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CFTC Announces New Cooperation Policy — Key Takeaways and Analysis

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Introduction

On May 19, 2026, the Commodity Futures Trading Commission’s (“CFTC”) Division of Enforcement (“DOE”) issued a Staff Advisory setting forth a new policy for evaluating cooperation and self-reporting when considering whether to recommend enforcement actions to the CFTC (the “Policy”).¹ The Policy is effective immediately and supersedes the DOE’s February 25, 2025 Advisory on self-reporting, cooperation, and remediation, as well as all prior policies on these subjects. Taken as a whole, the Policy signals the DOE’s intent to create more transparent incentives for companies and individuals to self-report misconduct and cooperate with investigations. In response, market participants and registrants should consider strengthening their internal escalation and monitoring procedures so that they can evaluate the best strategy for DOE engagement regarding potential misconduct and position themselves to maximize benefits that may flow from this Policy.

The Policy Provides a Range of Benefits Under a Tiered Framework

The Policy establishes a tiered framework for evaluating cooperation when the DOE considers declinations or makes enforcement recommendations to the CFTC. It formalizes a new approach announced by CFTC Director of Enforcement David I. Miller in a March 31, 2026 speech emphasizing the DOE’s focus on “serious violations,” including fraud, abuse and manipulation, with a particular emphasis on insider trading in prediction markets.² The new Policy provides a path to declination for eligible parties that self-report wrongdoing, cooperate fully, and remediate the harms caused. Eligibility for a full declination generally hinges on the absence of aggravating circumstances, with the Policy still providing for penalty reductions even where aggravating circumstances exist. Its stated purpose is to incentivize responsible behavior by encouraging registrants and market participants to invest in effective compliance programs, voluntarily self-report potential misconduct, meaningfully cooperate with the CFTC, and make good-faith efforts to remediate and prevent wrongdoing.

A. Declinations from Enforcement

The Policy provides a pathway for parties seeking a declination, meaning a decision by the DOE to refrain from recommending an enforcement action. To qualify, a party must satisfy all the following criteria:

1. **A “Voluntary Self-Report” to the CFTC.** A self-report must be made in good faith, before any known or reasonably anticipated threat of disclosure from other sources, and within a reasonably prompt time after discovery of misconduct. The party must disclose all material, non-privileged information in its possession, and must have timely fulfilled any statutory or regulatory reporting obligation. Notably, the DOE will not recommend charges for a self-report later found to contain inaccurate information, if it was made in good faith and any inaccuracies are promptly corrected.
2. **“Full Cooperation” during the DOE’s investigation.** Full cooperation requires timely disclosure of all relevant, non-privileged information and rolling updates on investigative findings. Parties must proactively share information even when not specifically requested, preserve and produce relevant documents, deconflict investigative steps in light of DOE requests, and make individuals available for interviews. The DOE will consider the size, sophistication, and financial state of the party when assessing its cooperation.
3. **“Timely and Appropriate Remediation” of the misconduct.** A party must conduct a thorough root-cause analysis and implement remediation measures to address the root-causes. Parties must implement an effective compliance and ethics program that includes compliance resources, independent authority for the compliance function, risk-based program design, and ongoing evaluation. Additionally, parties must appropriately discipline

¹ CFTC Letter No. 26-15, DOE, *New Division of Enforcement Policy on Cooperation* (May 19, 2026) (the “Policy”).

² David I. Miller, Director, CFTC Division of Enforcement, Remarks at NYU Law School – CFTC Enforcement Priorities, Insider Trading in the Prediction Markets, and Cooperation with the CFTC (Mar. 31, 2026), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opamiller1>.

employees responsible for misconduct and implement record-retention measures, including controls over personal devices and messaging platforms.

4. **“Full Restitution and/or Disgorgement,” if applicable.** A party must create and implement an appropriate DOE-approved plan to provide full restitution and to disgorge all ill-gotten gains. The DOE encourages parties to make harmed individuals whole immediately and will credit a party that proactively provides partial restitution before formally reaching agreement with the DOE. Where identifying all victims is impracticable, the party must agree to a reasonable restitution plan acceptable to the DOE.
5. **No aggravating circumstances preclude eligibility.** Aggravating circumstances that may preclude eligibility include pervasive intentional or reckless misconduct by ownership or senior management, misconduct occurring over an extended period, recidivist intentional or reckless behavior, and instances where misconduct caused egregious aggregate harm. Even where such circumstances are present, the DOE retains discretion to refrain from recommending an enforcement action if, on balance, the party’s conduct in cooperating still trumps the severity of aggravating circumstances. The DOE may also grant a declination before full implementation of remediation or restitution, depending on the circumstances and complexity of the planned corrective measures.

B. Cooperation Credit Available Absent Full Declination

Where a party provided Full Cooperation, Timely and Appropriate Remediation, and Full Restitution and/or Disgorgement but is nonetheless ineligible for a declination because, for example, it does not meet the standard for a Voluntary Self-Report or aggravating circumstances preclude a full declination, the DOE will incorporate cooperation credit into its recommendation to the CFTC. Specifically, the Policy provides for a civil monetary penalty reduction of at least 50% where the self-report did not qualify as voluntary, or at least 25% where aggravating factors are present. In either case, the maximum recommended penalty reduction is capped at 75%. As always, the benefit of the discount in settled resolutions will be tied to the methodology that DOE uses to calculate the starting point for the penalty and a party’s assessment of whether that starting point is fair and appropriate.

For parties that do not qualify for either a full declination or cooperation credit, the DOE retains discretion to award more limited cooperation credit where the party has engaged in Timely and Appropriate Remediation and has provided Full Restitution and/or Disgorgement, even absent a Voluntary Self-Report or Full Cooperation throughout the investigation. In such cases, the DOE may recommend a penalty reduction of no more than 25%, absent extraordinary circumstances, providing an avenue for the DOE to recognize a party’s remediation efforts while preserving meaningful incentives for early and comprehensive cooperation.

The Policy Marks a Departure from Prior Policies in Key Ways

The Policy replaces a February 25, 2025, CFTC Advisory (“Prior Policy”) that imposed more stringent requirements for self-reporting and was more restrictive in granting relief.³ While the broad factors that the DOE will consider remain the same, the Policy signals the DOE’s intent to better facilitate and incentivize cooperation in six key ways:

1. The Prior Policy treated declination as an “extraordinary” event for rare circumstances, rather than relief that a party could presumptively be entitled to.
2. The Prior Policy evaluated self-reporting and cooperation on a tiered matrix, which capped penalty reduction at 55% even where there were self-reporting and cooperation of the highest quality, as opposed to the Policy which allows for declination in such cases, and allows for penalty reductions of up to 75% even if self-reporting is insufficiently voluntary.
3. The Prior Policy treated a party as uncooperative, and therefore offset its cooperative efforts, for failing to self-report a material violation involving willful misconduct, harm to clients or counterparties, or significant financial losses. The Policy indicates that the DOE will now only view conduct as uncooperative where, for example, there is “pervasive intentional or reckless misconduct by ownership or senior management,” “intentional or reckless misconduct occurring over an extended period,” “recidivist intentional or reckless misconduct,” or “instances in which the misconduct has caused particularly egregious aggregate harm.”

³ CFTC Advisory, DOE, Advisory on Self-Reporting, Cooperation, and Remediation (Feb. 25, 2025).

4. The Prior Policy specified that initial penalty amounts would be based on “an analysis of the facts, the statute and regulation, past Commission precedent as appropriate, and other applicable law.”⁴ The Policy, by contrast, does not expressly state how initial penalty amounts will be determined.
5. Under the Prior Policy, a self-report was not considered voluntary if the CFTC already had independent knowledge of the misconduct. Under the Policy, a self-report may still be viewed as voluntary if made in good faith even where DOE had already become aware of the conduct.
6. The Prior Policy mandated that a self-report be made to the relevant CFTC Division in particular, whereas the Policy allows for a self-report to be made to any Division of the CFTC.

The Policy Aligns with the Recent Approach Taken by Adjacent Agencies

The Policy aligns with recent policies and pronouncements of adjacent agencies, including the Department of Justice (“DOJ”), the United States Attorney’s Office for the Southern District of New York (“SDNY”), and the Securities and Exchange Commission (“SEC”).

DOJ: On March 10, 2026, the DOJ released its first-ever Department-wide Corporate Enforcement Policy (“CEP”), which allows for cooperation to factor into prosecutorial actions generally, rather than only being available in specific divisions and for certain offenses.⁵ The CEP compares to the Policy as follows:

1. **Equivalent elements.** The CEP allows for presumptive declination where a company engages in voluntary self-reporting, full cooperation, and timely and appropriate remediation without aggravating circumstances.
2. **Similar cooperation credit.** The CEP provides for cooperation credit of up to 75%, and where a company fails to meet requirements for cooperation or remediation, such cooperation credit is instead capped at 50%.
3. **Different self-reporting requirements.** For self-reporting to be considered voluntary, the CEP—unlike the Policy—requires that the misconduct was not previously known to the DOJ; however, there is an exception where a whistleblower makes both an internal report to a company and a whistleblower submission to the DOJ, so long as the company reports this to the DOJ as soon as reasonably practical.

SDNY: Similarly, SDNY recently announced a corporate enforcement and voluntary self-disclosure program for financial crimes.⁶ Of note, the SDNY program is specific to declination, precludes declination where there are aggravating circumstances, and does not provide cooperation credits for cases where elements are not fully met. In addition, unlike the DOJ, the SDNY considers self-reporting voluntary even if the agency is already aware of misconduct from other sources, so long as the report was made prior to any public reporting of a government investigation.

The SDNY has already put this new program to practice in a case announced on May 19, 2026.⁷ In that case, the company received a conditional declination of charges against the company after self-reporting fraud, committing to full cooperation, restitution, remediation of harm caused by the misconduct, and its agreement to report criminal conduct for a three-year period.

SEC: The revised SEC Enforcement Manual lays out the agency’s process for evaluating cooperation with companies.⁸ While SEC Chairman Paul Atkins has not made public remarks about declinations, and the SEC has not announced or publicized any declinations or cooperation credits during this administration, Atkins has stated that enforcement “must be tempered by fair process, good judgement, integrity, and rectitude.”⁹ The SEC’s practice compares to the Policy as follows:

1. **Similar elements.** The SEC evaluates company cooperation efforts under the factors of the company’s self-policing prior to discovery of misconduct, self-reporting of misconduct, remediation efforts, and cooperation with law enforcement authorities; however, the SEC does not expressly mention aggravating factors as a consideration.

⁴ *Id.* at 13 (Ill.d).

⁵ See *Corporate Enforcement and Voluntary Disclosure Policy*, U.S. DOJ (Mar. 10, 2026), <https://www.justice.gov/dag/media/1430731/dl?inline>.

⁶ See *SDNY Corporate Enforcement and Voluntary Self-Disclosure Program for Financial Crimes*, U.S. Attorney’s Office for the SDNY (Apr. 22, 2026), <https://www.justice.gov/usao-sdny/media/1428811/dl?inline>.

⁷ See *Senior Personnel At Telecommunications Company Charged With Multimillion Dollar Fraud Following Company Self-Report*, U.S. DOJ (May 19, 2026), <https://www.justice.gov/usao-sdny/pr/senior-personnel-telecommunications-company-charged-multimillion-dollar-fraud>.

⁸ SEC Division of Enforcement, *Enforcement Manual* (2026).

⁹ Paul S. Atkins, Chairman, SEC, Keynote Address at the 25th Annual A.A. Sommer, Jr. Lecture on Corporate, Securities, and Financial Law (Oct. 7, 2025).

- 2. Different self-reporting requirements.** The SEC will only view self-reporting as voluntary if the company reports misconduct before the SEC learns of it from other sources.
- 3. Different results of cooperation.** The SEC does not provide specific percentages for cooperation credit or any guarantee of such credit, instead noting its broad discretion and that companies may receive relief ranging from declination of enforcement to pursuing reduced charges.

FINRA: The Financial Industry Regulatory Authority (“FINRA”) appears to be following this trend, with FINRA’s Head of Enforcement noting on May 14, 2026, that the agency was “looking at credit for cooperation and remediation.”¹⁰

Key Takeaways for Registrants and Market Participants

Strengthen internal procedures for identifying violations. Companies should enhance their policies and procedures for monitoring and escalation. Companies should encourage employees to raise potential violations within the organization and ensure sufficient pathways for employees to escalate such concerns.

Early consideration of whether and how to engage with the CFTC. The CFTC’s requirements for voluntary self-reporting—which do not penalize companies for providing preliminary information that later turns out to be incorrect—encourage companies to come in early even where they have not yet obtained a complete picture of the conduct at issue. Companies thus need to come to a decision as to whether self-reporting is appropriate at an early stage after identifying potential misconduct, as delaying reporting may cause them to no longer be eligible for voluntary self-reporting.

Offer full cooperation and remediation. Where misconduct is discovered, companies should immediately take steps to preserve potentially relevant documents, consider whether to proactively provide information to the CFTC, appropriately arrange for ongoing compliance and disciplinary measures, and prepare for restitution as may be needed. Doing so will maximize potential for full declination or cooperation credits.

For further guidance, contact Milbank’s White Collar Defense and Investigations team. We can help you further understand how the CFTC’s new cooperation and self-reporting policy may impact your business or ongoing matters.

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¹⁰ Sarah Jarvis, *FINRA Official Says Cooperation Credit Updates Incoming*, Law360 (May 16, 2026), <https://www.law360.com/articles/2478040/finra-official-says-cooperation-credit-updates-incoming>.



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