



ALERT

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CFTC Issues First Ever Enforcement Manual

The Enforcement Manual is intended to guide the work of the DOE and increase transparency

On May 8, 2019, the Commodity Futures Trading Commission's ("CFTC") Division of Enforcement ("DOE") announced that it had issued an Enforcement Manual that "establishes certain general policies and procedures that guide the work of DOE staff in detecting, investigating, and prosecuting violations of the Commodity Exchange Act (CEA) and the CFTC Regulations." This is the first time that the DOE has published an Enforcement Manual, and the accompanying press release indicates that it is intended to "increase transparency, certainty, and consistency" in CFTC enforcement actions.

The Enforcement Manual is a dense, 52-page document that, among other things: (i) provides background information regarding the CFTC and the DOE; (ii) describes the "life cycle" of DOE enforcement matters (including how leads for new investigations are generated); (iii) describes how the DOE collects information for use in its investigations, and the privileges that may limit the scope of such collection; (iv) provides guidance on the Wells notice and submission process; (v) describes the CFTC's efforts to work "cooperatively and in parallel with criminal authorities and other federal, state, or international regulators"; and (vi) describes the types of enforcement actions the CFTC may commence and the manner in which those actions may be resolved. The Enforcement Manual also summarizes the CFTC's self-reporting and cooperation advisories as well as its whistleblower program, which should be of interest to market participants.

In public statements accompanying the release of the Enforcement Manual, CFTC Director of Enforcement Jamie McDonald made clear that the Enforcement Manual "is not binding law," does not create any "private rights," and is not "enforceable in court." Mr. McDonald also indicated that he expects the Enforcement Manual to be "a living document" that changes over time as the DOE refines its thinking regarding appropriate policies and procedures. Thus, while the Enforcement Manual is clearly an important document and a meaningful step by the DOE to increase transparency, market participants should be aware of its limitations and should monitor the CFTC's website to keep abreast of any changes in the DOE's policies.

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