



CFTC Issues Advisory on Self-Reporting of Foreign Corrupt Practices for Non-Registrants

The Advisory is part of the agency's broader commitment to provide "incentives for companies and individuals to engage in ethical corporate behavior."

On March 6, 2019, the U.S. Commodity Futures Trading Commission ("CFTC") issued an Enforcement Advisory ("Advisory") regarding self-reporting and cooperation for violations of the Commodity Exchange Act ("CEA") involving foreign corrupt practices. In this Advisory, the CFTC's Enforcement Division indicated that it is willing to apply a presumption that it will recommend resolving self-reported violations of the CEA involving foreign corrupt practices without a civil monetary penalty if various conditions are satisfied. However, this Advisory applies only to individuals and entities that are not already registered (or required to be registered) with the CFTC. Individuals and entities that are registered (or required to be registered) with the CFTC are not eligible for the presumption, but will remain eligible for substantial reductions in civil monetary penalties under Advisories issued in 2017.

In the Advisory, the Enforcement Division made clear that the presumption will only apply when the non-registrant "timely and voluntarily" discloses violations of the CEA and that self-reporting is followed by "full cooperation and appropriate remediation." The Enforcement Division also retains discretion not to apply the presumption if aggravating circumstances are present, such as if "the company or individual has previously engaged in similar misconduct." The Advisory also made clear that even when the presumption applies, the Enforcement Division will still seek "all disgorgement, forfeiture, and/or restitution resulting from the misconduct at issue."

CFTC Enforcement Director Jamie McDonald publicly stated that the new Advisory is part of the CFTC's broader commitment to "provid[e] incentives for companies and individuals to engage in ethical corporate behavior." Market participants subject to regulation by the CFTC should be aware of these incentives and consider the benefits of self-reporting and cooperation.

The Advisory also signals a new area of interest for the CFTC, which had previously not asserted jurisdiction over violations of the Foreign Corrupt Practices Act. Market participants should take notice of the CFTC's new interest in foreign corrupt practices that might violate the CEA (such as the use of bribes to "secure business in connection with regulated activities") and should anticipate an increase in coordinated investigations by the CFTC, SEC, and Department of Justice in this area in the near future.



Stephen J. Obie
New York/
Washington



Ryan J. Andreoli
New York



Jayant W. Tambe
New York



Joan E. McKown
Washington

[David Sverdlov](#), an associate in the New York Office, assisted with the preparation of this Alert.

SUBSCRIBE

SUBSCRIBE TO RSS



Jones Day is a global law firm with more than 2,500 lawyers on five continents. One Firm WorldwideSM

Disclaimer: Jones Day's publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our "Contact Us" form, which can be found on our website at www.jonesday.com. The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm.

© 2019 Jones Day. All rights reserved. 51 Louisiana Avenue, N.W., Washington D.C. 20001-2113