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CFTC Issues Guidance on Factors Used in Evaluating Corporate Compliance Programs in Connection with Enforcement Matters

September 10, 2020

Washington, D.C. — The Commodity Futures Trading Commission today announced the issuance of new, public, staff-level guidance by the Division of Enforcement, which outlines factors that will be considered when evaluating compliance programs in connection with enforcement matters. The guidance, which will be published in the agency's Enforcement Manual, is the first of its kind issued by the Division. It follows the recent update of the agency's civil monetary penalty guidance, which was released in May. [See CFTC Press Release No. 8165-20]

"This new guidance highlights once again the CFTC's commitment to transparency and clarity," said Chairman Heath P. Tarbert, who in December announced additional efforts to promote transparency at the agency, including an updated Enforcement Manual. "The CFTC depends on good corporate citizens, acting through compliance programs—as partners in furthering the integrity and resilience of our markets. It's in both the agency's interest and the interest of compliance personnel that the Commission is clear about how and what we'll evaluate."

"The ultimate goal of our enforcement program is to deter bad behavior and foster a culture of compliance in our markets," added Division of Enforcement Director James McDonald. "Effective corporate compliance programs are a necessary part of that effort. This guidance will help both Division staff in evaluating a corporate compliance program and companies seeking to cultivate a culture of compliance for their businesses."

The staff guidance considers whether a compliance program was reasonably designed and implemented to (i) prevent the underlying misconduct at issue; (ii) detect the misconduct; and (iii) remediate the misconduct. At all points, the Division will conduct a risk-based analysis, taking into consideration a variety of factors such as the specific entity involved, its role in the market, and the potential market or customer impact of the underlying misconduct.

Factors to guide Division staff in evaluating a compliance program's ability to prevent misconduct may include (i) the written policies and procedures in effect; (ii) the training of staff; (iii) a failure to cure any previously identified deficiencies; (iv) adequate resources; and (v) the structure, oversight, and reporting of the compliance function. Factors that relate to the compliance program's effective detection of the underlying misconduct may include (i) internal surveillance and monitoring efforts; (ii) the organization's internal-reporting system and handling of complaints; and (iii) procedures for identifying and evaluating unusual or suspicious activity.

Staff will also take into account remediation measures to assess and address both the misconduct and any deficiencies in the compliance program that may have permitted the misconduct to occur. In considering remediation, staff will focus on whether the company (i) effectively addressed the impact of the misconduct; (ii) appropriately disciplined the individuals responsible for the misconduct; and (iii) identified and addressed any deficiencies in the compliance program itself.

The Division of Enforcement staff members primarily responsible for this guidance are Lara Turcik and Gretchen Lowe.

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