

June 3, 2011

Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Comments and Legal Guidance to the Proposed Rules for 17 CFR Part 3 Designation of a Chief Compliance Officer; Required Compliance Policies; and Annual Report of a Futures Commission Merchant, Swap Dealer, or Major Swap Participant

RIN 3038-AC96

Dear Members of the Commission:

In accordance with Federal Register Notice RIN 3038-AC96, Volume 75 *Federal Register* 70881 (November 19, 2010), we are hereby submitting formal comments on the Commission's proposed rule regarding Designation of a Chief Compliance Officer; Required Compliance Policies; and Annual Report of a Futures Commission Merchant, Swap Dealer, or Major Swap Participant.

We hereby incorporate into the record our entire report filed to the Commission on February 11, 2011, as part of the whistleblower rule making proceeding entitled *Impact of the Dodd-Frank Qui Tam Laws on Compliance: Formal Rule Making Comments to the Commodity Futures Trade Commission* referencing the "Corrected Version." This report outlines the interest of the National Whistleblowers Center in these matters and sets forth significant information necessary to understand the appropriate regulatory requirements necessary to ensure that compliance programs comport with both the intent of Congress and the letter of the law.

We specifically call the Commission's attention to Part VI and Part VII of the report on pages 32 through 44 that set forth specific recommendations for compliance-related rules. Additionally, we call your attention to Part VIII and recommend the adoption of the two proposed rules set forth in Part XIII. Finally, in regard to part XIV, the following conclusions are applicable to the proposed compliance rule and should be adopted: Conclusions 4 through 9 (Pages 108-110) and Conclusion 13 (Page 111).

Additionally, we have the following additional comments related to the rule Section III.3 (a)(1): the term "Senior Officer" should be defined. The Senior Officer should be equivalent to a CEO or a Chairman of the Board and under no circumstances should be the general counsel of an organization or an employee subordinate to the CEO. Furthermore, the CCO must be able to report to the full Board of Directors at any time with no interference from either a committee of the Board or a CEO. We further maintain that the CCO's employment should not be terminated unless such termination is approved by the Board after the CCO is presented the opportunity to address the Board.

As set forth in our full rule making comment, it is absolutely imperative that strict rules that prohibit any form of retaliation against compliance officials, the CCO, and/or any employee who serves a compliance function be established by the Commission. Furthermore, the Commission must ensure that employees, by rule, who provide information to compliance are protected from harassment or retaliation. The authority for the Commission to implement such rules in accordance with the Dodd-Frank Act's mandate that the Commission implement rules to ensure ethical compliance is clearly established by precedent such as: *In re Five Star Prods.*, 38 NRC 169, (Oct. 21, 1993). The need to ensure that the Commission rules fully protect whistleblowers who contact internal compliance programs and compliance officials who aggressively perform their job are set forth both in the report and in the letter filed on May 16, 2011, to the Commission concerning the recent court case of *Egan*.

Thank you in advance for your prompt and careful attention to this letter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'SMK', with a stylized flourish at the end.

Stephen M. Kohn
Executive Director