

# Financial Frauds 101 Overview: What's a Security? What's a Commodity? Which Whistleblower Program Applies?

There *should* be a short answer to the question of which whistleblower program applies in which situation. And sometimes there is; but not always. Securities (like stocks) are regulated by the SEC (Securities and Exchange Commission) and commodities (like pork bellies) are regulated by the CFTC (Commodity Futures Trading Commission). Send your whistleblower submission accordingly.

Of course, the reality is that there is some overlap. And that is especially true in the crypto space.

## **Securities**

Securities represent ownership or a financial interest in a company, organization, or asset. They are typically issued by corporations, governments, or other entities to raise capital. Examples of securities include stocks (equity securities), bonds (debt securities), mutual funds, and options. Securities are traded on various exchanges, such as the New York Stock Exchange (NYSE) or Nasdaq.

## **Commodities**

The CFTC is responsible for regulating the commodities and futures markets to ensure fair and transparent trading practices. Commodities are raw materials or primary agricultural products that are traded on exchanges. They can include physical goods such as gold, oil, wheat, and other natural resources. Commodities are often used as inputs in various industries, and their prices can be subject to fluctuations based on supply and demand dynamics.

The CFTC also regulates Forex (foreign currency trading) and derivatives markets, including futures, options, and swaps. (Fun fact: since 1958, it has been illegal to trade in onion futures.)

## **Cryptocurrencies**

The SEC and CFTC both have jurisdiction to combat cryptocurrency fraud. Broadly speaking, the SEC seeks to regulate offerings that smell like securities, like an ICO (initial coin offering), and cryptocurrency exchanges that offer trading of tokens that the SEC considers to be securities. Meanwhile, the CFTC seeks to regulate trading in cryptocurrencies and, arguably, DeFi (decentralized finance) platforms. Recently a

judge held that sales of the XRP token did not constitute an unregistered securities offering while another judge held that the Terra USD token likely qualifies as a security subject to SEC regulation. The law is in a state of flux and Congress has proposed legislation to clarify the respective roles of the SEC and CFTC in regulating cryptocurrency.

## **SEC Whistleblower Program**

The SEC's whistleblower program, established in the Dodd-Frank Wall Street Reform and Consumer Protection Act, offers financial rewards and protections to individuals who provide information about potential violations of federal securities laws, which can include fraudulent activities such as insider trading, accounting fraud, and other forms of market manipulation.

These whistleblower programs are designed to encourage individuals with information about potential financial fraud or wrongdoing to come forward and report their concerns. The SEC's whistleblower awards range from 10% to 30% of amounts collected from an enforcement action. To be eligible for an award, the whistleblower must:

(1) *voluntarily* provide (2) *original* information to the SEC; (3) that leads to a successful SEC enforcement action (court or administrative action); (4) where the SEC recovers more than \$1 million.

In real dollar terms, if there's a \$10 million fine, the whistleblower could be awarded up to \$3 million.

## **CFTC Whistleblower Program**

Similar to the SEC's whistleblower program, the CFTC offers rewards and protections to individuals who report violations of the Commodity Exchange Act (CEA), which includes fraud, market manipulation, and insider trading.

The CFTC's whistleblower program also awards 10% to 30% of the collected monetary sanctions. Similar to the SEC program, whistleblowers must satisfy certain eligibility criteria, *i.e.*, they must (1) *voluntarily* provide (2) *original* information to the CFTC; (3) that leads to a successful CFTC enforcement action; (4) where the CFTC recovers more than \$1 million.

## **Crypto**

Whistleblowers should carefully assess where to file a crypto-related claim. But in some cases, it may be wise to file with both the SEC *and* the CFTC.

## **Anti-Retaliation; Anonymity**

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Under both the SEC and CFTC whistleblower laws, the law prohibits employers from retaliating against employees. Both programs also allow whistleblowers to make anonymous submissions, if they do so through counsel.

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