

David A. Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
United States

Chris Barnard
Germany

07 December 2010

- **17 CFR Part 165**
- **RIN Number 3038-AD04**
- **Proposed Rules for Implementing the Whistleblower Provisions of Section 23 of the Commodity Exchange Act**

Dear Mr. Stawick.

Thank you for giving us the opportunity to comment on your proposed rules for "Implementing the Whistleblower Provisions of Section 23 of the Commodity Exchange Act".

I entirely support the main proposals, which would implement Section 23 of the Commodity Exchange Act ("CEA") as follows:

- the CFTC would pay an award to eligible whistleblowers who voluntarily provide original information about a violation of the federal securities laws that leads to the successful enforcement of a covered judicial or administrative action.
- It would also prohibit retaliation by employers against individuals that provide the CFTC with information about potential securities violations.

Both of the main proposals are critical, the latter, for example, providing a far stronger protection for whistleblowers compared with existing Sarbanes-Oxley protections¹ in the context of financial reporting. I do accept that the proposed rules could have reduced the effectiveness of a company's existing governance function, including its compliance, legal, audit, risk management and similar internal processes for investigating and responding to potential federal securities laws violations, but the proposals cleverly incentivise whistleblowers to go through internal compliance functions first, where possible.

¹ E.g. see section 806 Sarbanes-Oxley Act. Generally the burden of proof lies with the whistleblower here.

I specifically commend the CFTC on the following aspects of the proposed rules:

- the proposed rules encourage whistleblowing in good faith, regardless of outcome
- the proposals focus on “original information”, rather than source of information
- non-employees can be whistleblowers
- the CFTC has the option to grant higher awards to whistleblowers who go through internal compliance functions before reporting to the CFTC
- whistleblowers involved in misconduct cannot obtain awards
- the CFTC can communicate directly with whistleblowers without any prior consent of the company involved

Given the comprehensive nature of the proposed rules, I would expect companies to begin reviewing their internal compliance functions and procedures, enhancing them where inadequacies are discovered. This would itself be a positive outcome.

Yours sincerely

Chris Barnard