

FIA COMMODITIES CONFERENCE

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Changes to the CFTC’s Division of Enforcement Under the New Administration¹

The change with the new Administration under CFTC Acting Chairman Pham this past year has had a significant and dramatic impact on the CFTC’s Division of Enforcement (“Division”). As compared with the prior aggressive enforcement stance of the Division under the Biden Administration, which yielded record-breaking amounts of monetary relief recovered by the Division and introduced novel theories of violations of the Commodity Exchange Act (“CEA”) and the CFTC’s Regulations in fiscal year 2024, the number of enforcement actions thus far under the current Administration has declined dramatically. This notable drop is collectively attributable to a number of changes to the Division ranging from the Division’s primary focus, staff reductions and reorganization, as well as changes to the Division’s processes for referrals and self-reporting.

The Division Under the Biden Administration

Under the Biden Administration, the Division took an aggressive stance in pursuing violations of the CEA and the CFTC’s Regulations. In fiscal year 2024, the Division brought 58 new actions with a record-setting total recovery of over \$17.1 billion in monetary relief.² The Division also brought a number of cases setting new precedents in the voluntary carbon market space and digital asset spaces, as well as propounded new legal theories in cases that enforced position limits held across multiple exchanges and alleged that communications with the CFTC had been improperly impeded in connection with employee agreements.

In October 2024, the Division brought its first action charging fraud in the voluntary carbon credit market, which alleged that the Chief Executive Officer and majority shareholder of a carbon credit project developer engaged in a fraudulent scheme involving reporting false and misleading information to at least one carbon credit registry and third party reviewers so that the developer could obtain carbon credits far beyond what the company was entitled to receive and to increase the company’s revenues by millions of dollars.³ In a similar vein, the Division brought the first action against an unregistered futures commission merchant that allegedly inappropriately provided U.S. persons to digital asset derivatives trading platforms.⁴

The Division also expanded its authority and stretched its interpretation of the CEA and the CFTC’s Regulations under the Biden Administration. For example, the Division’s position limit settlement against Vitol, Inc. (“Vitol”) and its affiliate Vitol SA, was the first use of the Division’s authority to enforce position limits on aggregate positions held on multiple exchanges. In that matter, the CFTC found that Vitol held aggregate futures equivalent positions in the

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² *CFTC Releases FY 2024 Enforcement Results*, Release No 9011-24 (CFTC Dec. 4, 2024), available at: [CFTC Releases FY 2024 Enforcement Results | CFTC](#).

³ *CFTC v. Kenneth Newcombe*, Dkt. No. 1, Civ. Action No. 24-cv-7477 (S.D.N.Y. Oct. 2, 2024). See also *In re Jason Steele*, CFTC Dkt. No. 24-36 (Sep. 30, 2024); *In re CQC Impact Investors LLC*, CFTC Dkt. No. 24-37 (Sep. 30, 2024).

⁴ *In re Falcon Labs, Ltd.*, CFTC Dkt. No. 24-06 (May 13, 2024).

NYMEX WTI Options and IFED WTI Options in violation of CEA Section 4a(b) and CFTC Regulation 150.2.⁵

Another example of a new theory charged by the Division in the prior Administration was in its fraud and manipulation case against Trafigura Trading LLC (“Trafigura”). While Trafigura was charged for trading gasoline while in knowing possession of material nonpublic information and manipulating the U.S. Gulf Coast high-sulfur fuel oil benchmark, the Division also alleged that Trafigura impeded voluntary communications with the CFTC by requiring its employees to sign agreements containing broad non-disclosure provisions that prohibited the sharing of Trafigura’s confidential information with third parties which did not include carve-out language expressly permitting communications with law enforcement or regulators like the CFTC.⁶ This was the first CFTC action against that alleged that an entity impeded whistleblower communications.

By contrast, the number of new cases brought by the Division thus far under the Trump Administration has dropped precipitously as compared to prior administrations. The vast majority of enforcement announcements that have been made this year by the Division relate to final orders entered in fraud cases that were brought before the current Administration. Consistent with Acting Chairman Pham’s call to “get back to basics,”⁷ the single district court action brought by the Division under the new Administration a fraud action.⁸

However, the 30-day compliance sprint announced by Acting Chairman Pham in May 2025, which sought to resolve open investigations and enforcement matters regarding compliance violations in 30 days, yielded six settlements against ten firms.⁹ Acting Chairman Pham noted that this initiative was commenced “to conserve the CFTC’s resources and free up [Division] staff to pursue fraudsters and scammers and seek recoveries for victims, whether through disgorgement, restitution, or other measures.”¹⁰ The initiative was limited to enforcement matters regarding recordkeeping, reporting, or other compliance violations that did not involve fraud, customer harm, or market abuse, with the settlements relating to violations related to systems errors, recordkeeping of unapproved off-channel communications, swap data reporting, and supervision. The combined amount of civil monetary penalties recovered by these six settlements under the enforcement sprint totaled \$8,325,000, which is significantly less than what the Division had previously recovered against individual firms for these types of violations during the Biden Administration.

⁵ *In re Vitol, Inc. and Vitol SA*, CFTC Dkt. No. 24-14 (Aug. 14, 2024).

⁶ *In re Trafigura Trading LLC*, CFTC Dkt. No. 24-08 (June 17, 2024).

⁷ *Acting Chairman Pham: Time for CFTC to Get Back to Basics*, CFTC Release No. 9036-25 (Jan. 21, 2025), available at: <https://www.cftc.gov/PressRoom/PressReleases/9036-25>. In a subsequent statement, Acting Chairman Pham announced that the Division would refocus on fraud and helping victims and to stop regulation by enforcement. *See CFTC Division of Enforcement to Refocus on Fraud and Helping Victims, Stop Regulation by Enforcement*, CFTC Release No. 9044-25 (Feb. 4, 2025), available at: https://www.cftc.gov/PressRoom/PressReleases/9044-25?utm_source=govdelivery.

⁸ *See, e.g., CFTC v. Dean Dellas, et al.*, Civil Action No. 5:25-cv-575-BKS-ML (N.D.N.Y. May 7, 2025).

⁹ *Acting Chairman Pham Announces Successful Completion of Enforcement Sprint*, CFTC Release No. 9114-25 (Sep. 4, 2025), available at: https://www.cftc.gov/PressRoom/PressReleases/9114-25?utm_source=govdelivery.

¹⁰ *Keynote Address by Acting Chairman Caroline D. Pham, FIA BOCA50* (CFTC March 11, 2025), available at: <https://www.cftc.gov/PressRoom/SpeechesTestimony/opapham13>.

Changes to Division Composition and Structure

In addition to the shift in the Division's emphasis on fraud, the composition and structure of the Division has changed under Acting Chairman Pham. It has been widely reported that the CFTC reduced the number of its staff through voluntary resignation programs and firings.¹¹ Further, the structure of the Division has been reorganized into two task forces: the Complex Fraud Task Force and the Retail Fraud and General Enforcement Task Force.¹² The Complex Fraud Task Force is responsible for all preliminary inquiries, investigations, and litigations relating to complex fraud and manipulation across all asset classes, and is led by Paul Hayeck, who is also serving as the Acting Director of Enforcement. The Retail Fraud and General Task Force focuses on retail fraud and handles general enforcement matters involving other violations of the CEA, and is headed by Charles Marvine.

Changes to Division Processes

The internal processes within the CFTC have also changed. Under the new Administration, the CFTC issued a number of advisories formalizing and modifying the processes of the Division including with regard to referrals as well as self-reporting and cooperation.

CFTC Advisory on Referrals to the Division

In April 2025, the CFTC formalized the process of referring matters from the CFTC's Market Participants Division, the Division of Clearing and Risk, and the Division of Market Oversight (collectively the "Operating Divisions") to the Division.¹³ The advisory provides that only material supervision or material noncompliance issues will be referred to the Division by the Operating Divisions. Supervision or noncompliance issues that are not material will be addressed by the Operating Divisions directly with the registrant or registered entity without a referral to the Division. In determining materiality, the advisory provides that the Operating Divisions will apply a reasonableness standard that considers a registrant's size, activity and complexity, and the following factors:

- (1) especially egregious or prolonged systematic deficiencies or material weakness of the supervisory system or controls or program;
- (2) knowing and willful misconduct by management such as conduct evidencing an intent to conceal a potential violation or supervision or noncompliance issue; or
- (3) lack of substantial progress towards completion of a remediation plan for an unreasonably lengthy period of time such as several years, particularly after a sustained and continuous process with the Operating Division regarding the lack of substantial progress.

¹¹ <https://www.reuters.com/legal/litigation/us-cftc-begins-staff-firings-agency-source-says-2025-07-17/>

¹² See *CFTC Division of Enforcement to Refocus on Fraud and Helping Victims, Stop Regulation by Enforcement*, CFTC Release No. 9044-25 (Feb. 4, 2025), available at: https://www.cftc.gov/PressRoom/PressReleases/9044-25?utm_source=govdelivery.

¹³ CFTC Letter No. 25-13, *Staff Advisory on Materiality or Other Criteria That Operating Divisions Will Use to Determine Referrals to the Division of Enforcement* (Apr. 17, 2025).

The advisory also noted that a single instance of an issue or failure involving a technical or operational issue would not be considered a material supervision or noncompliance issue unless, looking at the totality of circumstances, the issue involved widespread impact to the registrants or its clients, counterparties or customers, or a failure of the registrant's systems, policies or practices that involves numerous persons, multiple errors, or significant monetary amounts given the size, activity, or complexity of the registrant. Notably, failing to meet a deadline (or an extension) for corrective action or remediation by itself is insufficient for a referral to the Division.

CFTC Criminal Referrals to DOJ

In July 2025, the Division issued an advisory for referrals to the Department of Justice (“DOJ”) for potential criminal enforcement, which subsequently was withdrawn in September 2025 and replaced with a policy statement setting forth the framework (identical to the advisory) to be followed when the CFTC considers whether to refer potential violations of criminal regulatory offenses to DOJ.¹⁴ The policy statement sets forth the Division’s general policy, which considers harm or potential harm caused, potential gain, recidivism, whether the putative defendant holds specialized knowledge or expertise related to the rule or regulation at issue, evidence of awareness of the unlawfulness of the conduct and knowledge of the regulation at issue, and whether DOJ involvement will provide meaningful protection to market participants. The policy statement was issued pursuant to the Administration’s Executive Order 14294 on Fighting Overcriminalization in Federal Regulations.

CFTC Self-Reporting and Cooperation Advisory

In February 2025, the Division rescinded its prior enforcement guidance on self-reporting and cooperation and issued a new self-reporting and cooperation advisory. While the new self-reporting advisory is now the exclusive Division policy on self-reporting, cooperation, and remediation, the Division continues to maintain discretion to consider the unique facts and circumstances in every case and may also consider a variety of other factors in formulating recommendations to the CFTC, including, but not limited to, the culpability of the actors; recidivism, if any, with respect to the same specific violation and facts and circumstances not involving fraud, manipulation, or other abuse; and the severity of the violation.

The self-reporting advisory provided guidance on the following topics:

- **Evaluation of Self Reporting:** The Division will evaluate self-reporting on a three-tier scale (No Self-Reporting, Satisfactory Reporting and Exemplary Reporting). The Division will evaluate whether the disclosure was voluntary, made to the CFTC, made in

¹⁴ *CFTC Issues Advisory on Referrals for Potential Criminal Enforcement*, CFTC Release No. 9094-25 (July 9, 2025), available at: https://www.cftc.gov/PressRoom/PressReleases/9094-25?utm_source=govdelivery; *CFTC Issues Policy Statement on Referrals for Potential Criminal Enforcement*, CFTC Release No. 9116-25 (Sep. 5, 2025), available at: [CFTC Issues Pohttps://www.cftc.gov/PressRoom/PressReleases/9116-25?utm_source=govdelivery](https://www.cftc.gov/PressRoom/PressReleases/9116-25?utm_source=govdelivery). The press releases comments that the advisory previously had been issued because there was no majority vote of the Commission to authorize Federal Register publication, but that the policy statement will be published in the Federal Register.

a timely manner, and complete. The Division will also provide a safe harbor for good faith self-reporting.¹⁵

- Evaluation of Cooperation: The Division will evaluate cooperation and categorize a Person's cooperation on a four-tiered scale that includes: No Cooperation, Satisfactory Cooperation, Excellent Cooperation, and Exemplary Cooperation:
 - "No Cooperation" - where a company has complied fully with subpoenas or other compulsory process but did not provide substantial assistance to the Division;
 - "Satisfactory Cooperation" - where a company complied fully with subpoenas or other compulsory process and provided substantial assistance to the Division by doing the following, where applicable: voluntarily providing documents and information; making presentations to the Division; and making witnesses available for interviews or testimony where consistent with applicable law;
 - "Excellent Cooperation" - where a company consistently provided substantial assistance to the Division's investigation by, in addition to the steps described under "Satisfactory Cooperation," doing the following, where applicable: performing internal investigations or reviews; providing the Division with a thorough analysis of the potential violation, root cause, and corrective action for remediation, including the use of internal or external expert resources or consultants as appropriate; and consistently providing documents and information on a voluntary basis; and
 - "Exemplary Cooperation" - where a company consistently provided material assistance to the Division's investigation and the cooperation provided an exceptionally high degree of value. Exemplary Cooperation generally involves taking most or all the steps described under "Satisfactory Cooperation" and "Excellent Cooperation" at a consistently high level throughout an investigation. Exemplary Cooperation is frequently typified by proactive engagement and use of significant resources to provide material assistance to the Division's investigation. Exemplary Cooperation also includes significant completion of remediation, and use of accountability measures, as appropriate. A company does not need to complete the entire remediation plan prior to resolution in order to be eligible to receive Exemplary Cooperation; however, a Company should have completed a significant portion of the remediation plan or completed significant milestones in the remediation plan.¹⁶

The self-reporting advisory also included a matrix of the presumptive mitigation credit that the Division will apply to a civil monetary penalty that is based on the evaluation of the quality of self-reporting and cooperation. While the mitigation credit matrix provides quantitative metrics to assist firms in assessing potential self-reporting, cooperation, and mitigating credit in its approach to the Division's matters, the self-reporting advisory does not provide any additional guidance or quantitative metrics on how the underlying civil monetary

¹⁵ CFTC Releases Enforcement Advisory on Self-Reporting, Cooperation, and Remediation (CFTC Feb. 25, 2025) at <https://www.cftc.gov/PressRoom/PressReleases/9054-25>

¹⁶ *Enforcement Advisory: Advisory On Self-Reporting, Cooperation, and Remediation* (CFTC Feb. 25, 2025) at 7-8, https://www.cftc.gov/media/11821/EnfAdv_Resolutions022525/download.

penalty will be calculated. That said, Acting Chairman Pham’s remarks in March 2025 noted the dramatic increase in the CFTC’s imposition of civil monetary penalties, especially over the last several years, and stated that the Commission would now take a more “holistic” approach that would look at penalties over time, including over the last ten (10) years, and not just the last few years.¹⁷

The self-reporting advisory also recognizes self-reporting to the relevant operating division, as opposed to the prior requirement for self-reporting to be made to the Division in order to qualify for credit. Additionally, the self-reporting advisory clarifies that mitigation credit is available for entities that self-report information that those entities may already have to include in mandatory annual chief compliance officer reports in order to ensure regulatory consistency.

While the self-reporting advisory still contemplates the use of compliance monitors or consultants to ensure the completion of any remedial undertakings as called for by prior advisories, the self-reporting advisory notably changes the determination of the proposed remediation plan and the need for a compliance consultant or monitor to be made by the relevant operating division, as opposed to the Division. However, the Division, in consultation with the relevant operating division, will approve the selection of the specific monitor, but no Division approval is required for a compliance consultant. For both consultants and monitors, periodic progress reports will be submitted to the operating division. Senior management will be required to certify the completion of any remedial undertakings to the Division.

Similar to prior advisories on self-reporting and cooperation, the self-reporting advisory also addresses uncooperative conduct that would not warrant cooperation credit. Failing to self-report a violation that the company has determined to be material to an appropriate division that involves willful misconduct, customer harm, or significant financial losses will be deemed as uncooperative.

Finally, as with the prior self-reporting and cooperation advisories, the self-reporting advisory contemplates the potential for a declination from prosecution in the extraordinary circumstances where a person is the first to self-report pervasive fraud, manipulation, or abuse involving multiple parties, and also provides exemplary cooperation.

Conclusion

The new Administration under Acting Chairman Pham has ushered in dramatic and significant changes to the CFTC’s Division of Enforcement, which thus far has substantially pared back its program. However, firms should still nevertheless be vigilant with their compliance efforts as, with a new permanent Chair and subsequent administrations, these winds of change could just as easily revert back to the aggressive stance that the Division undertook under the Biden Administration.

¹⁷ *Keynote Address by Acting Chairman Caroline D. Pham, FIA BOCA50* (CFTC Mar. 11, 2025), available at: https://www.cftc.gov/PressRoom/SpeechesTestimony/opapham13?utm_source=govdelivery#_ftnref16.