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### CFTC Dips Its Toe into Anti-Corruption Space



On March 6, 2019, the Division of Enforcement of the U.S. Commodity Futures Trading Commission ("CFTC") [issued](#) a new [Enforcement Advisory](#) on self-reporting violations of the Commodity Exchange Act ("CEA") involving foreign corrupt practices.

Under the Advisory, the Division provided guidance that it might recommend no civil monetary penalties for certain non-registrants that voluntarily and timely self-report, fully cooperate, and appropriately remediate. The Advisory's release was accompanied by formal [remarks](#) from CFTC Enforcement Director James McDonald at the American Bar Association's National Institute on White Collar Crime. ***The Advisory*** The Division identified a limited scope of persons to whom the Advisory applies and several requirements that such persons must satisfy. As a preliminary matter, the Advisory applies only to individuals and entities that are not registered (or required to be registered) with the CFTC and to violations of the CEA involving foreign corrupt practices. The Advisory does not apply, by comparison, to persons registered with the CFTC. And the Division confirmed that such persons might instead fall under other enforcement advisories issued in, for example, January and September 2017. To fall within the scope of this new Advisory, a non-registrant must satisfy several requirements. Specifically, a non-registrant must: (1) timely and voluntarily disclose to the Division the violation; (2) cooperate fully; and (3) provide appropriate remediation. Assuming those requirements are satisfied, the Division will apply a presumption that it will recommend a resolution with no civil monetary penalty. Even absent a civil penalty, though, the Division still will require disgorgement, forfeiture, and restitution. The Division nevertheless might recommend a civil monetary penalty if certain "aggravating circumstances" exist. The Advisory defines "aggravating circumstances" to include instances when (1) the company's executive or senior level management was involved; (2) the misconduct was pervasive within the company; or (3) the company or individual previously engaged in similar misconduct. ***Conclusion*** Consistent with DOJ Deputy Attorney General Rod Rosenstein's [May 2018 remarks](#) discouraging "piling on" by DOJ and other enforcement agencies in imposing multiple penalties in relation to investigations of the same misconduct, Director McDonald pledged that the CFTC "will not pile onto other existing investigations" but would "investigate in parallel with other enforcement authorities...to avoid duplicative investigative steps." Given the

narrow scope of the Advisory's application--as well as the fact that Director McDonald suggests that the CFTC will not run afoul of the prevailing "anti-piling on" policy, the anti-corruption enforcement landscape is arguably not poised to undergo any significant transformation as a result of the CFTC's announcement. Additionally, as always, each enforcement action brings with it a different set of circumstances by which CFTC staff will assess what qualifies as "timely" self-reporting, "full cooperation," and "appropriate remediation"--leaving nothing in the form of a "guarantee." Still, the Advisory certainly suggests that the CFTC is looking to offer potential respondents a carrot to entice additional self-reporting in the enforcement context.

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