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## CFTC Rewards for Cooperation Should Continue in 2018

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2017 saw big changes regarding the way the Commodities Futures Trading Commission (“CFTC”) considers and rewards cooperation. In January, 2017, the CFTC issued two [Enforcement Advisories](#) (one for [companies](#) and one for [individuals](#)) outlining the new factors the will consider in evaluating cooperation by those under investigation.

In late September, the CFTC [updated](#) those guidelines to “provide greater transparency about what the Division requires from companies and individuals seeking mitigation credit.” Distinguishing its new policy from the original advisories, the update clarified that “the Division will reserve its recommendations for the most substantial reductions in civil monetary penalty for those instances where a company or individual has self-reported the misconduct *and* fully cooperated with the Division’s investigation and remediated.”



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### Prerequisites to Earning Cooperation Credit

**Voluntary Disclosure:** To qualify for cooperation credit under the update, a respondent must promptly and voluntarily disclose the violations prior to any imminent threat of exposure. The disclosure must include “all relevant facts known.”

**Cooperation:** Throughout the course of the CFTC’s investigation, a party seeking cooperation credit must meet the criteria outlined in the original Advisories, including, but not limited to:

- Providing material assistance to the Commission;
- Reporting and assisting in a timely manner;
- Providing truthful, specific, complete, and reliable information;
- Encouraging high-quality cooperation of all involved; and
- Preserving information, explaining corporate documents, and quickly responding to subpoenas.

Additionally, the provision of credit must serve as an example and encourage others to self-report and cooperate as well.

**Remediation:** Upon discovery of misconduct, a respondent must timely and appropriately remediate flaws in compliance and control problems.

### “Cooperation Credit”

Under the Updated Advisory, the Commission will recommend a substantial reduction in the civil monetary penalties if the above described requirements are met. Additionally, in “exceptional circumstances” the Division may decline to prosecute. However, a cooperating company or individual still must disgorge profit or, where applicable, pay restitution.

### CFTC Enforcement in 2018

James McDonald, the Director of the Division of Enforcement, remarked in a [speech](#) on the Advisories that

companies and individuals are “entitled not to self-report, to hope they don’t get caught, and then to defend themselves if they do. Those are their rights.”

However, McDonald also said the CFTC hopes to “shift the incentive structure” moving forward. He foresees greater cooperation among the Commission and those it regulates. Commission enforcements (or non-enforcements) in 2018 will demonstrate the practical effect of the new policies.

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