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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

October 4, 2021

VIA ELECTRONIC TRANSMISSION

Kristin Johnson
Asa Griggs Candler Professor of Law,
Emory Law
1301 Clifton Rd NE
Atlanta, Georgia 30322

Dear Ms. Johnson:

If confirmed as Commissioner of the Commodity Futures Trading Commission (“CFTC”), you will be responsible for overseeing the agency’s highly successful whistleblower program.¹ The continued success of the program must remain a high priority for every commissioner, especially, during the next few months when changes to the program must be made by Congress to ensure its continued viability. It is important for Congress to understand how you will oversee and support the program should you be confirmed.

In 2010, Congress established the CFTC’s whistleblower program to collect fines and reward whistleblowers for their disclosures.² The whistleblower fund is also used to finance operating expenses and educational initiatives associated with the whistleblower office.³ As of April 2021, the CFTC has granted whistleblower awards associated with enforcement actions that have resulted in monetary sanctions totaling more than \$1 billion.⁴ During FY 2020 alone, the

¹ U.S. COMMODITY FUTURES TRADING COMMISSION WHISTLEBLOWER PROGRAM, <https://www.whistleblower.gov/> (last visited Sept. 24, 2021).

² The CFTC’s Whistleblower Program was established under the Dodd Frank Act. *See* Dodd-Frank Wall Street Reform Consumer Protection Act, Pub. L. No. 111-203, § 748, 124 Stat. 1739 (2010) (codified at 7 U.S.C. § 26 (2018)); Whistleblower Awards Process, 82 Fed. Reg. 24,487 (May 30, 2017); Whistleblower Incentives & Protection, 76 Fed. Reg. 53,171 (Aug. 25, 2011). *See also* COMMODITY FUTURES TRADING COMMISSION, WHISTLEBLOWER PROGRAM: CUSTOMER EDUCATION INITIATIVES 2020 ANNUAL REPORT 1 (2020), [FY20 Report to Congress.pdf \(whistleblower.gov\)](https://www.cftc.gov/PressRoom/PressReleases/8383-21).

³ COMMODITY FUTURES TRADING COMMISSION, WHISTLEBLOWER PROGRAM: CUSTOMER EDUCATION INITIATIVES 2020 ANNUAL REPORT 7 (2020), [FY20 Report to Congress.pdf \(whistleblower.gov\)](https://www.cftc.gov/PressRoom/PressReleases/8383-21) (“[T]he salaries and operating expenses of the Whistleblower’s Office and Office of Customer Education and Outreach [are disbursed from] the Fund.”).

⁴ Release No. 8383-21, *CFTC Awards Approximately \$3 Million to Whistleblower: Agency Surpasses \$1 Billion in Total Sanctions Associated with Whistleblower Awards* (Apr. 21, 2021), <https://www.cftc.gov/PressRoom/PressReleases/8383-21>. As Acting Director of Enforcement Vincent McGonagle notes, “This milestone illustrates that the CFTC’s Whistleblower Program has had a tremendous impact on increasing our enforcement efforts in its short history.” *Id.*

CFTC granted 16 applications for whistleblower awards, totaling approximately \$20 million.⁵ The whistleblower program continues to serve as a vital part of the CFTC's broader enforcement efforts.⁶

Because of its great success, the whistleblower fund is at risk of being depleted.⁷ The increasing size and quantity of fines arising from successful whistleblower disclosures have led to larger reward disbursements.⁸ Current law requires that the whistleblower fund be capped at \$100 million, and any fines collected past the cap are remitted to the Treasury's general fund.⁹ The disbursement of larger rewards from a capped fund poses an impending threat to the CFTC whistleblower program's ability to function.

Recently, I introduced, and Congress passed, the CFTC Fund Management Act which will prevent the CFTC office from shutting down in the event that the whistleblower fund is depleted.¹⁰ The law establishes a separate account at the U.S. Treasury to house funds utilized for operating and programming expenses, ensuring that the CFTC whistleblower office will continue to function even when awards exceed the whistleblower fund's balance at the time of distribution.¹¹ However, these changes are temporary, and we need to work together to reach a permanent solution.

The CFTC whistleblower program has been highly successful and if confirmed, you'd be responsible for ensuring its continued success. To help Congress understand how you plan to oversee the CFTC whistleblower program, please answer the following questions no later than October 19, 2021:

1. If confirmed as Commissioner of the CFTC, will you commit to provide the necessary resources to the CFTC whistleblower program, and ensure that whistleblowers receive their awards in a timely manner?

⁵ COMMODITY FUTURES TRADING COMMISSION WHISTLEBLOWER, FY 2020 DIVISION OF ENFORCEMENT ANNUAL REPORT 10 (2020), [DOE FY2020 AnnualReport 120120 \(1\).pdf](#). See also COMMODITY FUTURES TRADING COMMISSION, WHISTLEBLOWER PROGRAM: CUSTOMER EDUCATION INITIATIVES 2020 ANNUAL REPORT 2 (2020), [FY20 Report to Congress.pdf \(whistleblower.gov\)](#).

⁶ Between 30 and 40% of the CFTC's ongoing investigations now involve some whistleblower component. COMMODITY FUTURES TRADING COMMISSION WHISTLEBLOWER, FY 2020 DIVISION OF ENFORCEMENT ANNUAL REPORT 10 (2020), [DOE FY2020 AnnualReport 120120 \(1\).pdf](#).

⁷ As of September 2020, the CFTC's annual report to Congress indicated that the whistleblower fund's balance was approximately \$117 million. On May 11, 2021, the Wall Street Journal reported that the CFTC whistleblower program may face some challenges due to a recommended award of \$100 million to a whistleblower who presented information about potential violations at Deutsche Bank. Alexandra Berzon, *CFTC Whistleblower Program in Peril Over Potential \$100 Million-Plus Payout*, THE WALL STREET JOURNAL (May 11, 2021), <https://www.wsj.com/articles/cftc-whistleblower-program-in-peril-over-potential-100-million-plus-payout-11620732600>. See also Release No. 7159-15, *Deutsche Bank to Pay \$800 Million Penalty to Settle CFTC Charges of Manipulation, Attempted Manipulation, and False Reporting of LIBOR and Euribor* (Apr. 23, 2015), <https://www.cftc.gov/PressRoom/PressReleases/7159-15>.

⁸ News Release, Congress Passes Grassley Bill to Save CFTC Whistleblower Program, (June 23, 2021) <https://www.grassley.senate.gov/news/news-releases/congress-passes-grassley-bill-to-save-cftc-whistleblower-program>.

⁹ COMMODITY FUTURES TRADING COMMISSION, WHISTLEBLOWER PROGRAM: CUSTOMER EDUCATION INITIATIVES 2020 ANNUAL REPORT (2020), [FY20 Report to Congress.pdf \(whistleblower.gov\)](#).

¹⁰ CFTC Fund Management Act, Pub. L. No. 117-25, 135 Stat. 267 (2021).

¹¹ *Id.*

2. Will you work with Congress to identify ways to strengthen the CFTC whistleblower program?
3. Will you support a long-term solution to restoring the whistleblower fund and maintaining the program, such as increasing the cap of the whistleblower fund and allowing the office to use general funds?
4. The larger the monetary award, the more likely a whistleblower is to come forward. While the CFTC is statutorily limited to providing awards between 10%-30%, some whistleblower groups are concerned that an attempt may be made in the future to arbitrarily reduce the size of awards that are perceived as "too large." Do you agree that whistleblower awards should never be reduced in size simply because they are large?
5. Do you believe that whistleblowers provide a benefit to the workforce and society as a whole?

Should you have any questions please contact Dario Camacho of my Judiciary Committee staff at (202) 224-4515. Thank you for your attention to this important matter.

Sincerely,



Charles Grassley
Ranking Member
Senate Committee on the Judiciary