

1 “(B) demonstrates intentional or reckless
2 disregard for the orderly execution of trans-
3 actions during the closing period; or

4 “(C) is, is of the character of, or is com-
5 monly known to the trade as, ‘spoofing’ (bid-
6 ding or offering with the intent to cancel the
7 bid or offer before execution).

8 “(6) RULEMAKING AUTHORITY.—The Commis-
9 sion may make and promulgate such rules and regu-
10 lations as, in the judgment of the Commission, are
11 reasonably necessary to prohibit the trading prac-
12 tices described in paragraph (5) and any other trad-
13 ing practice that is disruptive of fair and equitable
14 trading.

15 “(7) USE OF SWAPS TO DEFRAUD.—It shall be
16 unlawful for any person to enter into a swap know-
17 ing, or acting in reckless disregard of the fact, that
18 its counterparty will use the swap as part of a de-
19 vice, scheme, or artifice to defraud any third
20 party.”.

21 **SEC. 748. COMMODITY WHISTLEBLOWER INCENTIVES AND**
22 **PROTECTION.**

23 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
24 is amended by adding at the end the following:

1 **“SEC. 23. COMMODITY WHISTLEBLOWER INCENTIVES AND**
2 **PROTECTION.**

3 “(a) DEFINITIONS.—In this section:

4 “(1) COVERED JUDICIAL OR ADMINISTRATIVE
5 ACTION.—The term ‘covered judicial or administra-
6 tive action’ means any judicial or administrative ac-
7 tion brought by the Commission under this Act that
8 results in monetary sanctions exceeding \$1,000,000.

9 “(2) FUND.—The term ‘Fund’ means the Com-
10 modity Futures Trading Commission Customer Pro-
11 tection Fund established under subsection (g).

12 “(3) MONETARY SANCTIONS.—The term ‘mone-
13 tary sanctions’, when used with respect to any judi-
14 cial or administrative action means—

15 “(A) any monies, including penalties,
16 disgorgement, restitution, and interest ordered
17 to be paid; and

18 “(B) any monies deposited into a
19 disgorgement fund or other fund pursuant to
20 section 308(b) of the Sarbanes-Oxley Act of
21 2002 (15 U.S.C. 7246(b)), as a result of such
22 action or any settlement of such action.

23 “(4) ORIGINAL INFORMATION.—The term
24 ‘original information’ means information that—

25 “(A) is derived from the independent
26 knowledge or analysis of a whistleblower;

1 “(B) is not known to the Commission from
2 any other source, unless the whistleblower is the
3 original source of the information; and

4 “(C) is not exclusively derived from an al-
5 legation made in a judicial or administrative
6 hearing, in a governmental report, hearing,
7 audit, or investigation, or from the news media,
8 unless the whistleblower is a source of the infor-
9 mation.

10 “(5) RELATED ACTION.—The term ‘related ac-
11 tion’, when used with respect to any judicial or ad-
12 ministrative action brought by the Commission
13 under this Act, means any judicial or administrative
14 action brought by an entity described in subclauses
15 (I) through (VI) of subsection (h)(2)(C) that is
16 based upon the original information provided by a
17 whistleblower pursuant to subsection (a) that led to
18 the successful enforcement of the Commission ac-
19 tion.

20 “(6) SUCCESSFUL RESOLUTION.—The term
21 ‘successful resolution’, when used with respect to
22 any judicial or administrative action brought by the
23 Commission under this Act, includes any settlement
24 of such action.

1 “(7) WHISTLEBLOWER.—The term ‘whistle-
2 blower’ means any individual, or 2 or more individ-
3 uals acting jointly, who provides information relating
4 to a violation of this Act to the Commission, in a
5 manner established by rule or regulation by the
6 Commission.

7 “(b) AWARDS.—

8 “(1) IN GENERAL.—In any covered judicial or
9 administrative action, or related action, the Commis-
10 sion, under regulations prescribed by the Commis-
11 sion and subject to subsection (c), shall pay an
12 award or awards to 1 or more whistleblowers who
13 voluntarily provided original information to the
14 Commission that led to the successful enforcement
15 of the covered judicial or administrative action, or
16 related action, in an aggregate amount equal to—

17 “(A) not less than 10 percent, in total, of
18 what has been collected of the monetary sanc-
19 tions imposed in the action or related actions;
20 and

21 “(B) not more than 30 percent, in total, of
22 what has been collected of the monetary sanc-
23 tions imposed in the action or related actions.

24 “(2) PAYMENT OF AWARDS.—Any amount paid
25 under paragraph (1) shall be paid from the Fund.

1 “(c) DETERMINATION OF AMOUNT OF AWARD; DE-
2 NIAL OF AWARD.—

3 “(1) DETERMINATION OF AMOUNT OF
4 AWARD.—

5 “(A) DISCRETION.—The determination of
6 the amount of an award made under subsection
7 (b) shall be in the discretion of the Commission.

8 “(B) CRITERIA.—In determining the
9 amount of an award made under subsection (b),
10 the Commission—

11 “(i) shall take into consideration—

12 “(I) the significance of the infor-
13 mation provided by the whistleblower
14 to the success of the covered judicial
15 or administrative action;

16 “(II) the degree of assistance
17 provided by the whistleblower and any
18 legal representative of the whistle-
19 blower in a covered judicial or admin-
20 istrative action;

21 “(III) the programmatic interest
22 of the Commission in deterring viola-
23 tions of the Act (including regulations
24 under the Act) by making awards to
25 whistleblowers who provide informa-

1 tion that leads to the successful en-
2 forcement of such laws; and

3 “(IV) such additional relevant
4 factors as the Commission may estab-
5 lish by rule or regulation; and

6 “(ii) shall not take into consideration
7 the balance of the Fund.

8 “(2) DENIAL OF AWARD.—No award under
9 subsection (b) shall be made—

10 “(A) to any whistleblower who is, or was at
11 the time the whistleblower acquired the original
12 information submitted to the Commission, a
13 member, officer, or employee of—

14 “(i) a appropriate regulatory agency;

15 “(ii) the Department of Justice;

16 “(iii) a registered entity;

17 “(iv) a registered futures association;

18 “(v) a self-regulatory organization as
19 defined in section 3(a) of the Securities
20 Exchange Act of 1934 (15 U.S.C. 78c(a));

21 or

22 “(vi) a law enforcement organization;

23 “(B) to any whistleblower who is convicted
24 of a criminal violation related to the judicial or
25 administrative action for which the whistle-

1 blower otherwise could receive an award under
2 this section;

3 “(C) to any whistleblower who submits in-
4 formation to the Commission that is based on
5 the facts underlying the covered action sub-
6 mitted previously by another whistleblower;

7 “(D) to any whistleblower who fails to sub-
8 mit information to the Commission in such
9 form as the Commission may, by rule or regula-
10 tion, require.

11 “(d) REPRESENTATION.—

12 “(1) PERMITTED REPRESENTATION.—Any
13 whistleblower who makes a claim for an award under
14 subsection (b) may be represented by counsel.

15 “(2) REQUIRED REPRESENTATION.—

16 “(A) IN GENERAL.—Any whistleblower
17 who anonymously makes a claim for an award
18 under subsection (b) shall be represented by
19 counsel if the whistleblower submits the infor-
20 mation upon which the claim is based.

21 “(B) DISCLOSURE OF IDENTITY.—Prior to
22 the payment of an award, a whistleblower shall
23 disclose the identity of the whistleblower and
24 provide such other information as the Commis-

1 sion may require, directly or through counsel
2 for the whistleblower.

3 “(e) NO CONTRACT NECESSARY.—No contract with
4 the Commission is necessary for any whistleblower to re-
5 ceive an award under subsection (b), unless otherwise re-
6 quired by the Commission, by rule or regulation.

7 “(f) APPEALS.—

8 “(1) IN GENERAL.—Any determination made
9 under this section, including whether, to whom, or in
10 what amount to make awards, shall be in the discre-
11 tion of the Commission.

12 “(2) APPEALS.—Any determination described
13 in paragraph (1) may be appealed to the appropriate
14 court of appeals of the United States not more than
15 30 days after the determination is issued by the
16 Commission.

17 “(3) REVIEW.—The court shall review the de-
18 termination made by the Commission in accordance
19 with section 7064 of title 5, United States Code.

20 “(g) COMMODITY FUTURES TRADING COMMISSION
21 CUSTOMER PROTECTION FUND.—

22 “(1) ESTABLISHMENT.—There is established in
23 the Treasury of the United States a revolving fund
24 to be known as the ‘Commodity Futures Trading
25 Commission Customer Protection Fund’.

1 “(2) USE OF FUND.—The Fund shall be avail-
2 able to the Commission, without further appropria-
3 tion or fiscal year limitation, for—

4 “(A) the payment of awards to whistle-
5 blowers as provided in subsection (a); and

6 “(B) the funding of customer education
7 initiatives designed to help customers protect
8 themselves against fraud or other violations of
9 this Act, or the rules and regulations there-
10 under.

11 “(3) DEPOSITS AND CREDITS.—There shall be
12 deposited into or credited to the Fund:

13 “(A) MONETARY SANCTIONS.—Any mone-
14 etary sanctions collected by the Commission in
15 any covered judicial or administrative action
16 that is not otherwise distributed to victims of a
17 violation of this Act or the rules and regulations
18 thereunder underlying such action, unless the
19 balance of the Fund at the time the monetary
20 judgment is collected exceeds \$100,000,000.

21 “(B) ADDITIONAL AMOUNTS.—If the
22 amounts deposited into or credited to the Fund
23 under subparagraph (A) are not sufficient to
24 satisfy an award made under subsection (b),
25 there shall be deposited into or credited to the

1 Fund an amount equal to the unsatisfied por-
2 tion of the award from any monetary sanction
3 collected by the Commission in any judicial or
4 administrative action brought by the Commis-
5 sion under this Act that is based on information
6 provided by a whistleblower.

7 “(C) INVESTMENT INCOME.—All income
8 from investments made under paragraph (4).

9 “(4) INVESTMENTS.—

10 “(A) AMOUNTS IN FUND MAY BE IN-
11 VESTED.—The Commission may request the
12 Secretary of the Treasury to invest the portion
13 of the Fund that is not, in the Commission’s
14 judgment, required to meet the current needs of
15 the Fund.

16 “(B) ELIGIBLE INVESTMENTS.—Invest-
17 ments shall be made by the Secretary of the
18 Treasury in obligations of the United States or
19 obligations that are guaranteed as to principal
20 and interest by the United States, with matu-
21 rities suitable to the needs of the Fund as de-
22 termined by the Commission.

23 “(C) INTEREST AND PROCEEDS CRED-
24 ITED.—The interest on, and the proceeds from
25 the sale or redemption of, any obligations held

1 in the Fund shall be credited to, and form a
2 part of, the Fund.

3 “(5) REPORTS TO CONGRESS.—Not later than
4 October 30 of each year, the Commission shall
5 transmit to the Committee on Agriculture, Nutri-
6 tion, and Forestry of the Senate, and the Committee
7 on Agriculture of the House of Representatives a re-
8 port on—

9 “(A) the Commission’s whistleblower
10 award program under this section, including a
11 description of the number of awards granted
12 and the types of cases in which awards were
13 granted during the preceding fiscal year;

14 “(B) customer education initiatives de-
15 scribed in paragraph (2)(B) that were funded
16 by the Fund during the preceding fiscal year;

17 “(C) the balance of the Fund at the begin-
18 ning of the preceding fiscal year;

19 “(D) the amounts deposited into or cred-
20 ited to the Fund during the preceding fiscal
21 year;

22 “(E) the amount of earnings on invest-
23 ments of amounts in the Fund during the pre-
24 ceding fiscal year;

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1 “(F) the amount paid from the Fund dur-
2 ing the preceding fiscal year to whistleblowers
3 pursuant to subsection (b);

4 “(G) the amount paid from the Fund dur-
5 ing the preceding fiscal year for customer edu-
6 cation initiatives described in paragraph (2)(B);

7 “(H) the balance of the Fund at the end
8 of the preceding fiscal year; and

9 “(I) a complete set of audited financial
10 statements, including a balance sheet, income
11 statement, and cash flow analysis.

12 “(h) PROTECTION OF WHISTLEBLOWERS.—

13 “(1) PROHIBITION AGAINST RETALIATION.—

14 “(A) IN GENERAL.—No employer may dis-
15 charge, demote, suspend, threaten, harass, di-
16 rectly or indirectly, or in any other manner dis-
17 criminate against, a whistleblower in the terms
18 and conditions of employment because of any
19 lawful act done by the whistleblower—

20 “(i) in providing information to the
21 Commission in accordance with subsection
22 (b); or

23 “(ii) in assisting in any investigation
24 or judicial or administrative action of the

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1 Commission based upon or related to such
2 information.

3 “(B) ENFORCEMENT.—

4 “(i) CAUSE OF ACTION.—An indi-
5 vidual who alleges discharge or other dis-
6 crimination in violation of subparagraph
7 (A) may bring an action under this sub-
8 section in the appropriate district court of
9 the United States for the relief provided in
10 subparagraph (C), unless the individual
11 who is alleging discharge or other discrimi-
12 nation in violation of subparagraph (A) is
13 an employee of the Federal Government, in
14 which case the individual shall only bring
15 an action under section 1221 of title 5,
16 United States Code.

17 “(ii) SUBPOENAS.—A subpoena re-
18 quiring the attendance of a witness at a
19 trial or hearing conducted under this sub-
20 section may be served at any place in the
21 United States.

22 “(iii) STATUTE OF LIMITATIONS.—An
23 action under this subsection may not be
24 brought more than 2 years after the date

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1 on which the violation reported in subpara-
2 graph (A) is committed.

3 “(C) RELIEF.—Relief for an individual
4 prevailing in an action brought under subpara-
5 graph (B) shall include—

6 “(i) reinstatement with the same se-
7 niority status that the individual would
8 have had, but for the discrimination;

9 “(ii) the amount of back pay other-
10 wise owed to the individual, with interest;
11 and

12 “(iii) compensation for any special
13 damages sustained as a result of the dis-
14 charge or discrimination, including litiga-
15 tion costs, expert witness fees, and reason-
16 able attorney’s fees.

17 “(2) CONFIDENTIALITY.—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraphs (B) and (C), the Commission,
20 and any officer or employee of the Commission,
21 shall not disclose any information, including in-
22 formation provided by a whistleblower to the
23 Commission, which could reasonably be ex-
24 pected to reveal the identity of a whistleblower,
25 except in accordance with the provisions of sec-

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1 tion 552a of title 5, United States Code, unless
2 and until required to be disclosed to a defend-
3 ant or respondent in connection with a public
4 proceeding instituted by the Commission or any
5 entity described in subparagraph (C). For pur-
6 poses of section 552 of title 5, United States
7 Code, this paragraph shall be considered a stat-
8 ute described in subsection (b)(3)(B) of such
9 section 552.

10 “(B) EFFECT.—Nothing in this paragraph
11 is intended to limit the ability of the Attorney
12 General to present such evidence to a grand
13 jury or to share such evidence with potential
14 witnesses or defendants in the course of an on-
15 going criminal investigation.

16 “(C) AVAILABILITY TO GOVERNMENT
17 AGENCIES.—

18 “(i) IN GENERAL.—Without the loss
19 of its status as confidential in the hands of
20 the Commission, all information referred to
21 in subparagraph (A) may, in the discretion
22 of the Commission, when determined by
23 the Commission to be necessary or appro-
24 priate to accomplish the purposes of this
25 Act and protect customers and in accord-

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1 “(iii) STUDY ON IMPACT OF FOIA EX-
2 EMPTION ON CFTC.—

3 “(I) STUDY.—The Inspector
4 General of the Commission shall con-
5 duct a study—

6 “(aa) on whether the exemp-
7 tion under section 552(b)(3) of
8 title 5, United States Code
9 (known as the Freedom of Infor-
10 mation Act) established in para-
11 graph (2)(A) aids whistleblowers
12 in disclosing information to the
13 Commission;

14 “(bb) on what impact the
15 exemption has had on the
16 public’s ability to access informa-
17 tion about the Commission’s reg-
18 ulation of commodity futures and
19 option markets; and

20 “(cc) to make any rec-
21 ommendations on whether the
22 Commission should continue to
23 use the exemption.

24 “(II) REPORT.—Not later than
25 30 months after the date of enact-

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1 ment of this clause, the Inspector
2 General shall—

3 “(aa) submit a report on the
4 findings of the study required
5 under this clause to the Com-
6 mittee on Banking, Housing, and
7 Urban Affairs of the Senate and
8 the Committee on Financial
9 Services of the House of Rep-
10 representatives; and

11 “(bb) make the report avail-
12 able to the public through publi-
13 cation of a report on the website
14 of the Commission.

15 “(3) RIGHTS RETAINED.—Nothing in this sec-
16 tion shall be deemed to diminish the rights, privi-
17 leges, or remedies of any whistleblower under any
18 Federal or State law, or under any collective bar-
19 gaining agreement.

20 “(i) RULEMAKING AUTHORITY.—The Commission
21 shall have the authority to issue such rules and regulations
22 as may be necessary or appropriate to implement the pro-
23 visions of this section consistent with the purposes of this
24 section.

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1 “(j) IMPLEMENTING RULES.—The Commission shall
2 issue final rules or regulations implementing the provi-
3 sions of this section not later than 270 days after the date
4 of enactment of the Wall Street Transparency and Ac-
5 countability Act of 2010.

6 “(k) ORIGINAL INFORMATION.—Information sub-
7 mitted to the Commission by a whistleblower in accord-
8 ance with rules or regulations implementing this section
9 shall not lose its status as original information solely be-
10 cause the whistleblower submitted such information prior
11 to the effective date of such rules or regulations, provided
12 such information was submitted after the date of enact-
13 ment of the Wall Street Transparency and Accountability
14 Act of 2010.

15 “(l) AWARDS.—A whistleblower may receive an award
16 pursuant to this section regardless of whether any viola-
17 tion of a provision of this Act, or a rule or regulation
18 thereunder, underlying the judicial or administrative ac-
19 tion upon which the award is based occurred prior to the
20 date of enactment of the Wall Street Transparency and
21 Accountability Act of 2010.

22 “(m) PROVISION OF FALSE INFORMATION.—A whis-
23 tleblower who knowingly and willfully makes any false, fie-
24 titious, or fraudulent statement or representation, or who
25 makes or uses any false writing or document knowing the

1 same to contain any false, fictitious, or fraudulent state-
2 ment or entry, shall not be entitled to an award under
3 this section and shall be subject to prosecution under sec-
4 tion 1001 of title 18, United States Code.

5 “(n) NONENFORCEABILITY OF CERTAIN PROVISIONS
6 WAIVING RIGHTS AND REMEDIES OR REQUIRING ARBI-
7 TRATION OF DISPUTES.—

8 “(1) WAIVER OF RIGHTS AND REMEDIES.—The
9 rights and remedies provided for in this section may
10 not be waived by any agreement, policy form, or con-
11 dition of employment including by a predispute arbi-
12 tration agreement.

13 “(2) PREDISPUTE ARBITRATION AGREE-
14 MENTS.—No predispute arbitration agreement shall
15 be valid or enforceable, if the agreement requires ar-
16 bitration of a dispute arising under this section.”.

17 **SEC. 749. CONFORMING AMENDMENTS.**

18 (a) Section 4d of the Commodity Exchange Act (7
19 U.S.C. 6d) (as amended by section 724) is amended—

20 (1) in subsection (a)—

21 (A) in the matter preceding paragraph

22 (1)—

23 (i) by striking “engage as” and insert-
24 ing “be a”; and