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CFTC Enforcement Division Releases Mitigation Credit Matrix for Self-Reporting, Cooperation, and Remediation

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On February 25, 2025, the Commodity Futures Trading Commission (CFTC) signaled a shift in its enforcement approach by releasing new guidance on the role self-reporting and cooperation play in its assessment of penalties. The statement, titled “Advisory on Self-Reporting, Cooperation, and Remediation,” includes a first-of-its-kind matrix that the CFTC’s Enforcement Division will use to apply mitigation credit when assessing penalties. In a press release accompanying the advisory, Acting Chairman Caroline D. Pham explained that the formal incentive structure “will enable the CFTC to do more with less” by encouraging wrongdoers to come forward of their own volition.

The CFTC has long considered self-reporting, cooperation, and remediation when making decisions on penalties. However, prior guidance declined to assign specific weights to these factors, leading to criticism that CFTC procedures did not sufficiently promote voluntary compliance with the law. The February 2025 advisory marks the agency’s most formal and comprehensive effort to date to provide public notice on the rewards of self-reporting and cooperation. The change brings the CFTC closer in line with agencies such as the DOJ’s Criminal Division, which also publishes its requirements to receive credit for self-reporting.

Outgoing CFTC Commissioner Kristin N. Johnson declined to endorse the new program, citing concerns that it did not align with the CFTC’s “statute and regulation” as they relate to cooperation across divisions and infrastructure.

Self-reporting

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Under prior guidance, the CFTC characterized self-reporting misconduct as a mitigating event warranting reduced penalties under certain circumstances. The February 2025 advisory is much more specific, outlining a three-tier scale for analyzing self-reporting:

Tier	Level of self-reporting
Tier 1: No Self-Report	No timely self-report; or Self-report was information already known from other sources; or Self-report that was not reasonably related to the potential violation or not reasonably designed to notify the commission of the potential violation.
Tier 2: Satisfactory Self-Report	Self-report to an appropriate division; Notified the commission of the potential violation; and / or Did not include all material information reasonably related to the potential violation that the reporting party knew at the time of the self-report.
Tier 3: Exemplary Self-Report	Self-report to an appropriate division; Notified the commission of the potential violation; Included all material information reasonably related to the potential violation that the reporting party knew at the time of the self-report; and Included additional information that assisted the division with conserving resources in the division's investigation.

The February 2025 advisory emphasizes the following factors considered by the CFTC when awarding credit for self-reporting:

Voluntariness and timeliness. For a self-report to be timely and voluntary, it must be made "prior to an imminent threat of exposure." The CFTC will examine whether the violation was about to become public knowledge when the party came forward, including through a contemporaneous CFTC

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or parallel investigation; whether the disclosure was made before harm escalated; and how promptly the self-reporting party acted.

Under the new guidance, a self-reporting party will receive credit for violations made as part of mandatory chief compliance officer reports, which are required of futures commission merchants, swap dealers, and other industry participants. This closes a loophole that existed under prior guidance.

Recipient. Self-reports must be made to the appropriate CFTC division. The February 2025 advisory stresses that disclosure to the enforcement division is always appropriate. Self-reports to particular operating divisions are appropriate only if the division in question is responsible for the interpretation and application of relevant regulations.

To ease the burden on self-reporters, the February 2025 advisory states that a party need only self-report to one CFTC division. To obtain credit, the party must provide evidence of the self-report to the enforcement division upon request.

Completeness. To receive full credit, self-reporters must include all material information known to them at the time of reporting. A party can retain full credit by making the best effort to determine relevant facts at the time of reporting and continuing to investigate the violation and report relevant information back to the CFTC.

Cooperation

Cooperation, like self-reporting, has historically been considered in CFTC penalties. The February 2025 advisory formalizes these considerations as a four-tier scale. These scales are inclusive; a cooperator must satisfy all requirements of a lower tier to advance to the next level.

Tier	Level of cooperation
Tier 1: No Cooperation	No substantial assistance beyond required legal obligations.
Tier 2: Satisfactory Cooperation	Provided substantial assistance; Voluntary production of documents and information; Arranging for voluntary witness interviews; and/or

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Tier	Level of cooperation
	Basic presentations on legal and factual issues.
Tier 3: Excellent Cooperation	Met the expectations for Satisfactory Cooperation; Consistently provided substantial assistance; Internal investigations or reviews; Thorough analysis of potential violation, root cause, and corrective action for remediation; and Use of internal or external expert resources and consultants as appropriate.
Tier 4: Exemplary Cooperation	Met the expectations for Excellent Cooperation; Consistently provided material assistance; Proactive engagement and use of significant resources; Significant completion of remediation; and Use of accountability measures, as appropriate.

Industry actors should consider the following factors to achieve full credit for cooperation:

Proactivity. The Satisfactory Cooperation tier requires voluntary and substantial assistance with a CFTC investigation. This indicates that the CFTC will consider whether a party is forthright in its cooperation and makes helpful information, such as documents and key witnesses, available to the regulator.

Resources expended. To advance to higher tiers, the cooperator must provide consistent assistance and expend internal resources on the CFTC investigation. This includes conducting internal investigations and reviews, exploring corrective actions, and potentially funding external evaluations or consultants.

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Materiality. The Exemplary Coordination tier is reserved for parties who, in addition to meeting the lower-tier requirements, cooperate in a manner resulting in significant, material assistance. Additionally, this highest level of credit requires that the cooperator undertake remediation and establish accountability measures.

Remediation

Under the February 2025 advisory, remediation is evaluated as part of the four-tier cooperation scale. However, the advisory notes that credit will generally only be given for when an operating division finds that a potential violation and its "root cause" have been remediated or that an acceptable remediation plan is in place.

Acceptable remediation tactics include altering company policies and procedures, taking accountability measures for management or personnel who individually engaged in wrongdoing, and conducting "gap analyses" aimed at catching and correcting potential violations similar in character to the ones under investigation. The enforcement division may also require a party to accept a monitor or consultant as part of a remediation plan.

What this means to you

The Mitigation Credit Matrix is included below. For eligible parties, the matrix will be applied to discount from an assessed civil monetary penalty. When applicable, a bad actor may also be required to disgorge wrongfully obtained profits and / or pay restitution, not subject to any discount.

The February 2025 advisory stresses that the CFTC has retained its discretion over penalty determinations. The new guidance does not oblige the agency to "consider one or more cooperation factors, or to give certain factors more weight than others." While the stated goal of the advisory is to increase transparency, consistency, and clarity in the industry, the Mitigation Credit Matrix and associated tier scales should not be understood as ironclad requirements.

	Tier 1: No Cooperation	**Tier 2: Satisfactory Cooperation**	**Tier 3: Excellent Cooperation**	**Tier 4: Exemplary Cooperation**
Tier 1: No Self-Report	0%	10%	20%	35%

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	Tier 1: No Cooperation	Tier 2: Satisfactory Cooperation	Tier 3: Excellent Cooperation	Tier 4: Exemplary Cooperation
Tier 2: Satisfactory Self-Report	10%	20%	30%	45%
Tier 3: Exemplary Self-Report	20%	30%	40%	55%

Contact us

If you have any questions about the advisory or the matrix, please contact Kip Randall, Sydney Sznajder, or your Husch Blackwell attorney.

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