CLIENT ALERTS & INSIGHTS

The CFTC's New Cooperation Playbook: What Practitioners Need to Know About Letter No. 26-15

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Featured Practices: White Collar, Government Investigations & Regulatory Compliance, Securities & Commodities Litigation & Investigations, Corporate

Key Takeaways:

- The CFTC's new advisory strongly incentivizes companies to voluntarily and promptly self-report misconduct, with the potential to avoid enforcement actions entirely or significantly reduce financial penalties.
- Enforcement outcomes now hinge on a clear five-factor cooperation framework, where full disclosure, cooperation, remediation, restitution, and lack of aggravating factors determine eligibility for declinations or penalty reductions.
- The guidance signals heightened regulatory expectations, including strict oversight of employee conduct, robust compliance programs, and comprehensive recordkeeping for modern communication platforms like Teams, Zoom, and WebEx.

In a recent Staff Advisory to the Enforcement Division[1], the Commodities and Futures Trading Commission ("CFTC") released guidance on how companies can avoid enforcement actions-or receive substantial penalty reductions-through early and full disclosure of potential misconduct.

Under the new guidance, effective immediately, CFTC staff will consider five factors in evaluating cooperation. If all five factors are present, the company may be eligible for a declination of enforcement. If fewer than five are present, the company may be eligible for a substantial reduction in civil money penalties. Even if only one factor is present and the company cooperates with the CFTC's investigation, it still may be eligible for a minor reduction in civil money penalties.

Evaluation Factors for Enforcement Decisions

In making enforcement decisions, the CFTC staff now weighs five factors. Previously, the CFTC used an opaque scoring system.[2] Now, the question is essentially binary: did the company fully cooperate or not? The CFTC weighs the following factors :

- **A voluntary self-report.** The most important factor is a voluntary self-disclosure to any CFTC division before any threat of investigation or disclosure. The report must be made in good faith: promptly and with complete disclosure of all facts. The CFTC heavily evaluates timing; a self-report made within two weeks of discovering misconduct is viewed more favorably than one disclosing misconduct discovered six months prior.

  A voluntary self-report must also include all material and nonprivileged information the company possesses about the misconduct. This includes instances where the company has incomplete information or has just commenced an internal investigation. Finally, this definition requires the company to fulfill all related statutory and regulatory obligations in the event of misconduct.

- **Full cooperation**. This includes timely disclosure of all information concerning the misconduct, disclosure of relevant information that the CFTC does not specifically request, and providing access to executives, officers, employees, and agents for interviews. Personnel cooperation at all levels will likely be critical to the CFTC's evaluation.

  Further, the CFTC expects ongoing updates on any internal investigation and expects companies to delay or accelerate interviews when specifically requested. It will not, however, take over a company's internal investigation.

- **Timely and appropriate remediation**. This factor requires the company to implement and maintain an effective compliance and ethics program, including incentives for compliance, ongoing evaluation, and a fulsome document-retention protocol. Compliant recordkeeping requires companies to preserve all "ephemeral" messaging platforms, such as Zoom, Teams, and Webex.

  The CFTC also expects quick and appropriate discipline for employees responsible for the misconduct. This includes not only employees who engaged in wrongdoing, but also supervisors who failed to identify or stop wrongdoing.

- **Restitution and disgorgement**. The company must plan to provide full restitution to individuals harmed by the misconduct. The CFTC looks favorably upon immediate and complete restitution. If that is not possible, the company should create a reasonable restitution plan approved by the CFTC.

- **The absence of disqualifying aggravating circumstances**. Aggravating circumstances include pervasive, intentional, or reckless misconduct by senior management, misconduct over an extended period, recidivist behavior, and egregious aggregate harm. The CFTC retains discretion to decline enforcement even where aggravating factors exist, balancing their severity against cooperation efforts.

Potential Rewards for Disclosure

Declination. The CFTC heavily incentivizes full cooperation by directing Enforcement to provide a compliant self-reporter with a full declination. In other words, the Enforcement Division will not recommend that the CFTC bring an enforcement action if the company satisfactorily meets all five of the above factors. A key question here is whether a disclosure qualifies as a "voluntary self-report" by meeting the staff's criteria (including, for instance, full disclosure of all relevant information). This is a rigorous standard that will require compliance resources, early proactive detection programs, and quick reactive investigative functions.

- **Reduction in civil money penalties.** A company that makes a good-faith self-report but fails to meet all five factors for declination may still receive substantial benefits. A penalty reduction is available for companies that make reports but do not meet all elements of a voluntary self-report or have aggravating factors. But all other factors must be present. Notably, a robust compliance program is critical for any company seeking a reduction in civil money penalties.
- For companies that submit a qualifying voluntary self-report, the Enforcement Division will recommend a 50% reduction. If aggravating factors exist, the CFTC will recommend a 25%reduction. The CFTC may not recommend more than a 75%reduction in civil money penalties. Companies that fail to meet the factors listed above, but who nonetheless have both a strong compliance program and cooperated with the CFTC in their investigation, are eligible for a civil money penalty reduction at a maximum of 25%. This is designed to incentivize companies to work with the CFTC in its investigation, even if they do not self-report early.

Important Enforcement Shifts from the Policy

Overall, this new policy brings significantly more clarity to companies as they evaluate enforcement risk and cooperation rewards from the CFTC. Three new aspects of the policy warrant particular strategic attention. First, the Division's insistence on identifying all individuals involved regardless of position, status, or seniority signals a continued and intensified focus on individual accountability. Clients should prepare for the expectation that cooperation means naming names at every level.

Next, the explicit requirement for controls over ephemeral messaging platforms reflects the CFTC's alignment with broader regulatory trends around off-channel communications and recordkeeping. Organizations that have not already implemented robust policies governing personal devices and disappearing-message applications should treat this as an urgent compliance priority.

Third, the quantified penalty-reduction benchmarks provide a concrete framework for assessing settlement positions, giving practitioners measurable reference points where previously only assurances of "credit" existed.

With this new guidance, the CFTC is saying, louder and more clearly than ever: *come to us before we come to you.* Companies face significant risks if they ignore the new self-reporting program, given the financial incentives the CFTC is providing to potential whistleblowers.[3] Accordingly, companies should react swiftly when they discover that misconduct may have occurred.

Your Benesch Team Can Help

Striking a balance between ensuring compliance at a reasonable cost can be challenging. Benesch's deep bench of White Collar and Government Investigations and Securities and Commodities Litigation and Investigations attorneys can assist companies' compliance efforts, both proactive and reactive.

Benesch can review and improve compliance programs or help build a new program if there is not a preexisting component to ensure that any potential issues are identified and addressed promptly This is important given that the CFTC will only recommend declination of enforcement or a reduction in civil money penalties for companies with a robust compliance program. Benesch can evaluate your compliance policies and procedures and recommend any necessary changes, particularly around ephemeral message retention.

From a reactive perspective, Benesch is well positioned to help companies navigate all levels of interactions with the CFTC, including regarding this new self-disclosure regime. We can advise on your level of risk, perform necessary investigations into potential misconduct, and most importantly, help navigate the decision of whether to self-report to the CFTC.

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[1] United States Commodity Futures Trading Comm'n, *New Division of Enforcement Policy on Cooperation*, Staff Letter No. 26-15 (May 19, 2026).

[2] United States Commodity Futures Trading Comm'n, *Advisory on Self-Reporting, Cooperation, and Remediation* (Feb. 25, 2025).

[3] *CFTC Whistleblower Award Determination No. 26-WB-07*, Order Determining Whistleblower Award Claims (June 1, 2026).