

September 29, 2016

Christopher Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street NW  
Washington DC 20581

**Re: Notice of Proposed Rulemaking: Commodity Futures Trading Commission  
Whistleblower Awards Process, RIN-3038-AE50**

Dear Mr. Kirkpatrick:

We are writing on behalf of the National Whistleblower Center in response to the notice of proposed rulemaking to improve the Commission's whistleblower award process.

The NWC is an advocacy organization with a more than 25-year history of protecting the rights of individuals to speak out about wrongdoing in the workplace without fear of retaliation. Since 1988, the NWC has supported whistleblowers in the courts, federal agencies and before Congress, achieving victories for environmental protection, nuclear safety, government ethics and corporate accountability. The NWC also sponsors several educational and assistance programs, including an online resource center on whistleblower rights, a speakers bureau of national experts and former whistleblowers, and a national attorney referral service run by the and Education Fund (NWLDEF). The NWC is a non-partisan, non-profit organization based in Washington, DC. We actively participated in the original rulemaking proceedings conducted by the Commission regarding the whistleblower law.

The importance of a whistleblower-friendly and robust whistleblower program cannot be denied. The recent comments from the U.S. Securities and Exchange Commission reinforce this point. All of the Commission's rules should be consistent with the goals of Congress in passing the whistleblower law, which are fully reflected in the public statements by the SEC. See SEC Release 2016-173 (August 30, 2016)(whistleblower program proved to be a "game changer")(online at [bit.ly/2bYapdD](http://bit.ly/2bYapdD)); Speech given by Andrew Ceresney, Director of Enforcement (Sept. 14, 2016)(online at [bit.ly/2dhiZTI](http://bit.ly/2dhiZTI)); and Remarks by SEC Chair White (April 30, 2015)(online at [bit.ly/2dd3OMw](http://bit.ly/2dd3OMw)). Also see, NWC, *Utilizing Whistleblowers in the Fight Against Waste, Fraud and Abuse* (Feb. 25, 2015)(online at [bit.ly/2dxJRSs](http://bit.ly/2dxJRSs)). The information contained in these materials is hereby incorporated herein, and should be relied upon by the

Commission as it considers various changes to its whistleblower rules. The key to all such changes is to reinforce the beneficial impact of these laws on the public good.

Generally speaking, we support the Commission's efforts to simplify the whistleblower rules which, if adopted, will make them more "user friendly" for whistleblowers and their counsel. Additionally, we support most of the proposed changes to the CFTC's whistleblower rules that are intended to make them more consistent with the whistleblower award provisions of the Dodd-Frank Act and the whistleblower rules adopted by the Securities and Exchange Commission.

However, we do express some reservations about the proposed CFTC rule changes. We have reviewed the comments submitted on September 28, 2016 by Taxpayers Against Fraud (TAF). We support TAF's views with respect to the proposed rule changes and the NWC likewise believes the proposed rules governing "original sources" of information, related actions, and appeals from award determinations deserve further clarification and revision, as set forth in TAF's written comments.

In addition, based on past experiences in the initial rule-making to implement the whistleblower provisions of the Dodd-Frank Act, we believe the Commission's notice of proposed rulemaking is likely to be used as a vehicle by certain industry and business groups to advocate radical changes that could adversely affect the Commission's whistleblower program in order to discourage whistleblowers from reporting concerns to the Commission.

On February 4, 2011, the NWC filed a 120-page rulemaking comment (online at [bit.ly/2dullg1](http://bit.ly/2dullg1)) with the CFTC rebutting the main concerns raised by corporate lobby groups regarding the CFTC's initial whistleblower rules. The corporate campaign to undercut whistleblower reforms in the Dodd-Frank Wall Street reform law continued to escalate as leading corporate lobby groups, including the Financial Services Roundtable, the Association of Corporate Counsel and the Chamber of Commerce, formally petitioned the CFTC to implement rules that would have severely restricted the scope of whistleblower protections mandated by Congress. All three pro-business groups strongly advocated that the CFTC institute unprecedented restrictions on the right of employees to contact government agencies and report wrongdoing. For example, the Roundtable demanded that the CFTC "require" whistleblowers to use "employer sponsored" "reporting procedures" and also asked the Commission to implement rules that would permit companies to "sanction" whistleblowers whose reports to law enforcement agencies caused "harm to the company." While we are grateful that the Commission did not adopt many of most extreme positions advocated by these pro-business groups in 2011, we believe similar attacks and arguments might be raised in response to the notice of proposed rulemaking currently under consideration.

Accordingly, we hereby request the Commission to provide for an opportunity for the public to submit rebuttal comments with respect to the current notice of proposed rulemaking. The public interest will be served by a rebuttal comment period if opposing views are submitted as expected during the original comment period. We also request an opportunity to meet with

the staff of the Commission to further explain our position on these rule changes. Please contact Mr. Paul Lyons at [p.lyons@whistleblowers.org](mailto:p.lyons@whistleblowers.org) to arrange a meeting or obtain additional information.

We thank the Commission for the opportunity to express our views and we support the adoption of the proposed rules, and the modifications proposed by TAF, to improve the current whistleblower program.

Sincerely,

Stephen M. Kohn  
Executive Director

David K. Colapinto  
General Counsel