

## **Alert** | Financial Regulatory & Compliance



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### **CFTC Issues Enforcement Advisory on Benefits of Self-Reporting, Cooperation, and Remediation**

On Feb. 25, 2025, the Division of Enforcement (Division) of the Commodity Futures Trading Commission (CFTC) issued an **Enforcement Advisory** (2025 Advisory) outlining the benefits of self-reporting, cooperation, and remediation for violations of the Commodity Exchange Act (CEA). The 2025 Advisory embodies a further refinement of the Division's approach over the last decade in connection with evaluating an entity's or individual's self-reporting, cooperation, and remediation when recommending enforcement actions to the Commission. The 2025 Advisory and the accompanying statement by CFTC Acting Chairman Caroline Pham underscore that the CFTC is emphasizing efficient use of enforcement resources and pursuing a more structured framework designed to create more concrete financial incentives for self-reporting to, and cooperating with, the Division.

#### **Background**

A brief review of the Division's prior pronouncements in this area provides background and context to the 2025 Advisory. In January 2017, the Division updated the CFTC's cooperation guidelines (2017 Update) by encouraging entity and individual self-reporting. The 2017 Update provided that self-reporting of wrongdoing and cooperating throughout an investigation could result in speedier settlements, substantially reduced penalties and, in rare cases, no prosecution at all. However, the 2017 Update did not provide specific guidance or concrete reductions, estimated or otherwise, for self-reporting, cooperation, and remediation. In May 2020, the Division issued a memorandum (2020 Memo), which provided further guidance and clarification regarding the factors the Division would consider when recommending

civil monetary penalties to the Commission for violations of the CEA or the CFTC's rules and regulations. The factors referenced in the 2020 Memo were incorporated into the Division's updated Enforcement Manual. Taking the same general approach as the 2017 Update, however, the 2020 Memo did not provide specific guidance or concrete reductions for self-reporting, cooperation, and remediation.

### **The 2025 Advisory**

The 2025 Advisory attempts to incentivize self-reporting, cooperation, and remediation of potential violations, and the Division's stated policy objective for the 2025 Advisory is to provide clarity to the benefits of self-reporting and cooperating through reduced penalties. In contrast to the 2017 Update and the 2020 Memo, the 2025 Advisory indicates that the Division will now use a matrix to calculate the applicable mitigation credit (Credit), thereby creating tangible financial incentives for firms and individuals to come forward proactively and receive reduced penalties and/or sanctions. The Division noted that the new policy is aligned with best practices for assessing appropriate penalties used by the Department of Justice and other U.S. financial and commodity regulators. For example, the Federal Energy Regulatory Commission has a long-standing Policy Statement on Penalty Guidelines (based on the U.S. Sentencing Guidelines) for enforcement actions including credit through reduction in the "culpability score" for self-reporting and cooperation that can reduce civil penalties.

Aligned with the principles of regulatory consistency, transparency, and clarity, the 2025 Advisory details both the structure and framework the Division will utilize when assessing self-reporting, cooperation, and remediation in connection with investigations and enforcement actions. Specifically, with respect to self-reporting and entitlement to Credit, the 2025 Advisory states that the Division will utilize a three-tier scale: No Self-Report, Satisfactory Self-Report, and Exemplary Self-Report. To receive "Exemplary" self-reporting credit, the self-report must be timely and voluntary, made to either the Division or one of the other CFTC divisions with oversight responsibility, provide information that assists the Division in conserving resources in its investigation, and include all material information known at the time of the self-report.

With respect to its evaluation of cooperation and remediation, the 2025 Advisory states that the Division will assess cooperation using a four-tiered scale: No Cooperation, Satisfactory Cooperation, Excellent Cooperation, and Exemplary Cooperation. The Division will assess remediation as a part of its evaluation of cooperation and will consider further whether the entity or individual engaged in efforts to prevent future violations.

The Division's assessment of the level of cooperation will also consider whether the entity or individual fully complied with subpoenas, voluntarily provided documents and information, made presentations to the Division, and, where applicable, made witnesses available for interviews or testimony. "Exemplary Cooperation" may include all of the foregoing, as well as evidence of significant remediation. The Division also included in the 2025 Advisory examples of behavior considered uncooperative, including untimely subpoena compliance, failure to preserve material information, bad faith attempts to improperly shape testimony, as well as harm to clients, counterparties, or customers.

Finally, the Advisory provides the Credit matrix (Matrix) detailing hypothetical/presumptive Credits. For example, the Matrix indicates that an entity or individual may be eligible to receive a Credit up to 55% for Exemplary Self-Reporting and Exemplary Cooperation, 40% for Exemplary Self-Reporting and Excellent Cooperation, 30% for Exemplary Self-Reporting and Satisfactory Cooperation, and 20% for Exemplary Self-Reporting and No Cooperation. The 2025 Advisory also notes that the Division's assessment of

cooperation is discretionary and will require a case-by-case analysis of the specific facts and circumstances of each matter.

## Conclusion

The 2025 Advisory states that it is the “Division’s sole policy on self-reporting, cooperation, and remediation,” superseding all previous advisories and the Division’s Enforcement Manual, and is thus a critical read for any practitioner before the CFTC. Entities and individuals subject to CFTC jurisdiction should carefully consider the various tiers with counsel when contemplating a self-report, and practitioners should consult the 2025 Advisory in order to position clients to receive credit under the newly announced Matrix.

## Authors

This GT Alert was prepared by:

- Douglas E. Arend | +1 312.476.5029 | [arendd@gtlaw.com](mailto:arendd@gtlaw.com)
- Tracy S. Combs | +1 415.655.1300 | [Tracy.Combs@gtlaw.com](mailto:Tracy.Combs@gtlaw.com)
- Jeffrey M. Henderson | +1 312.456.8453 | [hendersonj@gtlaw.com](mailto:hendersonj@gtlaw.com)
- Gregory K. Lawrence | +1 202.641.2293 | [lawrenceg@gtlaw.com](mailto:lawrenceg@gtlaw.com)
- William B. Mack | +1 212.801.2230 | [mackw@gtlaw.com](mailto:mackw@gtlaw.com)
- David I. Miller | +1 212.801.9205 | [David.Miller@gtlaw.com](mailto:David.Miller@gtlaw.com)

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