

## Changing the guard: CFTC announces new enforcement policy

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Less than two years after announcing a more aggressive approach to enforcement, the CFTC Division of Enforcement has issued a new policy on self-reporting and cooperation credit that replaces all previous Division policies on enforcement matters, stressing a more balanced and transparent approach.

On February 25, 2025, the CFTC's Division of Enforcement, under new leadership, issued [a new advisory](#) on how it will evaluate self-reporting, cooperation and remediation credit when recommending enforcement actions and proposing monetary penalties for both firms and individuals (the 2025 Advisory). The 2025 Advisory is now the Enforcement Division's **sole** policy on self-reporting, cooperation and remediation, supplanting all prior policies, including those in a [2023 advisory](#) (the 2023 Advisory) under the prior administration. The 2025 Advisory adopts a broader definition of "self-reporting" and marks the first time that the CFTC has included a matrix detailing the discounts available for companies that earn self-reporting and cooperation credit. As always, we will need to see how this guidance is interpreted and implemented, but the 2025 Advisory signals a more flexible approach than the 2023 Advisory.

### Background

Over the last decade, the Enforcement Division has issued various policies regarding credit for self-reporting violations of the Commodity Exchange Act and CFTC rules, cooperating with the investigation, and engaging in significant efforts to remediate the violations, when recommending enforcement actions and monetary penalties to the Commission. The 2023 Advisory reflected an aggressive approach to enforcement, including increased monetary penalties, imposition of monitors and consultants, and requiring admissions to allegations of misconduct, with a particular emphasis of treating "recidivism" more harshly. Our client update discussing the 2023 Advisory is available [here](#).

### The new guidance

#### Self-reporting

The 2025 Advisory provides a new approach for crediting self-reporting, with detailed, rubric-style "tiers" of credit. In determining the applicable self-reporting tier, the Enforcement Division will consider (1) the voluntariness of the self-report, (2) whether the self-report was made to an appropriate division of the CFTC, (3) the timeliness of the self-report, and (4) the completeness of the self-report. At a high level, the self-reporting tiers are:

- **Tier 1 (No Self-Report):** The self-reporting was not timely or did not include original, relevant information.
- **Tier 2 (Satisfactory Self-Report):** The self-reporting was made to an appropriate CFTC Division but did not include all material information known to the reporting party.
- **Tier 3 (Exemplary Self-Report):** The self-reporting was made to an appropriate CFTC Division and included all material information known to the reporting party, as well as additional information that conserved Enforcement

Division resources in the investigation.

Although the Enforcement Division previously required that voluntary disclosures be made directly to the Enforcement Division to receive credit, the 2025 Advisory states that credit will be given for (1) self-reporting to the appropriate CFTC Operating Division (including the Division of Clearing and Risk, the Division of Market Oversight, and the Market Participants Division), and (2) disclosures otherwise required pursuant to CFTC rules, such as disclosures in annual chief compliance officer reports. The 2025 Advisory also notes that the Enforcement Division and Operating Divisions plan to develop a future advisory to set forth criteria for enforcement referrals from an Operating Division.

The 2025 Advisory includes a “safe harbor” from violating rules prohibiting making false or misleading statements to the CFTC for good-faith efforts to self-report if such disclosure is later found to be inaccurate after further investigation by the disclosing party (but presumably not for disclosure later found to be inaccurate by the CFTC) and the disclosure is promptly corrected.

## Cooperation

The Enforcement Division will continue to give credit for cooperation consistent with long-standing Division policies. Like with self-reporting credit, the 2025 Advisory provides new tiers of cooperation credit:

- **Tier 1 (No Cooperation):** The firm or individual provided no substantial assistance beyond required legal obligations.
- **Tier 2 (Satisfactory Cooperation):** The firm or individual provided substantial assistance, including voluntary documents, information and witnesses.
- **Tier 3 (Excellent Cooperation):** The firm or individual met expectations for Tier 2 and conducted a thorough internal investigation and analysis using internal or external expert resources, as appropriate.
- **Tier 4 (Exemplary Cooperation):** The firm or individual met expectations for Tier 3 and proactively completed significant remediation, including using accountability measures, as appropriate.

The 2025 Advisory provides that the relevant CFTC Operating Division will assess and determine whether remediation plans are appropriate. Overall, the 2025 Advisory provides for a more significant role for the Operating Divisions in enforcement matters than in prior guidance.

## Monitors and consultants

The 2023 Advisory signaled increased use of independent compliance monitors and consultants. In contrast, the 2025 Advisory has a more limited discussion of imposing monitors and consultants and provides that the relevant Operating Division will assess and determine whether it is appropriate to recommend the use of a monitor or consultant, rather than the Enforcement Division.

## Recidivism

Whereas the 2023 Advisory placed heavy focus on perceived recidivism, and the CFTC imposed more substantial remedies for firms or individuals with prior actions involving similar matters, the 2025 Advisory makes only a single passing reference to recidivism as a factor. Although it is not clear how the CFTC will evaluate a firm’s or individual’s enforcement history, the 2025 Advisory might be a signal that the CFTC will be more restrained in labeling a firm or individual a “recidivist” that merits a heightened penalty.

## Mitigation credit matrix

The 2025 Advisory includes a “Mitigation Credit Matrix” that provides presumptive discounts on civil monetary penalties ranging from 0-55% based on different combinations of self-reporting and cooperation efforts. These presumptive discounts represent a departure from the 2023 Advisory’s strong emphasis on increasing the size of monetary penalties. The 2025 Advisory summarizes the discounts as follows:

	<b>Tier 1: No Cooperation</b>	<b>Tier 2: Satisfactory Cooperation</b>	<b>Tier 3: Excellent Cooperation</b>	<b>Tier 4: Exemplary Cooperation</b>
<b>Tier 1: No Self-Report</b>	0%	10%	20%	35%
<b>Tier 2: Satisfactory Self-Report</b>	10%	20%	30%	45%
<b>Tier 3: Exemplary Self-Report</b>	20%	30%	40%	55%

## Key takeaways

The 2025 Advisory signals a significant change from the 2023 Advisory and corresponding commentary. Where the 2023 Advisory emphasized the proverbial “stick” over the “carrot,” the 2025 Advisory appears to place more emphasis on the “carrot.” It provides a broader definition of “self-reporting,” a seemingly more lenient perspective on a firm’s or individual’s prior enforcement history, and less emphasis on use of a monitor or consultant. The 2025 Advisory also, for the first time, gives detailed guidance about how cooperation will translate into credit through presumptive, quantitative discounts for civil monetary penalties.

As with any new guidance, it will be important to see how it plays out in practice. In particular, the 2025 Advisory has been released during a transitional period for the CFTC under an acting Chair and less than a full slate of commissioners. It remains to be seen whether and to what extent the incoming Chair and commissioners will support these new policies. In addition, the CFTC has significant discretion in determining penalty amounts and will continue to have flexibility even under the tiered approach to awarding credit.

We have [long called for](#) greater clarity in guidance about the quantifiable benefits of cooperation. The 2025 Advisory appears to be a significant step forward. We will be watching closely to see how it is implemented and whether other civil agencies, such as the SEC, follow the CFTC’s lead.

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