

UPDATES

CFTC Staff Advisory on Referrals to the Division of Enforcement

April 25, 2025

On February 25, 2025, the Division of Enforcement (Enforcement Division) of the U.S. Commodity Futures Trading Commission (CFTC) released an Enforcement Advisory on Self-Reporting, Cooperation, and Remediation (Advisory). As explained in the [Sidley Update](#) on the Advisory, market participants may now receive self-reporting credit for potential violations reported to the Market Participants Division, Division of Clearing and Risk, or the Division of Market Oversight (together the Operating Divisions). Previously, self-reports had to be made to the Enforcement Division for a market participant to receive self-reporting credit.

As part of the implementation of the Advisory, on April 17, 2025, the Operating Divisions and Enforcement Division issued a [staff advisory](#) regarding the criteria the Operating Divisions will use in assessing whether to make a referral to the Enforcement Division following a self-report (Staff Advisory).

Key Takeaways

- Pursuant to the Staff Advisory, the Operating Divisions may refer “material” violations to the Enforcement Division. The Operating Divisions will handle nonmaterial violations without referral to the Enforcement Division.
- “Material” violations may include those that involve harm to clients, market participants, or market integrity or involve significant financial losses.
- Violations involving supervision or noncompliance may be material where they concern egregious deficiencies, willful misconduct, or a prolonged lack of substantial progress in remediation. This higher standard may reduce the number of referrals to the Enforcement Division or at the very least delay referrals to the Enforcement Division while the Operating Divisions collect information.
- Taken together with the February Advisory and recent comments by CFTC leadership, the Staff Advisory indicates that this is an opportune time for entities to consider self-reporting to the CFTC’s Operating Divisions. The Operating Divisions indicate that they will engage with entities to resolve nonmaterial supervision or compliance issues without referral to the Division of Enforcement. Material violations may still qualify for leniency under the previously announced enforcement “sprint.”

Overview of the Staff Advisory

The Staff Advisory explains that Operating Divisions may refer “material” violations they learn of through self-reporting to the Enforcement Division. Material violations may include those that involve (1) “harm to clients, counterparties or customers, or members or participants,” (2) “harm to market integrity,” or (3) “significant financial losses.”¹ The Staff Advisory further suggests that there may be cases where a market participant should consider self-reporting a violation directly to the Enforcement Division — specifically those involving fraud, manipulation, or abuse. Where supervision or noncompliance issues are not material, the Operating Divisions will address the issues without referral to the Enforcement Division.

Where violations involve “supervision or non-compliance,” to determine whether a violation is material, the Operating Divisions will apply a “reasonableness standard” using the following criteria: (1) whether deficiencies were especially egregious or prolonged, (2) whether the violation (or subsequent response) involved knowing and willful misconduct by management, or (3) whether there has been a lack of substantial progress in remediation “for an unreasonably lengthy period of time, such as several years.”² The analysis will take into account an entity’s size, activity, and complexity.

In particular, the Staff Advisory notes that historically, failure to supervise charges have “frequently involved technical or operational issues.”³ While it remains to be seen whether the Enforcement Division will take a new approach to potential failure to supervise violations, the implication of the Staff Advisory is that underlying violations that are technical or operational will not warrant an enforcement action for failure to supervise.

This is the first public guidance from the CFTC on the criteria its Operating Divisions will apply when determining whether to refer a matter to the Enforcement Division. As such, the Staff Advisory provides clarity and a meaningful framework to guide market participants’ interactions with the Operating Divisions on compliance issues, such as a firm’s supervisory systems, risk management program, and overall compliance program. At the same time, the Operating Divisions retain seemingly broad discretion in determining whether a supervision and noncompliance issue is “material.” As with any reasonableness standard, determinations will be fact and circumstance specific, and, as matters are resolved, market participants will learn more about how the Staff Advisory will be implemented.

The Staff Advisory also acknowledges the complexity of compliance issues, particularly for large market participants. Operating Divisions are directed to apply the reasonableness standard in the context of an entity’s “size, activity, and complexity.” This suggests, for example, that what qualifies as an egregious violation may depend on the size of the entity and its business activities. As to remediation, the Staff Advisory indicates that the Operating Divisions will be patient with entities that are trying in good faith to make progress, giving them ample time (potentially several years) to complete the remediation.

Finally, the Staff Advisory is part of the CFTC’s broader efforts to encourage and incentivize self-reporting and cooperation as well as engagement with the Operating Divisions. In March 2025, Acting Chair Caroline Pham announced a 30-day enforcement “sprint” to resolve self-reported compliance matters.⁴ Nearly two dozen firms participated in this program.⁵ Although the 30-day window has passed, entities may still request treatment under the terms of the enforcement sprint. This Staff Advisory now provides market participants with an opportunity to engage with the Operating Divisions to remediate and potentially prevent an enforcement action.

¹ Staff Advisory on Materiality or Other Criteria That Operating Divisions Will Use to Determine Referrals to the Division of Enforcement (Staff

Advisory) (Apr. 17, 2025) at 2, https://www.cftc.gov/PressRoom/PressReleases/9067-25?utm_source=govdelivery.

² *Id.* at 3. The Staff Advisory notes that “[t]he mere failure to meet, or extension of, a deadline for corrective action or remediation plan, on its own, will not be sufficient for a referral[.]”

³ *Id.* at 2 n.5.

⁴ Acting Chair Caroline Pham, *Keynote Address at FIA Boca50* (Mar. 11, 2025), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opapham13>.

⁵ Press release, Acting Chairman Pham Lauds DOJ Policy Ending Regulation by Prosecution of Digital Assets Industry and Directs CFTC Staff to Comply with Executive Orders (Apr. 8, 2025), <https://www.cftc.gov/PressRoom/PressReleases/9063-25>.

⁶ Futures Industry Association Law & Compliance Division, *CFTC Self-Reporting, Cooperation, and Remediation Advisory: A Game-Changer*, webinar (Mar. 31, 2025), <https://www.fia.org/fia/articles/cftc-self-reporting-cooperation-and-remediation-advisory-game-changer>.

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