

## **SPEECHES & TESTIMONY**

### **Remarks of CFTC Director of Enforcement James M. McDonald at the American Bar Association's National Institute on White Collar Crime**

**March 6, 2019**

The mission of the CFTC's Division of Enforcement is to protect the public and preserve market integrity by detecting, investigating, and prosecuting violations of the Commodity Exchange Act (CEA). In pursuit of this mission, one of the Division's priorities has been to continue to enhance coordination with our law enforcement partners. This priority reflects good, common sense. We know that twenty-first century bad actors do not conform their misconduct to the technical boundaries of our respective jurisdictions, nor do they pause as their conduct crosses international borders. So we in the enforcement community must work together to meet the challenges presented by this sort of wrongdoing. As I get started, please keep in mind that these are my own views and not necessarily those of the Commission or its staff.

At the CFTC, we have seen this collective effort bear fruit. Last year marked a high point in our parallel enforcement program with the Department of Justice. The same was true with respect to our parallel actions with the SEC. And we continue to work in close coordination with our international partners, our regulatory partners, and the States. All the while, we've continued our effort to identify any gaps that we at the CFTC might work to fill, where misconduct might otherwise go undetected.

We've done this internationally as well as domestically. From issues like Brexit to global benchmarks like Libor, we recognize that U.S. derivatives and commodity markets are interconnected with other markets around the world. We know that the prices in our markets can be driven by prices abroad. And we know that misconduct outside the United States, if left unchecked, can distort prices and undermine the integrity of our markets here.

Today, I want to talk about one type of misconduct that can undermine our domestic markets: violations of the CEA carried out through foreign corrupt practices. Companies and individuals engaging in foreign corrupt practices should recognize that this sort of misconduct might constitute fraud, manipulation, false reporting, or a number of other types of violations under the CEA, and thus be subject to enforcement actions brought by the CFTC. Bribes might be employed, for example, to secure business in connection with regulated activities like trading, advising, or dealing in swaps or derivatives. Corrupt practices might be used to manipulate benchmarks that serve as the basis for related derivatives contracts. Prices that are the product of corruption might be falsely reported to benchmarks. Or corrupt practices in any number of forms might alter the prices in commodity markets that drive U.S. derivatives prices. We currently have open investigations involving similar conduct. But regardless of the specific factual scenario, we are committed at the CFTC to enforcing the CEA provisions that encompass foreign corrupt practices.

We recognize, of course, that such misconduct might also violate the Foreign Corrupt Practices Act, and thus might be subject to prosecution under that statute by our partners at DOJ or the SEC. So as we at the CFTC work to police our markets for this type of misconduct, we'll work closely with our enforcement partners to ensure that any investigations are properly coordinated and are appropriately aimed at identifying and eliminating any gaps in our investigative and regulatory frameworks. In fact it was just this sort of coordination that led to our involvement in this space: it began through conversations with our enforcement partners about factual scenarios known to them, to which we at the CFTC might be able to add our expertise about how those facts would affect American derivatives markets.

In moving forward with this program, we will not pile onto other existing investigations. When we investigate in parallel with other enforcement authorities, we will work closely with them to avoid duplicative investigative steps. To the extent the CFTC brings an action that includes a monetary penalty, we will ensure that our penalty appropriately accounts for any imposed by any other enforcement body. And when the CFTC imposes disgorgement or restitution, we will give dollar-for-dollar credit for disgorgement or restitution payments in connection with other related actions.

We know that combatting corrupt practices that impact financial markets has increasingly become a team effort. We at the CFTC will do our job as part of the team to identify corruption in our markets and hold wrongdoers accountable, working closely and in coordination with our law enforcement partners domestically and abroad.

We plan to pursue this type of misconduct to protect our markets, and to protect honest businesses. Our registrants and market participants who obey the law and do the right thing should not be placed at a disadvantage simply because their competitors choose to break the rules. Our markets should reward those who have the best business model, the best ideas, or have created some other lawful business advantage. Not those who pay off the right people.

That's why we are committed to providing incentives for companies and individuals to engage in ethical corporate behavior—to develop a true culture of compliance, to do the right thing. We have taken significant steps toward this goal over the last several years, as we implemented our cooperation and self-reporting policy, which made clear that companies and individuals could receive a reduction in penalty if they fully cooperate with our investigations, timely remediate, and, most importantly, self-report the misconduct before we learn about it. In certain cases, we explained, this could include a determination that no civil monetary penalty is warranted.

Today, the Division of Enforcement is releasing an Enforcement Advisory on cooperation and self-reporting. The Advisory makes clear that if a company or individual not registered (or required to be registered) with the CFTC timely self-reports a violation of the CEA involving foreign corrupt practices, fully cooperates, and appropriately remediates, the Division will apply a presumption, absent aggravating circumstances, that it will not recommend a civil monetary penalty. In contrast to non-registrants, CFTC registrants have existing obligations to disclose to the Commission CEA violations, including those involving foreign corrupt practices; registrants are thus not eligible for the presumptive recommendation of no penalty set out in this Advisory. Nevertheless, CFTC registrants who self-report, cooperate, and remediate still would be eligible to receive the recommended substantial reduction in penalty generally applicable under the Division's existing Enforcement Advisories.

In all events, a self-reporting company or individual will be required to pay disgorgement and restitution resulting from the misconduct. In addition, the Division will seek all available remedies—including, where appropriate, substantial civil monetary penalties—with respect to companies or individuals implicated in the misconduct that did not make the voluntary disclosure.

It also makes sense to note here that, as always, our Whistleblower Office remains open and ready for business. The Commission issued a record number of whistleblower awards last year, with record payments to whistleblowers. And our Whistleblower Program applies to CEA violations involving foreign corrupt practices, just as it does in other areas. Any tips, complaints, or reports can be sent directly to the CFTC's Whistleblower Office at [www.whistleblower.gov](http://www.whistleblower.gov).

We know that wrongdoers will try to evade law enforcement. But they also need to evade internal controls and compliance programs within their companies. Companies that are honest, law-abiding, and ethical—and that have meaningful compliance programs and that self-report misconduct when they see it—can significantly deter wrongdoing. We of course recognize that the single greatest deterrent to misconduct comes from vigorous enforcement. That's what you've consistently seen from us and can continue to expect. But we also want to be mindful of the other meaningful deterrents—like corporate internal controls and compliance programs. And we want to marshal all of these resources to achieve optimal deterrence in our markets. That's what the updated cooperation and self-reporting advisory released today is intended to do. If we achieve this goal, we'll have taken significant steps toward ensuring that the American markets remain the most open, transparent, competitive, and financially sound in the world.

Thank you.