



Division of
Enforcement

COMMODITY FUTURES TRADING COMMISSION

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ENFORCEMENT ADVISORY

UPDATED ADVISORY ON SELF REPORTING AND FULL COOPERATION

On January 19, 2017, the Division of Enforcement issued two new Enforcement Advisories (the “January 2017 Advisories”) outlining the factors the Division will consider in evaluating cooperation by individuals and companies in the agency’s investigations and enforcement actions.¹ Among other things, the Advisories explained that, in evaluating the value of cooperation, the Division would consider the “timeliness” of cooperation, including whether the company or individual “quickly made appropriate disclosure of the misconduct and notified the Division.”² Through this Advisory, the Division is providing additional information regarding voluntary disclosures and the substantial credit companies and individuals can expect from the Division if they voluntarily disclose misconduct and fully cooperate with the Division’s investigation.

The Division of Enforcement has long sought to promote voluntary compliance with the law while at the same time ensuring accountability for companies and individuals that violate the law. One way the Division seeks to achieve these dual goals is by providing companies and individuals with meaningful incentives to self-report wrongdoing, cooperate with Division investigations, and, where appropriate, remediate flaws in their controls and compliance

¹ See Press Release, CFTC’s Enforcement Division Issues New Advisories on Cooperation (Jan. 19, 2017), <http://www.cftc.gov/PressRoom/PressReleases/pr7518-17>.

² See Enforcement Advisory: Cooperation Factors in Enforcement Division Sanction Recommendations for Companies (Jan. 19, 2017), <http://www.cftc.gov/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfadvisorycompanies011917.pdf> (Advisory for Companies); Enforcement Advisory: Cooperation Factors in Enforcement Division Sanction Recommendations for Individuals (Jan. 19, 2017), <http://www.cftc.gov/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfadvisoryindividuals011917.pdf>.

programs.³

This updated Advisory on self-reporting and full cooperation should provide greater transparency about what the Division requires from companies and individuals seeking mitigation credit for voluntarily self-reporting misconduct, fully cooperating with an investigation, and remediating, as well as what companies and individuals can expect from the Division if they meet these requirements. Specifically, if a company or individual self-reports, fully cooperates, and remediates, the Division will recommend that the Commission consider a substantial reduction from the otherwise applicable civil monetary penalty. Consistent with the January 2017 Advisories, the Division may recommend a reduced civil monetary penalty even where a company or individual did not self-report wrongdoing but otherwise fully cooperated with the Division's investigation and remediated deficiencies in its compliance or control programs. But, as this Advisory makes clear, the Division will reserve its recommendations for the most substantial reductions in civil monetary penalty for those instances where a company or individual has self-reported the misconduct *and* fully cooperated with the Division's investigation and remediated.

The Division expects that this Advisory will encourage companies and individuals to detect, report, and remediate wrongdoing, thus increasing voluntary compliance with the law. At the same time, the Division expects that this Advisory will provide it with additional avenues to learn about misconduct, thus increasing the Division's ability to prosecute wrongdoers and promoting accountability for those who violate the law.⁴

Requirements for full self-reporting and cooperation credit:

1. Voluntary disclosure to the Division:

- Voluntary disclosure must be made prior to an imminent threat of exposure of the misconduct.
- The disclosure must be made to the Division within a reasonably prompt time after the company or individual becomes aware of the misconduct.

³ “Company” as used in this Advisory means any type of business entity except a sole proprietorship.

⁴ The Division recognizes that the attorney-client privilege and work product doctrine are fundamental to the American legal system and administration of justice. The Division does not intend to affect or alter these rights in any way by this Advisory.

- The disclosure must include all relevant facts known to the company or individual at the time of the disclosure, including all relevant facts about the individuals involved in the misconduct.
 - The Division recognizes that, at the time of the first voluntary disclosure, the company or individual may not yet know all of the relevant facts, or the full extent of the misconduct. To encourage voluntary disclosure at the earliest possible time, the Division will still recommend full credit for the company or individual—assuming compliance with the other requirements—where the company or individual made best efforts to ascertain the relevant facts at the time of disclosure, fully disclosed the facts known at that time, continued to investigate, and disclosed additional relevant facts as they came to light.

2. Full cooperation:

- To receive full credit under this self-reporting program, the company/individual must adhere to the terms of the Division’s January 2017 Advisories.

3. Timely and appropriate remediation of flaws in compliance and control programs:

- Will be fact and circumstance dependent.

Credit:

- If 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.
 - In extraordinary circumstances—for example where misconduct is pervasive across an industry and the company or individual is the first to self-report—the Division may recommend a declination of prosecution.
- In all instances, the company or individual will be required to disgorge profits (and, where applicable, pay restitution) resulting from any violations.