for timely and high-quality reporting; support the effectiveness of the Program and the Commission's enforcement mission; conserve CPF resources; and adopt an approach consistent with the SEC's rule 21F-6(c).[60]

Through operation of the 30 Percent Presumption, proposed new rule 165.9(d) is expected to reduce the time and resources required for the WBO and the Commission to engage in the full factor-by-factor analysis specified in rule 165.9(b) and (c) for smaller-dollar matters. Specifically, when the presumption applies, staff would not conduct granular analysis for three award-percentage factors—*i.e.,* (1) the significance of the whistleblower's information; (2) the degree of assistance provided by the whistleblower (beyond confirming that assistance was not limited); (3) the Commission's interest in deterring violations; and (4) participation in internal compliance systems.[61] Assessing all these factors can be labor intensive. For example, evaluating "degree of assistance" may entail reviewing hundreds of pages of investigative records and correspondence, while determining "significance" or "deterrence" involves cross-referencing enforcement outcomes and market impacts. Based on historical data, streamlining the award determination process for matters under the $5 million threshold should eliminate the need for individualized analysis on these points for many awards, thereby substantially reducing administrative burden. Accordingly, the Commission preliminarily believes

[60] The Commission is unaware of metrics to monetize these benefits. Accordingly, they are discussed qualitatively and, to the extent possible, quantitatively.

[61] Commission staff would continue to evaluate the negative factors in rule 165.9(c) to determine whether the presumption applies under proposed new rule 165.9(d).

that removing these requirements is likely to result in substantial improvements in award-processing efficiency, including fewer disputes over award percentages when the maximum is awarded by operation of the 30 Percent Presumption.[62] The Commission further notes that the SEC's experience with its analogous provision, SEC rule 21F-6(c), indicates that such a presumption can result in meaningful improvements in award-processing efficiency.[63]

The Commission also preliminarily believes that the benefits of improved processing efficiency are likely to increase over time as the markets within the Commission's jurisdiction continue to evolve. As new products, trading technologies, and market structures emerge, the Commission expects, based on its experience, that the number and complexity of potential enforcement matters will grow as well, expanding the field for potential whistleblower assistance in the process.[64] Accordingly, the Commission preliminarily believes it is reasonable to expect that streamlined review of smaller-dollar claims will become increasingly important for maintaining Program effectiveness.[65]

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[62] A single-claimant award at the 30-percent level eliminates any incentive for that claimant to contest the award percentage in the Preliminary Determination or appeal the Final Determination.

[63] According to the SEC's 2021 annual report to Congress, after implementation of the Whistleblower Rule Amendments, the 30 percent presumption was applied in approximately 89 percent of cases with award amounts not exceeding $5 million, compared to 46 percent prior to the amendments. The report further notes that this presumption has increased consistency, transparency, and expedited the processing of award claims in FY 2021. Securities and Exchange Commission, 2021 Annual Report to Congress Whistleblower Program, 18 (2021), available at *https://www.sec.gov/reports?aId=edit-tid&year=All&field_article_sub_type_secart_value=Reports+and+Publications-AnnualReports&tid=59*.

[64] For example, the Commission has observed significant recent growth in event contracts—*i.e.*, derivative contracts, typically with a binary payoff structure, based on the outcome of an underlying occurrence or event—and the prediction markets that trade them. *See* Prediction Markets, 91 FR 12516, 12517 nn.9-10 and accompanying text (March 16, 2026) (advanced notice of proposed rulemaking). Insider trading in these expanding prediction markets is a particular focus for the Commission's enforcement effort. *See* David I. Miller, CFTC Director of Enforcement, Public Remarks and New York University Law School—CFTC Enforcement Priorities, Insider Trading in the Prediction Markets and Cooperation with the CFTC (March 31, 2026), available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/opamiller1*.

[65] The Commission's analysis is grounded in historical Program data, which, combined with the markets' highly dynamic natures, renders it unable to more precisely quantify the likely magnitude of expected efficiency gains ex ante.

In addition, the Commission expects that proposed new rule165.9(d) will reduce the potential for award-processing delays to discourage future whistleblower reporting. Economic theory and common experience suggest that shorter, more predictable timelines reinforce the incentive to report promptly by increasing the perceived value of prospective awards.[66] By shortening processing timelines, proposed new rule 165.9(d) should mitigate timing-related disincentives and help preserve the Program's ability to attract high-quality information.

The Commission further anticipates that proposed new rule 165.9(d) will improve the predictability and procedural transparency of the award process for prospective whistleblowers. Clearer expectations regarding the likely award percentage and anticipated processing time may encourage timely reporting—particularly before any negative award factors, such as unreasonable delay, could arise. Greater predictability may also enhance prospective whistleblowers' ability to evaluate the present value of potential awards, thereby reinforcing CEA section 23's incentive structure.[67]

Proposed new rule 165.9(d) is also expected to support the effectiveness of the Program and the Commission's broader deterrence and enforcement mission, for which the Program is a market disciplining mechanism. By introducing efficiencies without requiring additional staffing, the proposed new rule would help conserve CPF resources for expenditure on Program awards.[68] Moreover, by strengthening incentives for individuals to provide timely, high-quality information, proposed new rule 165.9(d) also

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[66] According to the economic theory, the longer the time required to make an award, the lower the present value of the award becomes to the claimant at the time of applying, reflecting the time value of money. As a result, if the delay between application and award becomes too long, a potential whistleblower, based on his or her circumstances, may likely decide that the cost of becoming a whistleblower would outweigh the present value of the whistleblower award.

[67] Also, some meritorious whistleblowers may receive higher awards than they would under the status quo. The Commission's analysis of historical award data suggests that, of the 43 matters with $5 million or less in awards, approximately 30 percent would have a received a larger award had proposed new rule 165.9(d) been in effect.

[68] *See* 7 U.S.C. 26(g)(2) (specifying use of fund); n.3, *supra*.

could conserve enforcement resources that would otherwise be required to independently identify and investigate misconduct.

Finally, harmonizing the Commission's approach with SEC rule 21F-6(c) should reduce interagency differences that otherwise may create uncertainty among prospective whistleblowers operating in markets subject to both agencies' jurisdiction. As noted above, one market participant or entity may be subject to CFTC jurisdiction, while its affiliate market participant or entity may be subject to SEC jurisdiction. And, while the CFTC and SEC oversee different aspects of financial-sector activity, it is not impossible that some broad-reach illegal conduct could implicate the jurisdiction of both agencies, meaning that a prospective whistleblower could conceivably have information valuable to both agencies and/or be informed about both agencies' whistleblower programs.[69] Such harmonization is consistent with existing coordination between the two agencies and may help ensure that the CFTC's Program is viewed as offering fair and comparable incentives, thereby encouraging participation and improving the overall functioning of the federal whistleblower framework.

5. Assessment of Proposed New Rule 165.9(d)'s Costs

Based on historical experience and subject to acknowledged uncertainty about future market conditions and enforcement activity, the Commission preliminarily believes that proposed new rule 165.9(d) would not impose additional burdens on whistleblowers seeking to provide tips or apply for awards; incorporates safeguards that mitigate risks to the public interest; and would result in a limited and manageable increase in award payments from the CPF. Using Program data from 2014 through calendar year 2025, the Commission identified 43 matters with awards at or under $5

[69] Further, symmetry with SEC rule 21F-6(c)'s presumption helps guard against the potential that members of the whistleblower bar may be less inclined to represent clients in Program matters. *See* n.42, *supra,* noting that the Program's process and award-size potential affects attorneys' incentives as well as whistleblowers'.

million that, had the 30 Percent Presumption been operative for all 43, could have increased the aggregate award payments from the CPF by as much as $4 million.[70] Four million dollars corresponds to one percent of the approximately $395 million paid in awards since 2014 and less than two percent of the FY 2025 CPF balance, an effect that the Commission preliminarily views as limited and manageable relative to the Program's scale and the CPF's capacity.

Relative to the baseline, the Commission does not anticipate that proposed new rule 165.9(d) would impose material costs on whistleblowers. The proposal does not change the information that whistleblowers must provide to submit a tip or apply for an award, nor does it alter the substantive eligibility requirements under part 165. Accordingly, the Commission expects no incremental burden on potential or existing whistleblowers. Likewise, the proposal introduces no new reporting, recordkeeping, or compliance obligations for the WBO or the Commission, and therefore, is not expected to increase administrative operating costs. Since the proposal reduces, in many cases, the number of positive factors Commission staff need to analyze to determine the award percentage, the Commission preliminarily expects associated processing costs to decline, thereby increasing program efficiency.

Also, the proposed amendment is tailored with conditions and retained Commission discretion to ensure that the 30 Percent Presumption does not result in outcomes contrary to the Commission's interests. The presumption would be unavailable where negative factors are present (including culpability, unreasonable delay, or interference with internal compliance systems) and the Commission would retain the ability to overcome the presumption if applying the maximum percentage would be inappropriate in light of the public interest or the objectives of the whistleblower

[70] As previously noted, a portion of these 43 awards were at levels below 30 percent. *See* n.67, *supra.* The estimated $4 million increase reflects the impact had all 43 awards been at the 30 percent level.

program. These safeguards are intended to avoid unintended costs associated with over-inclusive awards, *i.e.,* awards at the statutory-maximum percentage notwithstanding that the claimant's assistance was limited or duplicative; the presence of a negative factor (culpability, unreasonable delay, or interference with internal compliance systems); inconsistency with program objectives or the public interest; or unduly awarding one claimant relative to another in a multi-claimant award allocation. The unintended costs could be realized, for example, in the form of diminished Program and/or enforcement effectiveness resulting from dulled or distorted whistleblower incentives to report violations swiftly and provide fulsome whistleblower assistance.

With respect to the CPF,[71] the Commission recognizes that proposed new rule 165.9(d) could increase payments for the subset of awards at or under the $5 million threshold compared to awards calculated under existing part 165. Using Program data from 2014 through the end of calendar year 2025, the Commission identified 43 matters with $5 million or less in awards, representing approximately 10 percent of the total award dollars paid over that period. If the 30 Percent Presumption had applied to these 43 matters, the Commission's analysis indicates that total CPF payouts would have increased by less than $4 million during the entire period the Program has been operated[72] (*i.e.*, less than $333,333 on an annualized basis over 12 years). Four million dollars is approximately one percent of the more than $395 million in whistleblower awards issued since 2014 through calendar year 2025 and less than two percent of the CPF balance at the end of FY 2025.[73] Based on this historical analysis, the Commission

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[71] *See* n.3, *supra.*

[72] *See* nn.67 and 70, *supra.*

[73] *See* Commodity Futures Trading Commission Whistleblower Program, Customer Education Initiatives 2025 Annual Report, 3, 21-21 (Feb. 2026) (includes CPF balance sheet showing available balance of $212,679,118 as of September 30, 2025).

does not view the potential increase in CPF withdrawals as threatening the CPF's continued efficacy or its ability to support the Program's statutory functions.[74]

The Commission acknowledges that these estimates rely on the Program's historical experience and that future effects are subject to uncertainty. The derivatives markets overseen by the Commission are experiencing significant structural evolution, including new products, new intermediaries, and changing market dynamics and new trading technologies, introducing uncertainty regarding the number, nature, and size of future enforcement actions and related whistleblower claims. Accordingly, ex ante estimates of the proposal's impact on the CPF cannot be expressed with a narrow confidence interval. Recognizing this limitation, the Commission preliminarily believes, based on currently available data and the proposal's tailored safeguards and retained Commission discretion, that any additional costs associated with proposed new rule 165.9(d) are likely to be limited and manageable.

6. Assessment of Alternatives

In developing proposed new rule 165.9(d), the Commission considered several alternatives and has preliminarily determined that none would achieve the same combination of efficiency, incentive alignment, and programmatic coherence as the proposed approach.

The Commission considered increasing WBO staffing to accelerate processing. While additional staff may modestly improve processing capacity in the near term, this alternative does not result in a substantial increase in the number of cases reviewed compared to the 30-Percent-Presumption option in proposed new rule 165.9(d) nor does it fundamentally address the procedural inefficiencies inherent in the current framework.

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[74] And, as noted previously, the Commission lacks discretion to consider the CPF balance in its determination of award amount. 7 U.S.C. 26(c)(1)(B)(ii); 17 CFR 165.9(d). Further, the Commission lacks discretion to not pay meritorious awards. *See* 7 U.S.C. 26(b)(1) (saying the Commission "shall pay" awards to qualifying whistleblowers).

Furthermore, staffing increases are costlier to implement. For example, the Commission estimates the annual salary burden for hiring one data analyst at the CT-13 grade and two attorney-advisors at the CT-14 grade would be $512,497 per year, not including benefits.[75] Funding additional staffing from the CPF would require, therefore, a greater draw on resources, without a commensurate improvement in award-processing efficiency. Because this option fails to meaningfully address the underlying procedural inefficiency of the current framework and carries ongoing costs to the CPF, the Commission does not regard it as preferable to the proposed amendment.

The Commission also considered a lower presumption threshold of $2 million.[76] Although a $2 million threshold would capture a substantial number of smaller matters, it would forfeit the benefits associated with harmonization with SEC rule 21F-6(c), including reducing inter-agency disparities that could influence whistleblower behavior in cross-jurisdictional contexts. A lower threshold, assessed on the basis of the historical data, would also apply the presumption to fewer matters,[77] thereby diminishing potential gains in timeliness, participation, and administrative efficiency without significantly reducing the cost burden on the CPF.[78] Given these considerations, and recognizing that the CPF impact of a $5 million threshold appears manageable based on historical data, the Commission preliminarily believes that a $2 million threshold would not maximize the programmatic and incentive-based benefits sought through this rulemaking.

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[75] The Commission estimates that increasing the capacity of the Program by hiring one data analyst at the CT-13 salary grade and two attorney-advisors at the CT-14 salary grade would result in an aggregate minimum annual salary burden (excluding benefits) of $512,497. This figure was calculated using the Commission's 2026 pay table and the lowest wage specified in the CT-13 and CT-14 wage bands for employees in Washington, D.C., respectively.

[76] This is an approach initially proposed but ultimately not adopted by the SEC. *See* Whistleblower Program Rules, 85 FR at 70910 - 70911.

[77] That is, 61 percent instead of 77 percent as measured by past whistleblower awards. *See* Table 3, *supra.*

[78] *Id.* (showing only a four percent difference in total award dollars at the $2 million-capped level versus the $5 million-capped level).

The Commission also evaluated whether the 30 Percent Presumption should apply to matters with awards up to $15 million, consistent with an approach proposed by another federal agency in a separate whistleblower rulemaking.[79] The vast majority of historical awards, approximately 94 percent by count, fall within a $15 million threshold, substantially more than within the $5 million threshold under proposed new rule 165.9(d). Based on the historical Program data, such an expansion would scope in roughly one-third of total award dollars (approximately 32%), increasing potential CPF exposure. Additionally, a $15 million threshold would diverge significantly from the SEC's approach, reducing the harmonization benefits in cross-jurisdictional contexts. For these reasons, the Commission preliminarily concludes that a higher threshold would not offer a superior balance of costs and benefits relative to the proposed $5 million level.

7. Consideration of CEA Section 15(a) Factors

Section 15(a)(2) of the CEA requires the Commission to consider the costs and benefits of its actions in light of five factors: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of the futures and swaps markets; (3) price discovery; (4) sound risk management practices; and (5) any other public-interest considerations.[80] The following discussion synthesizes the Commission's consideration of these factors with respect to proposed new rule 165.9(d), based on the Program's historical data and subject to recognized uncertainty regarding the number, nature, and complexity of future whistleblower matters.

The Commission preliminarily believes that proposed new rule 165.9(d) is likely to enhance the protection of market participants and the public by improving incentives for the timely, high-quality reporting of potential violations through more predictable

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[79] *See* Whistleblower Incentives and Protections, 91 FR 16328, 16339 (Financial Crimes Enforcement Network, Department of Treasury; proposed 31 CFR 1010.930(e)(3)(iv)—Certain Awards of $15 Million or Less).

[80] 7 U.S.C. 19(a)(2).

award-percentage outcomes and streamlined processing for matters where the statutory-maximum payout would be $5 million or less. Assessed using historical Program data, approximately 82 percent of awards by count were $5 million or less, indicating that more rapid award-percentage determinations for smaller-dollar cases could improve timeliness across a substantial share of meritorious claims. Under proposed new rule 165.9(d), when the presumption applies, granular assessment of specified factors—*e.g.,* significance; degree of assistance (beyond confirming it was not limited); programmatic interest/deterrence; certain negative factors—will be reduced; at the same time, legal sufficiency checks, eligibility checks, and Commission discretion are retained. Accordingly, the Commission sees this approach as consistent with strengthened detection, deterrence, and remediation without compromising safeguards. More timely and accurate reporting strengthens the Commission's ability to detect, deter, and remediate violations that could harm market participants, distort market integrity, or undermine confidence in derivatives markets. Based on the historical Program data—which shows that, had proposed new rule 165.9(d) been operative since 2014, the aggregate total impact to the CPF would have been less than $4 million[81]—the Commission preliminarily expects proposed new rule 165.9(d)'s impact on the CPF to be limited, manageable, and consistent with the Program's public-interest objectives. In addition, the Commission preliminarily views the alignment between proposed new rule 165.9(d) and the SEC rule 21F-6(c) as likely to reduce cross-jurisdictional uncertainty for prospective whistleblowers operating in markets subject to both agencies, supporting more timely detection and remediation of misconduct. These benefits may increase over time as the evolving structure of CFTC-regulated markets gives rise to new forms of misconduct that whistleblowers are uniquely positioned to identify.

[81] This figure represents approximately one percent of total awards paid since 2014 and less than two percent of the FY 2025 CPF balance.

The Commission preliminarily expects proposed new rule 165.9(d) to promote efficiency by streamlining award-percentage determinations for matters in which the statutory-maximum payout would be $5 million or less, a cohort that accounts for approximately 82 percent of awards by count in historical Program data. Improved Program processing efficiency should feed enforcement program effectiveness, which in turn supports market competitiveness and enhances overall market integrity by increasing the likelihood that harmful conduct will be detected and addressed. The Commission expects similar positive effects for its enforcement program from the alignment of proposed new rule 165.9(d) and SEC rule 21F-6(c). The rules' alignment is likely to reduce cross-jurisdictional uncertainty for prospective whistleblowers—a feature that could potentially improve the flow of whistleblower information to support the Commission's enforcement program effectiveness in furtherance of market competitiveness and financial integrity. Finally, because proposed new rule 165.9(d) does not introduce new reporting, recordkeeping, or compliance obligations, it is not expected to impose new burdens on registrants or other market participants.

Although the proposed new rule 165.9(d) would not directly impact price-formation mechanisms, the Commission preliminarily foresees an indirect contribution to more accurate price discovery. Again, by enhancing the Program's efficiency, transparency and predictability—improvements likely to shorten award timelines and reinforce whistleblower incentives to report—proposed new rule 165.9(d) would operate in service of the Commission's enforcement mission to deter and police misconduct. Misconduct that impairs market transparency, distorts prices, or affects liquidity is more likely to be identified and addressed when whistleblowers have reliable incentives and predictable award outcomes. By enhancing the Commission's ability to detect misconduct earlier and to deploy enforcement resources more efficiently, the

proposed amendment supports the statutory objective of fostering fair, orderly, and transparent markets.

Market participants rely on the integrity of derivatives markets to hedge and manage risk effectively. The Commission preliminarily believes that to the extent proposed new rule 165.9(d), for reasons already identified, strengthens deterrence of misconduct and accelerates the Commission's response to potential violations, it will support sound risk-management practices indirectly by accelerating the identification and remediation of misconduct that can create operational, counterparty, or market-wide risks. By reinforcing the incentive for whistleblowers to promptly report information that may reveal systemic risks, operational failures, or abusive conduct, the proposal enhances the Commission's ability to address emerging threats to market integrity. These benefits may be particularly significant given the ongoing evolution of the markets within the Commission's jurisdiction and the accompanying uncertainty in predicting future patterns of misconduct.

The Commission preliminarily believes the proposed new rule 165.9(d) is likely to advance several additional public-interest considerations. First, the proposed new rule is expected to conserve public resources by improving administrative efficiency with limited additional CPF drawdown. Analysis of historical Program data indicates that total CPF payouts would have increased by less than $4 million during the entire period the Program has operated (*i.e.,* less than $333,333 on an annualized basis over 12 years). Four million dollars is approximately one percent of the more than $395 million in whistleblower awards issued since 2014 and less than two percent of the CPF balance at the end of FY 2025.

Second, the Commission preliminarily believes that aligning the $5 million threshold with SEC rule 21F-6(c) fosters consistency across the two whistleblower programs, which serves the public interest in effective legal enforcement across financial

markets. More specifically, the more harmonized award framework should help ensure that attorneys representing whistleblowers, many of whom submit tips resulting in awards, are motivated and confident in advising and prioritizing CFTC whistleblowers and their cases along with those of SEC whistleblowers. This, in turn, helps prevent valuable whistleblower information from being overlooked or not fully pursued through the appropriate channels whether at the CFTC, SEC or both. Ultimately, consistent legal enforcement across financial markets supports market integrity, market participant protection and public trust in regulatory systems.

8. Request for Comments

The Commission invites public comments on all aspects of its cost-benefit consideration, including but not limited to the correctness of the baseline against which costs and benefit are measured; the correctness of its assessment of proposed new rule 165.9(d)'s costs and benefits; the correctness of its assessment of the costs and benefits of the three identified alternatives; and whether an alternative other than those the Commission is proposing or considered would be more net beneficial and/or better serve the considerations set out in CEA section 15(a)(2) and why. Commenters are also requested to submit data or other information to support any positions they assert as well as to assist the Commission in monetizing, quantifying or qualifying the costs and benefits of proposed new rule 165.9(d) and the alternatives considered.

D. Antitrust Considerations

CEA section 15(b) requires the Commission to consider the public interests protected by the antitrust laws and to take actions involving the least anti-competitive means of achieving the objectives of the CEA. Subject to consideration of comments, the Commission foresees no negative impact accruing to the public interests protected by the antitrust laws from proposed new rule 165.9(d). Accordingly, in its view proposed new

rule 165.9(d) is consistent with the least anti-competitive means of achieving the objectives of the CEA.

E. Executive Orders 12866, 13563, and 14192

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select those regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; and distributive impacts). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, or the President's priorities.

The Office of Management and Budget has determined that this action is not a significant regulatory action as defined in Executive Order 12866, as amended, and therefore it was not subject to Executive Order 12866 review.

This Proposal, if finalized as proposed, is not expected to be an Executive Order 14192 regulatory action, because the proposed rule is not a significant regulatory action under E.O. 12866.

List of Subjects in 17 CFR Part 165

Administrative practice and procedure, Government employees, Investigations, Whistleblowing.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR part 165 as follows:

PART 165—WHISTLEBLOWER RULES

1. The authority citation for part 165 continues to read as follows:

Authority: 7 U.S.C. 2, 5, 9, 12a(5), 13a, 13a-1, 13b, and 26.

§ 165.7 [Amended]

2. In § 165.7(e)(1), remove the words "by the Director of the Division of Enforcement."

3. Amend § 165.9 by:

a. Redesignating paragraph (d) as paragraph (e); and

b. Adding a new paragraph (d) to read as follows:

§ 165.9 Criteria for determining amount of award.

* * * * *

(d) *Additional considerations in connection with certain awards of $5 million or less.* (1) This paragraph (d) applies when the Commission is considering any meritorious award application where:

(i) The statutory maximum award of 30 percent of the monetary sanctions collected in any covered and related action(s), in the aggregate, is $5 million or less, and the Commission determines that it does not reasonably anticipate that future collections would cause the statutory maximum award to be paid to any whistleblower to exceed $5 million in the aggregate;

(ii) None of the negative award factors specified in paragraphs (c)(1) or (c)(3) of this section were found present with respect to the claimant's award application and the award claim does not trigger § 165.17 (concerning awards to whistleblowers who engage in culpable conduct);

(iii) The claimant did not engage in unreasonable reporting delay under paragraph (c)(2) of this section (although the Commission, in its discretion, may in certain limited circumstances determine to waive this criterion if the claimant can demonstrate that doing so based on the facts and circumstances of the matter is consistent with the public interest and the objectives of the whistleblower program); and

(iv) The Commission does not otherwise determine in its discretion that application of the enhancement afforded by this paragraph (d) would be inappropriate because either:

(A) The whistleblower's assistance in the covered action or related action (as assessed under paragraph (b)(2) of this section) was, under the relevant facts and circumstances, limited; or

(B) Providing the enhancement would be inconsistent with the public interest, or the objectives of the whistleblower program.

(2) If the Commission determines that the criteria in paragraph (d)(1) of this section are satisfied, the resulting payout to a claimant for the original information that the claimant provided that led to one or more successful covered or related action(s), collectively, will be the maximum allowed under the statute.

(3) Notwithstanding paragraph (d)(2) of this section, if two or more claimants qualify for an award in connection with any covered action or related action and at least one of those claimants' award applications qualifies under paragraph (d)(1) of this section, the aggregate amount awarded to all meritorious claimants will be the statutory maximum. In allocating that amount among the meritorious claimants, the Commission will consider whether an individual claimant's award application satisfies paragraphs (d)(1)(ii) and (d)(1)(iii) of this section.

§ 165.10 [Amended]

4. In § 165.10(a)(7), remove the words "Division of Enforcement."

5. Revise § 165.15 to read as follows:

§ 165.15 Administering the whistleblower program.

(a) *Specific authorities*—(1) *Payments, deposits, and credits.* The Executive Director is authorized to deposit into or credit collected monetary sanctions to the Fund, and to make payment of awards therefrom, with the concurrence of the General Counsel, or of their respective designees.

(2) *Designation of claims review staff.* The Claims Review Staff referenced in § 165.7 shall be composed of no fewer than three and no more than five staff members from at least two of the Commission's Offices or Divisions (except the Office of the General Counsel) who have not had direct involvement in the underlying enforcement action, as designated by the General Counsel in consultation with the Executive Director.

(3) *Disclosure of whistleblower identifying information.* The General Counsel is authorized on behalf of the Commission to exercise its discretion to disclose whistleblower identifying information under § 165.4(a).

(b) *General authority to administer the program.* The General Counsel shall have general authority to administer the whistleblower program except as otherwise provided under this part.

Issued in Washington, DC, on June 11, 2026, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

NOTE: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Whistleblower Award Determination – Commission Voting Summary

On this matter, Chairman Selig voted in the affirmative. No Commissioner voted in the negative.

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