

## New CFTC Enforcement Guidance

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On February 25th, 2025, the Commodity Futures Trading Commission's ("CFTC") Division of Enforcement ("Division") issued a long-awaited [advisory](#) (the "Advisory") regarding its evaluation of how a company's or individual's self-reporting, cooperating and remediation efforts would factor into the Division staff's recommendation of an enforcement action. The Advisory represents the "Division policy on self-reporting, cooperation, and remediation," setting forth the factors and rubric the Division will consider in investigations and enforcement actions.

The mitigation credit matrix, the first of its kind to be used by the Division, purports to advance the goal of fostering more transparency in the Division's regulatory proceedings and clarifies the incentives to self-report. The matrix sets forth the presumptive mitigation credits offered based on self-reporting and cooperation levels, which range from 0% to 55% of a discount from the initial civil monetary penalty calculated by the Division (although the Advisory does not clarify how the initial civil penalty will be calculated). Disgorgement and restitution obligations are not eligible for mitigation credit. Some of the factors relevant to the Division's evaluation of a person's self-reporting and cooperation levels are as follows:

- With respect to self-reporting, the relevant factors are whether disclosure was (i) made voluntarily, to the CFTC, in a timely manner (*i.e.*, prompt), and (ii) complete. A self-report that was already publicly known or known to another government actor may not meet the criteria for voluntariness, but a self-report that would have been required to be disclosed in an annual report may still be voluntary if made in a timely manner.
- A self-report can be made to any relevant CFTC operating division ("Operating Division"), not only the Division of Enforcement. A self-report may receive full credit for completeness even if not all the relevant facts are yet known if the disclosing party continues to investigate and supplements its report with additional facts as they are identified. Additionally, self-reports and voluntary disclosures that were made in good faith but are later found to be inaccurate by further investigation of the disclosing party and corrected accordingly will be subject to a safe harbor.
- In order for a person's cooperation to be assessed as "exemplary" on the four-tier scale, significant completion of remediation efforts and accountability measures is required.
- Remediation efforts will be given credit as part of cooperation if the Operating Division has concluded that the reported violation and its root cause have either been remediated or an appropriate remediation plan is in place. The Operating Division will also assess whether the use of a compliance monitor or outside consultant is appropriate to ensure the completion of any remedial undertakings. While invocation of the Fifth Amendment by its employees or agents will not be considered as a factor in a company's cooperation, cooperation credit might be negated by separate bad faith and uncooperative conduct.

Notwithstanding the factors outlined in the Advisory, the Advisory notes that "the Division maintains the discretion to consider the unique facts and circumstances in every case, and may also consider a variety of other factors," which include culpability, recidivism, severity, and other facts and circumstances that do not involve fraud, manipulation or other abusive conduct. CFTC Acting Chair Caroline Pham noted that this Advisory would allow the Division to more efficiently "focus relentlessly on catching fraudsters and scammers, helping victims, and promoting market integrity."