



March 2019

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A New Enforcement Agency Joins the World of International Corruption Enforcement: CFTC Announces New Initiative Covering Companies Involved in Foreign Corrupt Practices

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Historically, enforcement of violations of the Foreign Corrupt Practices Act (“FCPA”) has been the exclusive domain of the U.S. Department of Justice (“DOJ”) and the Securities and Exchange Commission (“SEC”). In the past few years, that paradigm has shifted, with numerous countries beginning to enforce their own anti-corruption laws and increasing the risks for companies operating globally. Companies now have another enforcement agency for which to prepare: on March 6, 2019, the Commodity Futures Trading Commission (“CFTC”) announced its foray into the world of enforcement of foreign bribery violations and adopted a standard well familiar to FCPA practitioners in determining under what circumstances the CFTC may decline to impose civil penalties for foreign corrupt practices: self-report, cooperate, and remediate.

Classic examples of FCPA violations involve bribes paid to foreign officials, which include payments to officials of state-owned enterprises such as state banks and sovereign wealth funds—sometimes through a third-party intermediary—with an intent to influence that official’s decision-making, whether the objective is to win business, curry favor, or obtain a regulatory authorization. Such misconduct often culminates in prosecutions by, and multimillion dollar settlements with, multiple regulators, in both the United States and abroad. With a new regulator jumping on the foreign corruption bandwagon, companies—including those not previously subject to SEC mandates and non-CFTC registrants—must rapidly familiarize themselves with the risks of CFTC enforcement and consider how best to prepare for the increased scrutiny of a new enforcement agency with different regulatory powers that is actively cooperating with the DOJ and SEC.

In this article, we outline the requirements of the FCPA, the jurisdiction of the CFTC, and explain the scope and implications of the CFTC’s recent Enforcement Advisory.

The FCPA

The U.S. Foreign Corrupt Practices Act of 1977 (FCPA) prohibits U.S. businesses and citizens from making “corrupt” payments to foreign officials under its “anti-bribery provisions,” which are enforced criminally by the DOJ.¹ The FCPA also includes a series of accounting provisions applicable to companies under the SEC’s jurisdiction, which operate in tandem with the FCPA’s anti-bribery



provisions and require issuers to make and keep books and records that accurately and fairly reflect the corporation's transactions and maintain an adequate system of internal accounting controls.² The FCPA subjects only certain types of entities and conduct to criminal enforcement: (1) SEC "issuers" and their officers, directors, employees, agents, or stockholders;³ (2) "domestic concerns" and their officers, directors, employees, agents, or stockholders;⁴ and (3) any person other than an issuer or domestic concern acting "while in the territory of the United States."⁵

The DOJ historically has pursued criminal FCPA violations, often in coordination with the SEC, which frequently pursues parallel civil violations. The SEC's jurisdiction to enforce the FCPA is more limited than that of the DOJ, however, in that the SEC has authority to pursue only SEC issuers or domestic concerns and their officers, directors, employees, stockholders, or agents.⁶ Although the DOJ technically has a legal basis to bring civil enforcement actions against non-issuers,⁷ it has brought no such actions in decades and instead has focused its resources on pursuing criminal law violations. As a result, no recent civil enforcement actions have been brought against companies engaged in questionable, but not criminal, conduct that were not subject to the SEC's jurisdiction.

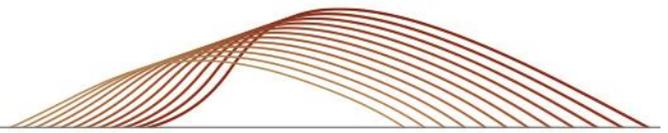
Accordingly, the CFTC's recent pronouncement that it, too, plans to pursue misconduct tied to foreign corrupt practices appears to fill an ostensible void in civil foreign corruption enforcement—at least insofar as any alleged FCPA violations are intertwined with violations of the Commodity Exchange Act ("CEA").

The CFTC and Enforcement of the CEA

Established as an independent government agency in 1974, the CFTC endeavors to foster "open, transparent, competitive, and financially sound" commodities markets and to protect market participants from fraud, manipulation, and abusive practices.⁸ The CFTC historically exercised regulatory authority only over commodity futures markets, which originally related to agricultural commodities like wheat, corn, and cotton.⁹ Over time, "commodities" subject to the CFTC's jurisdiction have expanded to include other "goods and articles . . . and [] services, rights and interests . . . in which contracts for future delivery are presently or in the future dealt in," including currencies, interest rates, energy and metals (such as crude oil, heating oil, gasoline, copper, and silver), and digital assets like Bitcoin or cryptocurrencies.¹⁰ Today, the CFTC regulates derivatives, futures, and swaps markets, both exchanges and over the counter or bilateral, and oversees a number of individuals and organizations registered with the CFTC.¹¹

Of relevance to its apparent expanded investigative interests, the CFTC is tasked with enforcing the CEA's antifraud and anti-manipulation provisions, which render it illegal for any "person"¹² to manipulate the price of any commodity, commit fraud, or knowingly to violate certain CEA provisions.¹³ Violations of these provisions carry sizeable penalties; criminal violations are punishable by payment of a fine of up to \$1 million per violation, 10 years in prison, or both, and parallel civil violations carry civil penalties of the greater of \$1 million or triple the monetary gain for each violation, together with restitution for damages caused by each violation.¹⁴

Although the CFTC may pursue any "person" who violates the CEA's anti-manipulation provisions,¹⁵ the CEA generally does not apply extraterritorially, which means that it generally cannot be enforced for most conduct occurring overseas absent a U.S. nexus. The CEA's application extends primarily to three classes of individuals, entities, and conduct: (1) CFTC registrants, (2) certain U.S. persons, and (3) "domestic" conduct—that is, conduct involving commodities in interstate commerce, or derivatives traded on domestic exchanges.¹⁶ The CFTC's March 2019 Advisory expands the CFTC's focus and



recognizes the CFTC's increasing cooperation with the DOJ to pursue misconduct involving foreign conduct that impacts the commodities markets.

Potential Implications of the Enforcement Advisory: Heightened Enforcement Exposure

On March 6, 2019, the CFTC issued an Enforcement Advisory detailing its focus on foreign corrupt practices. Although somewhat narrow in scope, this new Advisory signals to the marketplace the growing coordination and cooperation between the CFTC and the DOJ in matters that traverse the realms of both commodities and foreign corruption. Commodities market participants must recognize that they now face an increased risk of prosecution for conduct that also could violate the FCPA.

The CFTC's March 2019 Advisory's narrow scope outlines only how certain individuals and companies that self-report violations of the CEA involving foreign corrupt practices may escape civil monetary penalties.¹⁷ Pursuant to the Advisory, the CFTC may decline to impose civil penalties upon non-CFTC registrants who self-report, cooperate, and remediate CEA violations involving foreign corrupt practices, absent certain aggravating circumstances, but may still order disgorgement, forfeiture, or restitution.¹⁸

The March 2019 Advisory does not specify what types of CEA violations might "involv[e] foreign corrupt practices,"¹⁹ but CFTC Enforcement Director James McDonald shed some light in this regard during a March 6, 2019 speech announcing the policy.²⁰ Director McDonald suggested that certain foreign corrupt practices "might constitute fraud, manipulation, false reporting, or a number of other types of violations under the CEA, and thus be subject to enforcement actions brought by the CFTC."²¹

Bribes used to win business related to CFTC-regulated activities, such as swaps or derivatives trading, advising, or dealing, potentially could fall within this rubric. Similarly, the CFTC could focus on corrupt practices used to manipulate benchmarks that serve as the basis for related derivatives contracts; false price reporting—reporting of prices that are the "product of corruption"—to benchmarks; and other forms of corrupt practices that alter prices in the commodity markets that "drive U.S. derivatives prices."²² During a panel discussion following his March 6, 2019 speech, Director McDonald specifically referenced an example of a hedge fund arguably covered by the CEA involved in corrupt practices.²³

Although the scope of the CFTC's new mandate and potential violations "involving foreign corrupt practices" will be developed further in future investigations, the following include a few specific examples of how the CFTC may seek to employ its new initiative:

- **Bribing foreign officials involved in commodities markets:** Paying bribes to foreign officials who have some type of oversight responsibility for commodities markets likely is a prime area for increased enforcement. U.S. persons, as well as others using products or instruments subject to CFTC jurisdiction, involved in this type of conduct thus may find themselves subject to prosecution under both the FCPA and the CEA. That said, for the CFTC to pursue this type of conduct under the CEA, the conduct must have a nexus to the United States—that is, it would need to involve a U.S. person or CFTC registrant; trades executed on a U.S. exchange; or a "domestic" transaction.²⁴
- **Recordkeeping/books and records violations:** Much like the SEC currently pursues entities for violations of the FCPA's books and records provisions, an entity subject to similar CEA provisions that either (1) falsifies or otherwise inaccurately records information in reports submitted to the CFTC—for example, by recording bribes as ordinary expenses in

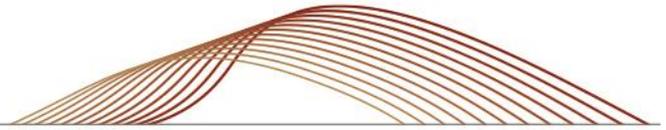


business records,²⁵ or (2) fails to file the required reports altogether, in either instance with the purpose of hiding or disguising bribe-related activity from the CFTC,²⁶ may be pursued for a violation of the CEA's reporting requirements.

- **Market manipulation accomplished via bribery:** The CFTC recently has reemphasized its focus upon market manipulation, particularly in connection with disruptive trading practices like spoofing. If a participant in a CFTC-regulated market were to bribe representatives of a foreign state-owned commodity producer to increase or decrease production to benefit a related position held by the market participant (perhaps a long or short position in a related derivative whose price is based upon the commodity), thereby artificially impacting commodity prices, that potentially could constitute market manipulation involving foreign corruption, in violation of the CEA's anti-manipulation provisions.²⁷
- **Utilization of CFTC-regulated digital products or virtual currencies as a means of paying bribes:** If a CFTC registrant (or perhaps even a non-registrant) utilizes a CFTC-regulated virtual currency, such as Bitcoin, that qualifies as a "commodity" under the CEA to bribe foreign officials, that conduct potentially could fall within the CFTC's jurisdiction to pursue (assuming the requisite U.S. connection).

As noted above, the CEA generally does not apply extraterritorially, meaning that the CFTC usually may pursue CEA violations only to the extent that they involve certain U.S. persons, CFTC registrants, transactions executed on U.S. exchanges, or other "domestic" conduct (title transfer or incurrence of irrevocable liability in the United States). However, even if the misconduct occurs extraterritorially (and, therefore, outside the CEA's "domestic application" requirement), the CFTC's new initiative to cooperate with the DOJ in this regard could lead to additional FCPA prosecutions by the DOJ—prosecutions that, absent the CFTC's involvement, may never have crossed the DOJ's radar screen. Historically, when the DOJ gains access to information in the possession of civil agencies, whether held by the SEC, the Treasury Department's Office of Foreign Assets Control, or the State Department's Directorate of Defense Trade Controls, it increases criminal enforcement of entities subject to those regulatory requirements. Accordingly, CFTC registrants and other persons who participate in the commodities markets must have internal systems in place not only to detect potential market manipulation and ensure that required reports are timely and accurately filed with the CFTC, but also specifically to guard against these and other potential CEA violations tied to foreign corruption, including policies and procedures governing interactions with government officials and state-owned enterprises.

The March 2019 Advisory clearly demonstrates the CFTC's focus on increased coordination with the DOJ, given that "twenty-first century bad actors do not conform their misconduct to the technical boundaries of [the government agencies'] respective jurisdictions, nor do they pause as their conduct crosses international borders."²⁸ The CFTC plans to "work closely with [its] enforcement partners to ensure that any investigations are properly coordinated and are appropriately aimed at identifying and eliminating any gaps in [the government agencies'] investigative and regulatory frameworks" and "avoid duplicative investigative steps."²⁹ The CFTC also will work to ensure that any penalty it imposes "appropriately accounts for" penalties imposed by other enforcement bodies, and to afford "dollar-for-dollar credit" for disgorgement or restitution payments in other related actions,³⁰ thereby avoiding duplicative payments or "piling on."



Following the Advisory's release, DOJ Criminal Division Assistant Attorney General Brian A. Benczkowski commented that the DOJ "look[s] forward to working in parallel with the CFTC in cases involving foreign corrupt practices, as well as others."³¹ Director McDonald similarly commented that "[c]ombating misconduct that affects our financial markets has truly become a team effort, and that is particularly true with respect to foreign corrupt practices," and "[w]e at the CFTC will do our job as part of the team to identify this type of misconduct in our markets and hold wrongdoers accountable, working closely with our enforcement partners domestically and abroad."³²

Limitations on the Advisory

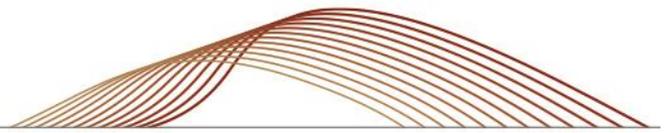
The March 6, 2019 Advisory applies only to companies and individuals not registered, or not required to register, with the CFTC (that is, non-CFTC registrants), where (1) the companies and/or individuals "timely and voluntarily disclose" to the Enforcement Division CEA violations "involving foreign corrupt practices;" and (2) the voluntary disclosure "is followed by full cooperation and appropriate remediation," in accordance with the CFTC's prior January and September 2017 Advisories regarding cooperation and self-reporting.³³ In those circumstances, the CFTC will "apply a presumption that it will recommend to the Commission a resolution with no civil monetary penalty, absent aggravating circumstances involving the nature of the offender or the seriousness of the offense."³⁴ "Aggravating circumstances," in turn, may include (1) the involvement of executive or senior level management in the misconduct; (2) "pervasive" misconduct within the company; and (3) prior instances of similar misconduct by the company or individual.³⁵

Individuals and entities covered by the new policy may include traders and firms active in various commodities markets that are not registered (or not required to register) with the CFTC.³⁶ Notably, CFTC registrants, which already are required to self-report CEA violations (including those related to foreign corrupt practices),³⁷ are not subject to the March 2019 Advisory, and its "presumption of a recommendation of no civil monetary penalty will not apply" to them.³⁸ That said, registered individuals and entities remain eligible for substantial penalty reductions if they self-report and fully cooperate with the CFTC, in accordance with the CFTC's earlier cooperation and self-reporting policies.³⁹

A recommended resolution without a civil monetary penalty under the March 2019 Advisory may not absolve an individual or company from all liability, however. In that instance, the CFTC "would still require payment of all disgorgement, forfeiture, and/or restitution resulting from the misconduct at issue" and also "will seek all available remedies—including, where appropriate, substantial civil monetary penalties—with respect to companies or individuals implicated in the misconduct that were not involved in submitting the voluntary disclosure."⁴⁰

Next Steps for Companies (and Individuals)

As publicly reported in conjunction with the March 2019 Advisory, the CFTC currently has open investigations related to corrupt practices in the commodities markets,⁴¹ and in light of these developments, commodity market participants—both CFTC registrants and non-registrants—should expect increased scrutiny from the CFTC and DOJ, as the agencies continue to collaborate to identify and fill any gaps in enforcement "where misconduct might otherwise go undetected."⁴² Accordingly, in the wake of the CFTC's March 2019 Advisory, companies involved in commodities transactions—both domestically and abroad—or other conduct subject to the CEA (regardless of their CFTC registration status) should evaluate their potential exposure for foreign corruption under the FCPA and CEA. Companies should engage in a thorough review to determine their potential exposure and examine the strength of their internal compliance programs to ascertain whether those programs are appropriately



designed to prevent and detect not only market manipulation or disruptive trading under the CEA, but also foreign corrupt practices that will be receiving increased scrutiny. These companies are well-advised to consult with outside counsel familiar with both the CFTC's practices and FCPA enforcement initiatives to conduct an appropriately tailored risk assessment, implement enhanced compliance and internal controls, and identify potential foreign corruption risks in relation to activities in the commodities markets.



If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings Washington, D.C. lawyers:

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¹ See DOJ, *Foreign Corrupt Practices Act*, <https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act>. Specifically, the FCPA's anti-bribery provisions render it unlawful to use the mails or other instrumentalities of interstate commerce "corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to" any foreign official for the purposes of influencing that official's decision in his official capacity; inducing that official to act in violation of his lawful duties; securing "any improper advantage;" or inducing that official to use his influence to affect any act or decision of a foreign government or instrumentality, in order to assist in obtaining or retaining business. *Id.*; 15 U.S.C. §§ 78dd-1(a), 78dd-2(a), 78dd-3(a). The FCPA's anti-bribery provisions also apply to conduct that occurs in the United States, regardless of whether the actor is a U.S. business or citizen. See 15 U.S.C. § 78dd-3.

² DOJ, *Foreign Corrupt Practices Act*, <https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act>; 15 U.S.C. § 78m(b)(2).

³ 15 U.S.C. § 78dd-1(a).

⁴ *Id.* § 78dd-2(a). "Domestic concerns," in turn, include (1) individual citizens, nationals, or residents of the United States; and (2) entities that are either organized under the laws of the United States or have a principal place of business in the United States. *Id.* § 78dd-2(h)(1).

⁵ *Id.* § 78dd-3(a).

⁶ The SEC increasingly has taken a more expansive approach regarding who may qualify as an "agent" of an issuer or domestic concern, however.

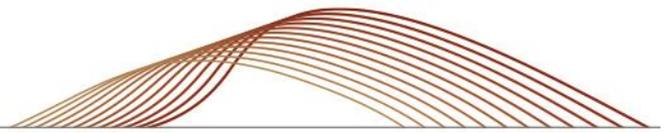
⁷ 15 U.S.C. §§ 78dd-2(d)(1), 78dd-3(d)(1).

⁸ CFTC, *Mission & Responsibilities*, <https://www.cftc.gov/About/MissionResponsibilities/index.htm>.

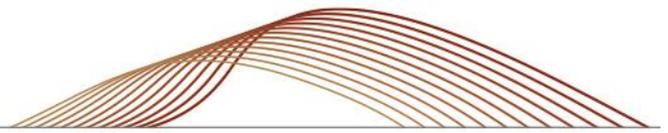
⁹ *Id.*

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- ¹⁰ 7 U.S.C. § 1a(9); *see supra* n.8, CFTC, *Mission & Responsibilities*; *see also* CFTC, A CFTC PRIMER ON VIRTUAL CURRENCIES 11 (2017), https://www.cftc.gov/sites/default/files/idc/groups/public/documents/file/labcftc_primercurrencies100417.pdf (“Bitcoin and other virtual currencies are properly defined as commodities”). The CEA defines the term “commodity” to include: “wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, *Solanum tuberosum* (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice, and all other goods and articles, except onions . . . and motion picture box office receipts (or any index, measure, value, or data related to such receipts), and all services, rights, and interests (except motion picture box office receipts, or any index, measure, value or data related to such receipts) in which contracts for future delivery are presently or in the future dealt in.” 7 U.S.C. § 1a(9).
- ¹¹ *See supra* n.8, CFTC, *Mission & Responsibilities*.
- ¹² The CFTC defines the term “person” broadly to include “individuals, associations, partnerships, corporations, and trusts.” 7 U.S.C. § 1a(38).
- ¹³ *Id.* §§ 9(1), (3); *see* 17 C.F.R. §§ 180.1, 180.2. More recently, the CFTC has focused upon pursuing persons engaged in “disruptive practices,” which include (1) violating bids or offers; (2) intentional or reckless disregard for the orderly execution of transactions during the closing period; and (3) “spoofing” (bidding or offering with the intent to cancel the bid or offer before execution), 7 U.S.C. § 6c(a)(5), sometimes in conjunction with allegations of manipulation.
- ¹⁴ 7 U.S.C. §§ 9(10)(C)(ii), 9(10)(D), 13(a)(2).
- ¹⁵ *See* 7 U.S.C. §§ 1a(38), 6c(a)(5), 9(1), 9(3).
- ¹⁶ *See In re LIBOR-Based Fin. Instruments Anti-trust Litig.*, 935 F. Supp. 2d 666, 696 (S.D.N.Y. 2013), *vacated and remanded on other grounds by Gelboim v. Bank of Am. Corp.*, 823 F.3d 759 (2d Cir. 2016). The CEA does carve out a few exceptions, however—most notably, the provisions governing swaps. The CFTC has authority to regulate swap-related activities outside the United States that (1) “have a direct and significant connection with activities in, or effect on, commerce of the United States;” or (2) contravene certain CFTC rules or regulations. 7 U.S.C. §§ 2(i)(1)–(2).
- ¹⁷ CFTC, ADVISORY ON SELF REPORTING AND COOPERATION FOR CEA VIOLATIONS INVOLVING FOREIGN CORRUPT PRACTICES (Mar. 6, 2019), <https://www.cftc.gov/sites/default/files/2019-03/enfadvisoryselfreporting030619.pdf> [hereinafter “March 2019 Advisory”].
- ¹⁸ *See id.* at 2.
- ¹⁹ *Id.* at 1.
- ²⁰ James M. McDonald, Director of Enforcement, CFTC, Remarks at the American Bar Association’s National Institute on White Collar Crime (Mar. 6, 2019), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opamcdonald2> [hereinafter “McDonald ABA Remarks”].
- ²¹ *Id.*
- ²² *Id.*
- ²³ *See* Stewart Bishop, *CFTC Unveils Leniency Policy for Self-Reporting Corruption*, LAW360 (Mar. 6, 2019), <https://www.law360.com/securities/articles/1136090/cftc-unveils-leniency-policy-for-self-reporting-corruption> (referencing Director McDonald’s remarks).
- ²⁴ A “domestic” transaction involves the transfer of title in the United States or the incurrence of irrevocable liability, such as liability to pay for or deliver the commodity or futures contract, in the United States. *Loginovskaya v. Batratchenko*, 764 F.3d 266, 273–74 (2d Cir. 2014).
- ²⁵ The CEA, like the FCPA, has a number of required reporting and recordkeeping provisions applicable to certain registrants, such as commodity pool operators (which include a number of hedge funds), and other entities. *See, e.g.*, 17 C.F.R. § 4.23 (requiring commodity pool operators registered under the CEA to make and keep certain books and records in an “accurate, current and orderly manner”); *id.* §§ 19.00(a)(2), 19.02 (requiring cotton merchants and dealers that hold or control reportable cotton futures positions under 17 C.F.R. § 15.00(p)(1)(i) to file a CFTC Form 304 reporting their call cotton purchases and sales weekly).
- ²⁶ The CEA includes a general prohibition against provision of false information to the CFTC, which renders it unlawful for any person to make a false or misleading statement of material fact (or omit to state such a material fact) to the CFTC, including in any registration application or report filed with the CFTC, or in any other information relating to a swap, contract of sale of a commodity, or future provided to the CFTC. 7 U.S.C. § 9(2).
- ²⁷ *See id.* §§ 9(1), (3).
- ²⁸ McDonald ABA Remarks.



²⁹ *Id.*

³⁰ *Id.*

³¹ Press Release, CFTC, CFTC Division of Enforcement Issues Advisory on Violations of the Commodity Exchange Act Involving Foreign Corrupt Practices (Mar. 6, 2019), <https://www.cftc.gov/PressRoom/PressReleases/7884-19>.

³² *Id.*

³³ March 2019 Advisory at 1; see CFTC, COOPERATION FACTORS IN ENFORCEMENT DIVISION SANCTION RECOMMENDATIONS FOR COMPANIES (Jan. 19, 2017),

<https://www.cftc.gov/sites/default/files/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfadvisorycompanies011917.pdf> (detailing factors the CFTC Enforcement Division may consider in evaluating company cooperation in investigations and enforcement actions); CFTC, COOPERATION FACTORS IN ENFORCEMENT DIVISION SANCTION RECOMMENDATIONS FOR INDIVIDUALS (Jan. 19, 2017),

<https://www.cftc.gov/sites/default/files/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfadvisoryndividuals011917.pdf> (detailing factors the CFTC Enforcement Division may consider in evaluating individual cooperation in investigations and enforcement actions); CFTC, UPDATED ADVISORY ON SELF REPORTING AND FULL COOPERATION (Sept. 25, 2017),

<https://www.cftc.gov/sites/default/files/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfadvisoryselreporting0917.pdf> [hereinafter "September 2017 Advisory"] (discussing how the CFTC Enforcement Division may consider voluntary disclosures in the context of its broader cooperation program).

³⁴ March 2019 Advisory at 1.

³⁵ *Id.*

³⁶ See *supra* n.23, Bishop, *CFTC Unveils Leniency Policy For Self-Reporting Corruption*.

³⁷ March 2019 Advisory at 1 n.1 ("CFTC registrants have existing, independent reporting obligations to the Commission requiring them, among other things, to report any material noncompliance issues under the CEA, which would include any foreign corrupt practices that violate the CEA."); see *also, e.g.*, September 2017 Advisory at 2–3 (outlining requirements for full self-reporting and cooperation credit).

³⁸ March 2019 Advisory at 1 n.1.

³⁹ *Id.* ("[R]egistrants that timely and voluntarily self-report misconduct, fully cooperate, and appropriately remediate will receive a recommended 'substantial reduction in the civil monetary penalty,' as set forth in the January 2017 and September 2017 Advisories."); see September 2017 Advisory at 3 ("If the company or individual self-reports, fully cooperates, and remediates, the Division will recommend the most substantial reduction in the civil monetary penalty that otherwise would be applicable.").

⁴⁰ March 2019 Advisory at 2.

⁴¹ McDonald ABA Remarks.

⁴² *Id.*