WINSTON & STRAWN LLP

CLIENT ALERT

The CFTC's Mitigation Credit Matrix: New Guidelines for a New Context

APRIL 29, 2025

On February 25, 2025, the Commodity Futures Trading Commission (CFTC or the Commission) released an Enforcement Advisory (The Advisory) outlining concrete guidelines for self-reporting, cooperation, and remediation. The Advisory provides explicit guidance to companies and individuals on how to receive credits against civil penalties by self-reporting and cooperating with Commission investigations.

SUMMARY OF THE ADVISORY

The Advisory creates two categories that the Commission will consider in determining whether, and to what extent, to discount civil monetary penalties: Self-Reporting and Cooperation.

SELF-REPORTING

The Advisory outlines several criteria for its evaluation of whether a party's self-report qualifies for mitigation credit. The report must be voluntary, meaning that the report was made before any threat of the violation's exposure. The report should also be made promptly, taking into consideration the party's efforts to determine the existence and materiality of the violation. The Commission will also consider the report's completeness, evaluating the report's description of the issue, the method of discovery, root cause analysis, and remediation procedures. To further encourage timely self-reporting, the Commission provides a safe harbor for good-faith self-reports that are later supplemented with additional information. Notably, the Commission now recognizes reports submitted to operative divisions, rather than reports submitted only to the Division of Enforcement. In a subsequent staff letter, the Commission advised parties to use their best judgment as to whether a report should be submitted to an operating division or the Division of Enforcement based on the violation's suspected materiality. Staff Letter No. 25-13 (April 17, 2025). Based on these criteria, the Commission will categorize a self-report into one of three tiers: No Self-Report, Satisfactory Self-Report, or Exemplary Self-Report.

COOPERATION

Similarly, the Advisory outlines the Commission's evaluation criteria for whether a party's cooperation qualifies for mitigation credit. The Commission will consider factors such as the timeliness, completeness, voluntariness, extent, and quality of a party's cooperation. The Commission will categorize a party's cooperation into one of four categories. The highest tier of cooperation is reserved for parties whose cooperation significantly conserves Commission resources and who substantially complete proposed remediation measures.

THE PRESUMPTIVE MATRIX

In calculating a party's mitigation credit, the Commission has created this Mitigation Credit Matrix:

	TIER 1: NO COOPERATION	TIER 2: SATISFACTORY COOPERATION	TIER 3: EXCELLENT COOPERATION	TIER 4: EXEMPLARY COOPERATION
Tier 1: No Self-Report	**0%**	**10%**	**20%**	**35%**
Tier 2: Satisfactory Self-Report	**10%**	**20%**	**30%**	**45%**
Tier 3: Exemplary Self-Report	**20%**	**30%**	**40%**	**55%**

While this matrix presumptively applies, the Commission reserves the right to adjust any credits based on the circumstances of each case.

WILL OTHER AGENCIES FOLLOW?

Acting CFTC Chair Caroline Pham noted that the Advisory was intended to implement President Trump's "Ensuring Lawful Governance and Implementing the President's 'Department of Government Efficiency' Deregulatory Initiative" Executive Order. Press Release No. 9054-25 (Feb. 25, 2025). Chairman Pham stated that the Advisory will enable the CFTC "to do more with less," resolving enforcement actions more quickly and conserving limited agency resources for the most severe violations. *Id.*

While the Advisory's clarity seems promising, it is not yet certain that it will lead to substantially different mitigation credits being applied in enforcement actions. If the Advisory does yield the efficiency benefits Chairman Pham forecasts, it will be interesting to follow whether other agencies update their own mitigation credit schemes. The CFTC's new credit matrix represents a departure from mitigation credit criteria at other financial agencies, such as the Securities and Exchange Commission (SEC). The SEC's cooperation credit guidelines, for example, do not separate self-reporting and cooperation into separate categories, nor do they provide any presumptive credit percentages. 17 C.F.R. § 202.12. The SEC also considers broader, more malleable factors when determining whether to apply a credit, such as societal interest in holding the individual or entity accountable. *Id.* At a glance, the CFTC's new guidelines appear far more prescriptive and less subjective than the SEC's.

The SEC's cooperation credit guidelines have not been updated since 2010, a markedly different time and context for federal financial agencies. Whether the differences between the CFTC and SEC guidelines lead to different outcomes is to be determined, as is whether the CFTC's advisory is just the first step in updating mitigation credit schemes across multiple agencies.
3 Min Read

Authors

Caitlin M.R. Mandel

Daniel T. Chaudoin

Arman Aboutorabi

Related Topics

Financial Services

Related Capabilities

Financial Services Litigation

Financial Services

Related Professionals

Caitlin M.R. Mandel

Daniel T. Chaudoin

Arman Aboutorabi

Cristina I. Calvar

Seth Farber

Basil Godellas