LEGAL UPDATES

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CFTC Releases Criteria for Operating Divisions to Refer Violations to Enforcement Division

Service

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On April 17, 2025, the Commodity Futures Trading Commission's (CFTC) Market Participants Division (MPD), the Division of Clearing and Risk (DCR), and the Division of Market Oversight (DMO)—collectively the Operating Divisions—and the Division of Enforcement (DOE) issued a Staff Advisory that further implements the DOE's recent advisory addressing self-reporting, cooperation, and remediation (Enforcement Advisory). This Staff Advisory specifically provides guidance on the criteria the Operating Divisions will use to determine whether to refer a self-reported violation to the DOE for supervision or non-compliance issues.

Self-reporting scheme

Under the Enforcement Advisory's guidance, when the CFTC receives a self-report, it evaluates whether that report was made to the appropriate division. The DOE is considered per se an appropriate division. Alternatively, in a new approach authorized by the Enforcement Advisory, an entity can also report to an Operating Division. An appropriate Operating Division is one that "is responsible for the interpretation and application of each regulation, as applicable, that is the subject of the potential violation." All of that is to say, an entity now can choose whether to report a potential violation to an Operating Division or the DOE. Should an entity choose to report through an Operating Division, the division will look to the new Staff Advisory for guidance on whether to refer the violation to the DOE.

Referral criteria

The Staff Advisory addresses materiality in tiers, starting with violations that cause harm or significant financial losses. As an initial matter, Operating

Divisions may refer material violations to the DOE—those violations involving harm to clients, counterparties or customers, or members or participants, harm to market integrity, or significant financial losses. Although entities may now report to Operation Divisions, the CFTC cautions that they "should use their own judgment to determine whether it is appropriate to self-report a material violation—particularly involving fraud, manipulation, or abuse—directly to DOE in the first instance."

Dropping to the second tier, the Staff Advisory addresses supervision or non-compliance issues—i.e., supervisory system or controls, risk management programs, or compliance programs. Operating Divisions will address non-material supervision or non-compliance issues with the entity directly without referring them to the DOE. To determine the materiality of a supervision or non-compliance issue, the Operating Divisions "will apply a reasonableness standard to the [referral] criteria, with consideration of a registrant or registered entity's size, activity, and complexity." Those criteria are:

1. especially egregious or prolonged systematic deficiencies or material weakness of the supervisory system or controls, or program;
2. knowing and willful misconduct by management, such as conduct evidencing an intent to conceal a potential violation, or supervision or non-compliance issue;
3. or lack of substantial progress towards completion of a remediation plan for an unreasonably lengthy period of time.

What this means to you

While entities may now self-report violations to the Operation Divisions, they should consider whether the DOE is still the most appropriate division, especially for a violation causing harm or significant financial losses or more specially, one involving fraud, manipulation, or abuse. For issues involving supervision or non-compliance, the Operation Divisions will evaluate the enumerated criteria to determine materiality. Per the Staff Advisory, Operating Divisions will address non-material supervision and non-compliance issues directly and not refer them to the DOE.

Contact us

If you have questions about this Staff Advisory or CTFC enforcement guidance generally, please contact Kip Randall, Sydney Sznajder, or your Husch Blackwell attorney.