

## [Securities Regulation Daily Wrap Up, ENFORCEMENT—CFTC Enforcement Director James McDonald touts ‘substantial benefits’ of self-reporting, \(Aug. 25, 2017\)](#)

Securities Regulation Daily Wrap Up

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By [Lene Powell, J.D.](#)

Companies and individuals debating whether to self-report wrongdoing to the CFTC should know that they can get a significant reduction in their penalty for doing so, said CFTC Enforcement Director James McDonald. In a new episode of [CFTC Talks](#), a podcast series, McDonald emphasized that Division of Enforcement views self-reporting as an important enforcement tool and that the CFTC is not trying to play "gotcha."

Since his [appointment](#) in March, McDonald has overseen several major CFTC enforcement resolutions involving reduced penalties for self-reporting and other cooperation. In the [interview](#) hosted by Chief Market Intelligence Officer [Andy Busch](#), McDonald also discussed his career experiences, including his work as an Assistant U.S. Attorney in the Southern District of New York and law clerk to Chief Justice John Roberts, Jr.

**New emphasis on cooperation.** According to McDonald, the CFTC is constantly thinking about how to give companies and individuals the right incentives to comply with the law while holding people who violated the law accountable. Over the past few months, the CFTC has highlighted the value of cooperation generally, including self-reporting, remediation, and other measures.

In January, the agency [issued](#) two advisories on cooperation, discussing factors considered in providing cooperation credit to companies and individuals. In June, trader [David Liew](#) was able to completely avoid a civil monetary penalty for spoofing and manipulation in the gold and silver futures markets by providing "substantial assistance" to the Division. Later that month, the CFTC entered into its first-ever [Non-Prosecution Agreements \(NPAs\)](#) with two former Citigroup traders who provided "timely and substantial cooperation" relating to their spoofing misconduct.

Earlier in August, McDonald noted that a \$600,000 penalty imposed against [The Bank of Tokyo-Mitsubishi](#) for spoofing was a "substantially reduced penalty" in exchange for self-reporting and other cooperation.

**Self-reporting considerations.** McDonald made several points about self-reporting:

- The CFTC is not trying to play "gotcha" with self-reporting. If the company tells the CFTC about nine violations and they go in and find a tenth violation, the CFTC will not necessarily deny self-reporting credit.
- It is okay if the company is not sure it has identified all the wrongdoing at the time of the self-report. As long as the company "stays in the self-reporting and cooperation lane," it's fair to expect a real benefit "on the back end."
- It has to be a "real" self-report. "It can't be that you'd self-reported to one agency, one law enforcement agency, or you were required to self-report it under the law, or you had some public disclosure requirement under some other legal provision. You have to actually come in and self-report, and say here's the wrongdoing that we've identified," said McDonald.
- Part of self-reporting and cooperation means identifying other areas or others who were involved in the wrongdoing. Not everybody will necessarily get a free pass. Just because the CFTC gives an individual or company self-reporting credit doesn't mean they won't go after other individuals or companies involved.

McDonald hopes that by giving the right incentives and being transparent about expectations, the CFTC can promote compliance with the law and regulations going forward.

**Keeping an open mind.** For the CFTC's part, McDonald observed that because government lawyers have a tremendous amount of power and discretion, it is particularly important for them to be open to new information that might affect their view of a case. Although it would be inefficient to constantly rethink the approach to a case, government lawyers need to consider every question with clear eyes and not get "dug in."

"So if you're an assistant U.S. attorney, and you're investigating a case, and you're on the eve of trial, but you get new information that would make you think about the case differently, you can't be dug in just because you're on the eve of trial," said McDonald. "You've got to resist that temptation."

"I think a lot of people would be very glad to hear that," said Busch.

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