

# GC Agenda: July/August 2016

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## MAJOR CFTC WHISTLEBLOWER PAYOUT

The recent payout by the Commodity Futures Trading Commission (CFTC) of its third and by far largest ever whistleblower award under the whistleblower bounty program reminds companies to take steps to anticipate and investigate whistleblower complaints.

The CFTC's whistleblower bounty program was established by the Dodd-Frank Act to curb violations of the Commodity Exchange Act. In a press release in April 2016, the CFTC stated that it awarded the unidentified whistleblower more than \$10 million for providing information that led to a successful enforcement action, and that it hoped this award would incentivize future whistleblowers to provide tips. The SEC has also made significant whistleblower awards in recent months under its own program.

Large whistleblower awards increase the likelihood that actual or perceived violations will be the subject of tips that lead to CFTC and other enforcement investigations. Companies should keep in mind the following principles:

- With limited exceptions, a whistleblower can be any individual inside or outside the company.

- An employee does not need to report internally to be eligible for a whistleblower award, potentially providing information to the government that the company itself does not have.
- A company can encourage internal reporting by fostering open lines of communication between employees, managers, and legal and compliance personnel, and by providing alternative means of reporting, such as a hotline or an anonymous tip box.
- Tips or other information about potential violations should be reviewed and investigated promptly using an established protocol.
- A company's decision about reporting allegations of potential misconduct to the government should be informed by the possibility that there may be a whistleblower tip.
- Managers and legal and compliance personnel should be trained in handling tips and avoiding retaliation because whistleblowers have statutory protection against retaliation.

For a sample employee policy prohibiting retaliation and outlining the procedure for reporting retaliation, see Standard Document, Anti-Retaliation Policy ([8-503-5830](#)).

Excerpt from the July/August 2016 GC Agenda. GC Agenda is based on interviews with Advisory Board members and leading experts from Law Department Panel Firms. Practical Law would like to thank Douglas Yatter from Latham & Watkins LLP for participating in interviews for this month's issue.

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