

CFTC's New Enforcement Cooperation Policy Offers Clearer Path to Declinations and Reduced Penalties

May 26, 2026

On May 19, 2026, the Commodity Futures Trading Commission (“CFTC” or “Commission”) Division of Enforcement (“Division”) announced the Division’s new policy on cooperation in enforcement matters.¹ The staff advisory establishes new standards for how CFTC-registered companies and individuals may qualify for declinations and significant penalty reductions through self-reporting, cooperation, and remediation. The policy replaces all prior Division cooperation policies and is effective immediately.

Alignment with DOJ Policy

The new policy aligns the CFTC more closely with the U.S. Department of Justice (“DOJ”), which issued a Department-wide Corporate Enforcement Policy in March 2026.² Echoing DOJ’s pronouncement in many of its provisions, the CFTC advisory sends a clear message to registrants: self-report potential violations promptly, cooperate fully, remediate appropriately—or risk losing meaningful cooperation credit.

Shift from Prior CFTC Framework

The policy represents a notable shift from the CFTC’s prior cooperation framework. Earlier CFTC guidance, including a February 2025 advisory, focused primarily on “Mitigation Credit” through tiered scoring matrices tied to varying levels of self-

¹ Press Release, Commodity Futures Trading Comm’n, CFTC Staff Issues Advisory on Cooperation in Enforcement Matters (May 19, 2026), <https://www.cftc.gov/PressRoom/PressReleases/9234-26>; Commodity Futures Trading Comm’n, CFTC Letter No. 26-15, New Division of Enforcement Policy on Cooperation (May 19, 2026), <https://www.cftc.gov/cs/26-15/download>.

² Debevoise & Plimpton LLP, The Debrief, “DOJ Announces Department-Wide Corporate Enforcement Policy” (Mar. 12, 2026), <https://www.debevoise.com/insights/publications/2026/03/doj-announces-department-wide-corporate-enforce>.

reporting and cooperation.³ In contrast, the new policy adopts a more streamlined framework centered on explicit declination criteria and defined penalty reduction ranges.

Most notably, the policy states that the Division will not recommend an enforcement action where a party voluntarily self-reports misconduct to the CFTC,⁴ fully cooperates, undertakes timely and appropriate remediation, provides full restitution and/or disgorgement, and presents no disqualifying aggravating circumstances.⁵ The policy also outlines potential penalty reductions of up to 75%, even where declinations are unavailable, reflecting a broader effort by the CFTC to provide increased transparency and predictability in enforcement resolutions and incentivize cooperation.⁶

The advisory significantly raises expectations regarding the timing of self-reports, the scope of cooperation, and the adequacy of remediation efforts. In particular, the advisory emphasizes rapid self-reporting to the CFTC, even before internal investigations are complete, and places substantial weight on root-cause analysis, employee accountability, record retention, and compliance controls.

Broader Enforcement Implications

In announcing the policy, CFTC Chairman Michael S. Selig stated that the advisory is intended to “provide clarity, promote consistency, and reinforce the division’s commitment to transparency in its enforcement practices.” Director of Enforcement David I. Miller similarly described the policy as creating “a clear path to declinations” and emphasized that it is intended to “incentivize cooperation, simplify our approach to cooperation credit, and operate more fairly with parties before the division.”⁷

This new policy comes as the CFTC is gearing up for greater levels of enforcement. In particular, Enforcement Director Miller’s recent speech outlining the CFTC’s

³ Press Release, Commodity Futures Trading Comm’n, CFTC Releases Enforcement Advisory on Self-Reporting, Cooperation, and Remediation (Feb. 25, 2025), <https://www.cftc.gov/PressRoom/PressReleases/9054-25>; Commodity Futures Trading Comm’n, Enforcement Advisory, Advisory on Self-Reporting, Cooperation, and Remediation (Feb. 25, 2025), https://www.cftc.gov/media/11821/EnfAdv_Resolutions022525/download.

⁴ The policy specifies that a qualifying self-report may be made “to any division of the CFTC.” See CFTC Letter No. 26-15 at 4.

⁵ *Id.* at 2–3. The policy identifies aggravating circumstances as including “pervasive intentional or reckless misconduct by ownership or senior management; intentional or reckless misconduct occurring over an extended period; recidivist intentional or reckless misconduct; and/or instances in which the misconduct has caused particularly egregious aggregate harm.” *Id.*

⁶ *Id.* at 3.

⁷ Press Release, *supra* note 1.

enforcement priorities⁸ and the CFTC's prediction markets insider trading charges in the Van Dyke case illustrate the agency's increased scrutiny of fraud, manipulation, and insider trading involving event contracts and prediction markets.⁹ In addition, pending digital asset legislation (especially the market structure bill known as the CLARITY Act) could significantly expand the CFTC's jurisdiction over digital commodity spot markets.¹⁰

The new policy distinguishes the CFTC from the SEC's approach to cooperation in several respects. Although the SEC has long encouraged self-reporting and cooperation through the Seaboard Report¹¹ and its Cooperation Initiatives,¹² SEC cooperation determinations historically have been more discretionary and less prescriptive regarding specific penalty outcomes. In contrast, the CFTC's new policy expressly articulates declination criteria and defined penalty reduction ranges, giving market participants greater visibility into how cooperation may affect enforcement outcomes.

A Clearer Path to Declinations

The centerpiece of the policy is the Division's commitment that it will not recommend an enforcement action for a violation of the Commodity Exchange Act ("CEA") or CFTC Regulations when five conditions are met:¹³

- the party made a "Voluntary Self-Report";
- the party provided "Full Cooperation" during the Division's investigation;

⁸ David I. Miller, Director of Enforcement, Commodity Futures Trading Comm'n, Remarks at NYU Law School – CFTC Enforcement Priorities, Insider Trading in the Prediction Markets, and Cooperation with the CFTC (Mar. 31, 2026), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opamiller1>.

⁹ Debevoise In Depth, "Polymarket Insider Trading Charges Illustrate DOJ and CFTC Prediction Markets Enforcement Strategy" (Apr. 27, 2026), <https://www.debevoise.com/insights/publications/2026/04/polymarket-insider-trading-charges-illustrate-doj>.

¹⁰ See Debevoise & Plimpton LLP, "Digital Financial Assets: Market Structure, Stablecoin & Banking" (May 19, 2026), <https://www.debevoise.com/insights/publications/2026/05/digital-financial-assets>.

¹¹ See U.S. Sec. & Exch. Comm'n, Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and the Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions, Release No. 34-44969 (Oct. 23, 2001), available at <https://www.sec.gov/litigation/investreport/34-44969.htm>.

¹² See Debevoise & Plimpton LLP, Client Update, "The SEC's Enforcement Cooperation Initiatives" (Feb. 17, 2010), <https://www.debevoise.com/-/media/files/insights/publications/2010/02/the-secs-enforcement-cooperation-initiatives/files/view-client-update/fileattachment/theseccenforcementcooperationinitiatives.pdf?rev=8d735c41fd984ba5b9fa9150a528c9dc&hash=E7693B113A701124AEEC1D652C402946>.

¹³ CFTC Letter No. 26-15 at 2–3 (capitalized terms are defined in Section IV of the policy).

- the party implemented “Timely and Appropriate Remediation” of the misconduct;
- the party provided “Full Restitution and/or Disgorgement,” if applicable; and
- there are no disqualifying aggravating circumstances.¹⁴

Although the Commission retains ultimate authority over enforcement actions, the policy explicitly ties the possibility of a declination to cooperative conduct. The policy also gives the Division discretion to decline enforcement even where aggravating circumstances exist, based on balancing the severity of the misconduct against the parties’ cooperation and remediation.¹⁵

A Focus on Early Disclosure

The advisory repeatedly emphasizes that disclosure speed is essential. To qualify as “Voluntary Self-Reporting,” a disclosure generally must occur before “any known or reasonably anticipated imminent threat of disclosure” by a whistleblower, the media, or other channels. In addition, parties are expected to disclose misconduct at the “earliest possible opportunity” instead of waiting for periodic reporting cycles.¹⁶

At the same time, the policy acknowledges that registrants may still be investigating misconduct when disclosures occur. Parties may still qualify for cooperation credit, even where investigations are incomplete, so long as they provide all material non-privileged information known at the time and continue supplementing disclosures on a rolling basis. The advisory also includes a limited safe harbor for good-faith self-reporting when that self-report is later found to be inaccurate. Recognizing that prompt disclosures may later prove incomplete or inaccurate as investigations proceed, the Division states that it will generally not recommend charges under the CEA for inaccuracies in a self-report, provided the disclosure was made in good faith and any inaccuracies are promptly corrected after discovery of the inaccurate information.¹⁷ This is a significant provision that will provide comfort to some parties that fear early disclosure could result in inaccurate reporting.

The advisory thus creates substantial incentives to self-report promptly, even before all relevant facts are known.

¹⁴ See *supra* note 5.

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 5.

“Full Cooperation” Means Proactive Cooperation

The Division’s expectations for cooperation are extensive and mirror DOJ standards in several aspects.

Parties seeking “Full Cooperation” credit under the policy are required to take certain steps, including the following:¹⁸

- identify all individuals involved in the misconduct, regardless of seniority;
- provide rolling, timely updates regarding internal investigations;
- proactively identify relevant evidence, even when not specifically requested;
- preserve and produce relevant documents, including overseas documents;
- facilitate third-party productions and witness interviews; and
- accommodate the Division’s deconfliction requests, including by delaying interviews when specifically requested.

The advisory therefore increases pressure on registrants conducting internal investigations to coordinate closely with enforcement staff and be responsive to Division requests.

Expectations for Compliance and Remediation

The advisory makes clear that meaningful remediation requires more than simply addressing the immediate misconduct. To receive credit for “Timely and Appropriate Remediation,” parties must conduct a “thorough root-cause analysis of the misconduct” and implement effective compliance and ethics programs tailored to the company’s size, resources, and risks associated with the business.¹⁹

The policy identifies several features the Division expects to see in effective compliance and ethics programs, including the following:²⁰

¹⁸ *Id.* at 5–6.

¹⁹ *Id.* at 6.

²⁰ *Id.* at 6–7.

- a demonstrated commitment to “corporate values that promote compliance”;
- adequate compliance resources and personnel with sufficient expertise;
- an independent compliance function with meaningful access to senior leadership and governance bodies;
- compensation, review, and promotion structures that incentivize compliance;
- ongoing testing and evaluation to ensure the effectiveness of any compliance program; and
- appropriate disciplinary measures for employees responsible for the misconduct, as well as supervisors and others with oversight responsibility, as appropriate.

The advisory also emphasizes record-retention controls, including policies governing personal devices and “ephemeral messaging” applications—such as Signal, WhatsApp, and other platforms with disappearing messages or auto-delete functionality—because the use of such applications could impair the preservation of business records or compliance with related legal obligations.²¹

As a whole, the policy signals that the Division will closely scrutinize not only whether registrants remediate misconduct, but also whether they can demonstrate well-resourced and effective compliance frameworks that are designed to prevent the misconduct from happening again.

More Predictable Penalty Reductions

Even where a party does not qualify for a declination, the advisory provides registrants with the opportunity to obtain significant and predictable penalty reductions.²²

In particular, where a party provides Full Cooperation, Timely and Appropriate Remediation, and Full Restitution and/or Disgorgement (as those terms are defined in the policy), but nonetheless remains ineligible for a declination because either (1) its self-report, although made in good faith, did not satisfy the policy’s requirements for a qualifying “Voluntary Self-Report,” or (2) aggravating factors are present, the Division

²¹ *Id.* at 7.

²² *Id.* at 3.

will still incorporate substantial cooperation credit into its enforcement recommendation.

In those circumstances, the Division states that it will recommend:

- a civil monetary penalty reduction of at least 50% where the party's good-faith self-report did not qualify as a "Voluntary Self-Report"; and
- a reduction of at least 25% where aggravating circumstances preclude declination.

In either scenario, the maximum recommended reduction is capped at 75% of the Division's "good-faith calculated penalty."

The advisory therefore creates a middle ground between full declinations and ordinary enforcement resolutions, rewarding significant cooperation even where technical deficiencies in self-reporting or aggravating circumstances prevent a complete declination.

Practical Implications and Key Takeaways

The CFTC's new policy seeks to accelerate internal escalation timelines and place greater pressure on registrants to make disclosure decisions earlier in the investigative process, including before all relevant facts are fully developed.

Registrants should consider reviewing and supplementing existing policies and procedures to ensure that they can identify and maximize opportunities to qualify for declinations and significant penalty reductions through self-reporting, cooperation, and remediation. This review should consider the following steps:

- **Escalation and disclosure protocols.** Registrants should assess whether existing policies and procedures are adequately designed to escalate the discovery of potential misconduct quickly enough to permit timely self-reporting before any imminent threat of regulatory inquiry, whistleblower disclosure, or media scrutiny.
- **Internal investigation procedures.** The policy places a premium on rapid fact development, proactive cooperation, and rolling disclosures. Registrants should evaluate whether internal investigation protocols are structured to properly preserve documents, identify relevant facts, evaluate severity, and facilitate prompt disclosures to regulators where appropriate.

- **Employee communications and record retention.** The CFTC specifically highlighted controls governing personal devices and ephemeral messaging applications. Registrants should review whether existing policies, employee training, surveillance, and retention controls adequately preserve business-related communications and comply with regulatory recordkeeping obligations.
- **Compliance program effectiveness.** The policy signals heightened scrutiny of compliance functions, including independence, resourcing, testing, disciplinary frameworks, and incentive structures. Registrants should assess whether their compliance functions are sufficiently empowered and calibrated to the organization's business area and accompanying risks.
- **Remediation and root-cause analysis frameworks.** The policy makes clear that remediation credit will depend not only on correcting misconduct, but also on demonstrating thoughtful root-cause analysis, accountability measures, and sustainable compliance enhancements designed to prevent recurrence. Registrants should therefore consider whether existing remediation protocols are sufficiently robust, documented, and tailored to demonstrate meaningful corrective action to regulators.
- **Emerging market risks.** As the CFTC expands its focus on prediction markets and digital assets, registrants operating in these areas should expect increased scrutiny relating to fraud, manipulation, and insider trading risks.
- **Parallel enforcement coordination.** The increasing alignment between the CFTC's cooperation framework and DOJ corporate enforcement policies may create additional complexity for registrants facing parallel criminal and regulatory exposure. Registrants should carefully consider how and when to coordinate self-reporting, internal investigations, and remediation efforts across the CFTC, DOJ, and other regulators. Decisions regarding the timing, scope, and sequencing of disclosures may materially affect the availability of cooperation credit, declinations, and penalty reductions.

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Please do not hesitate to contact us with any questions.



Helen V. Cantwell
Partner, New York
+1 212 909 6312
hcantwell@debevoise.com



Andrew J. Ceresney
Partner, New York
+1 212 909 6947
aceresney@debevoise.com



Charu A. Chandrasekhar
Partner, New York
+1 212 909 6774
cchandrasekhar@debevoise.com



Daniel M. Gitner
Partner, New York
+1 212 909 6898
dmgitner@debevoise.com



David A. O'Neil
Partner, Washington, D.C.
+1 202 383 8040
+1 202 809 1995
daoneil@debevoise.com



Douglas S. Zolkind
Partner, New York
+1 212 909 6804
dzolkind@debevoise.com



Nicholas Folly
Counsel, San Francisco
+1 415 738 5754
nfolly@debevoise.com



Stephan J. Schlegelmilch
Counsel, Washington, D.C.
+1 202 383 8154
sjschlegelmilch@debevoise.com



Annie Dang
Associate, New York
+1 212 909 6912
avdang@debevoise.com

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