



Division of
Enforcement

U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5320
Facsimile: (202) 418-5523
www.cftc.gov

ENFORCEMENT ADVISORY

Advisory on Self Reporting and Cooperation for CEA Violations Involving Foreign Corrupt Practices

The Division of Enforcement (“Division”) issues this Advisory to provide further guidance regarding circumstances under the Division’s cooperation and self-reporting program in which it may recommend a resolution with no civil monetary penalty.

On January 19, 2017, the Division of Enforcement issued two Enforcement Advisories (the “January 2017 Advisories”) outlining the factors the Division would consider in evaluating cooperation by individuals and companies in the Division’s investigations and enforcement actions. On September 26, 2017, the Division issued an additional Enforcement Advisory (the “September 2017 Advisory”) outlining the ways in which the Division would consider voluntary disclosures by a company or individual in the context of its broader cooperation program. Among other things, in the September 2017 Advisory, the Division explained that “[i]f the company or individual self-reports, fully cooperates, and remediates, the Division will recommend the most substantial reduction in the civil monetary penalty that otherwise would be applicable.” The September 2017 Advisory further explained that, in certain circumstances, the Division may recommend a resolution with no civil monetary penalty on account of voluntary disclosure, cooperation, and remediation.

This Advisory applies to companies and individuals not registered (or required to be registered) with the CFTC that timely and voluntarily disclose to the Division violations of the Commodity Exchange Act involving foreign corrupt practices, where the voluntary disclosure is followed by full cooperation and appropriate remediation, in accordance with the January 2017 and September 2017 Advisories.¹ In those circumstances, the Division will apply a presumption that it will recommend to the Commission a resolution with no civil monetary penalty, absent aggravating circumstances involving the nature of the offender or the seriousness of the offense. In its evaluation of any aggravating circumstances, the Division will consider, among other things, whether: executive or senior level management of the company was involved; the misconduct was pervasive within the company; or the company or individual has previously engaged in similar misconduct.

¹ CFTC registrants have existing, independent reporting obligations to the Commission requiring them, among other things, to report any material noncompliance issues under the CEA, which would include any foreign corrupt practices that violate the CEA. Nevertheless, registrants that timely and voluntarily self-report misconduct, fully cooperate, and appropriately remediate will receive a recommended “substantial reduction in the civil monetary penalty,” as set forth in the January 2017 and September 2017 Advisories, but the presumption of a recommendation of no civil monetary penalty will not apply.

If the Division recommends a resolution without a civil monetary penalty pursuant to this Advisory, the Division would still require payment of all disgorgement, forfeiture, and/or restitution resulting from the misconduct at issue. In addition, the Division will seek all available remedies—including, where appropriate, substantial civil monetary penalties—with respect to companies or individuals implicated in the misconduct that were not involved in submitting the voluntary disclosure.