

# White Collar Defense and Investigations



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## CFTC Announces New Enforcement Advisory on Self-Reporting, Cooperation and Remediation

On February 25, 2025, the Division of Enforcement of the Commodity Futures Trading Commission (CFTC or the Commission) issued an advisory to Division staff on how to evaluate self-reporting, cooperation and remediation credit when making recommendations to the Commission in enforcement actions.

The new advisory represents a significant change from the Enforcement Division's previous position and formally rescinds five prior advisories on these topics issued in 2017 and 2020, as well as the 2023 advisory that covered penalties, monitors, consultants and admissions in enforcement actions.

### Greater Flexibility in Self-Reporting

The new advisory maintains the basic requirements for self-reporting, which are that a self-report must:

- Be made prior to an imminent threat of disclosure.
- Occur within a reasonably prompt period of time from when the conduct was discovered.
- Disclose all of the relevant facts known at the time and discovered through best efforts.

But a number of changes to the Enforcement Division's approach provide those making self-reports greater flexibility.

**First**, the Enforcement Division will now recognize self-reports made to the operating division responsible for the regulation at issue (e.g., the Division of Clearing and Risk, the Division of Market Oversight and the Market Participants Division). Previously, the position was that, to receive self-reporting credit, a self-report needed to be made to the Enforcement Division. The Enforcement Division and operating divisions will be releasing future guidance on the criteria that the operating divisions will use to make referrals to the Enforcement Division.

Those seeking self-reporting credit by reporting to a division other than Enforcement Division should be mindful to retain a record of the self-report so that it can be provided to the Enforcement Division if requested.

**Second**, the advisory also addresses a concern previously raised by now-Acting Chairman Caroline Pham that self-reporting credit would not be granted when the issues being reported were required to be disclosed in a registrant's annual chief compliance officer (CCO) report. The new advisory clarifies that a self-report of issues that otherwise must be disclosed in a CCO report are still eligible for credit so long as the self-report is made in a timely manner and without regard to the timing of the CCO report.

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**Third**, the advisory provides a safe harbor from charges under the Commodity Exchange Act’s provisions and rules that prohibit making false statements and inaccurate reports to the CFTC. While the advisory does not alter the requirement that a self-report be “prompt,” self-reporters will not be charged for initial reports that, through further due diligence and fact investigation, are later discovered to be inaccurate or incomplete.

**Fourth**, the advisory permits the Enforcement Division to provide partial self-reporting credit where the self-report did not include all material information known about the violation at the time of the self-report. This differs from the 2020 advisory, by which self-reporting was an all-or-nothing proposition, with respondents that provided incomplete self-reports receiving no reporting credit. Now, the CFTC will evaluate self-reporting on a three-tier scale:

- **Tier 1:** “No Self Report,” where no report is made, the information is already known to the CFTC or the report is unrelated to the ultimate violation.
- **Tier 2:** “Satisfactory Self-Report,” where the self-report notifies the CFTC of the potential violation but does not include all information known at the time of the report.
- **Tier 3:** “Exemplary Self-Report,” where a report includes all material information known at the time and conserves CFTC investigatory resources.

## Greater Clarity on Expectations for Cooperation

While the Enforcement Division’s prior advisories recognized different levels of cooperation and assessed remediation separately, the new advisory makes remediation part of cooperation, creates a four-tier framework for assessing cooperation and provides expectations for tiers of increasing levels of cooperation:

**Tier 1:** “No Cooperation,” where the respondent has done nothing more than comply with subpoenas.

**Tier 2:** “Satisfactory Cooperation,” where a respondent has provided “substantial assistance” by voluntarily providing

documents and information, making presentations and making witnesses available for interviews and testimony.

**Tier 3:** “Excellent Cooperation,” where a respondent has passed Tier 2 requirements and also performs an internal investigation, provides an analysis of the potential violation and its root cause, takes corrective action and consistently provides information on a voluntary basis.

**Tier 4:** “Exemplary Cooperation,” where a respondent’s cooperation provides “an exceptionally high degree of value,” for example by proactively engaging and using significant resources to assist in the investigation and significantly completing remediation of the issue.

## Shift Away From Monitors

The new advisory rescinds the Enforcement Division’s 2024 guidance on penalties, monitors/consultants and admissions, which called for the imposition of consultants or monitors in more cases. Under the new advisory, the operating division — rather than the Enforcement Division — will determine whether a monitor is appropriate based on whether suitable remedial efforts to prevent future violations have been taken or are underway.

## Greater Clarity on Mitigation Credit

The previous advisories on self-reporting, cooperation and remediation promised respondents “credit” for that conduct but did not disclose a method or formula to determine the amount of the credit.

The new advisory fills that gap by identifying specific percentage discounts that the Enforcement Division will presumptively recommend from an initial penalty calculation based on the level of self-reporting and cooperation provided.

The discounts range from 0% to 55%, as follows:

	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%
Tier 2: Satisfactory Self-Report	10%	20%	30%	45%
Tier 3: Exemplary Self-Report	20%	30%	40%	55%