CARLTON FIELDS

New Page in CFTC Playbook: Self-Reporting, Cooperation, and Remediation Earn Declinations and Penalty Reductions

Expect Focus
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On May 19, 2026, the Commodity Futures Trading Commission's Division of Enforcement announced a new policy that incentivizes market participants to invest in meaningful compliance programs, voluntarily self-report potential misconduct, and remediate wrongdoing. The division's departure from its prior policy offers a clear, but demanding, path to declination and crediting through defined criteria. The new policy shifts away from the division's prior position that declinations were available only in "extraordinary circumstances" and does away with its previous more subjective, qualitative standards.

The division's new approach also brings it more in line with the Department of Justice, which released its first-ever departmentwide corporate enforcement policy for criminal matters in March 2026. The DOJ's policy, similar to the division's, focuses on self-reporting, cooperation, and remediation, and it will be important for registrants' and market participants' cooperation strategies and responses to investigations to account for both policies, especially in matters that may implicate parallel CFTC and DOJ exposure.

The CFTC enforcement division's new policy outlines a program in which the division will not recommend enforcement against a party that:

- Initiates a "voluntary self-report" to the CFTC;
- Provides "full cooperation";
- Effects "timely and appropriate remediation" of the misconduct;
- Provides "full restitution" and/or disgorgement, if applicable; and
- Has no "aggravating circumstances" that preclude eligibility, such as pervasive intentional or reckless misconduct by a firm's ownership or senior management, recidivist intentional or reckless misconduct, or misconduct that has caused particularly egregious aggregate harm.

The new policy further provides that parties that only partially satisfy the aforementioned criteria may receive:

- At least a 50% reduction in civil monetary penalties if they meet all criteria except that their self-report does not satisfy the policy's requirements to qualify as a "voluntary self-report"; or
- At least a 25% reduction if they would meet all criteria but for aggravating factors.

Moreover, non-qualifying parties may still receive some cooperation credit for any self-reporting or cooperation that did occur.

All in all, most firms will be happy to now turn over a new page in their relationship, if any, with the CFTC's enforcement division.

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