Reaching the Finish Line: The CFTC Concludes Its Enforcement Sprint by Offering Lower Fines for Self-Reporting and Cooperation

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This spring saw a flurry of activity from Acting Chairman Caroline D. Pham and the US Commodity Futures Trading Commission (the Commission or CFTC) regarding changes to CFTC enforcement priorities. Under her leadership, Acting Chairman Pham announced an "enforcement sprint" (the Sprint) designed to resolve matters considered to be relatively minor compliance violations with no customer harm or nefarious intent. The Sprint was also intended to free up Division of Enforcement (the Division) resources to focus on fraud and market abuse.[1] The Division also published a self-reporting, cooperation and remediation Advisory (the Advisory) containing a detailed, albeit complicated, mitigation credit matrix (the Matrix), which is designed to provide market participants with a guide on obtaining potentially significant reductions in their civil monetary penalties.[2]

Eight months after Acting Chairman Pham announced the Sprint, and after the departures of Commissioners Kristin Johnson, Summer Mersinger and Christy Goldsmith Romero, the lone CFTC commissioner settled a total of six enforcement actions, involving 10 separate derivatives market participants receiving a combined $8,325,000 in civil monetary penalties.[3] Each settlement involved "material compliance-related violations" such as supervisory and recordkeeping violations, and none of the matters involved fraud, customer harm or market abuse.[4] The CFTC also noted that resolving these violations helped the Division "clean up its overall docket" and prioritize fraud, market abuse and other wrongdoing that harms customers.[5]

These six orders represent Acting Chairman Pham's efforts to fulfill her promises to the industry by providing significantly lower civil monetary penalties for compliance-related enforcement matters where there was no customer harm present. While these lower civil monetary penalties are unlikely to set the new standard for these types of cases moving forward, these six orders do show that the Commission, at least for now, is willing to use the Advisory to reward market participants who engage

with the CFTC as issues arise and remediate those issues. These orders may be a helpful guide to market participants looking to advocate for similar credit.

However, it is important to note that the Division's approach to enforcement moving forward is ever-changing, and it is unclear how much precedential value future Commissioners will place on these matters following Acting Chairman Pham's tenure. This advisory summarizes each of the six settlements, analyzes the Sprint's key takeaways and discusses possible implications for future settlements.

Summary of the Sprint Enforcement Settlements

The six settlement orders published by the CFTC fall into three categories — violations related to supervision and system errors, off-channel communications and swap data reporting.

Supervisory Violations Involving Surveillance and Trading Systems

Two matters resolved during the Sprint involved supervision and other violations related to system errors, including technical issues in the firms' surveillance and trade reporting systems that persisted for years, and resulted in $6.5 million in penalties.[6] In one, the firm's third-party surveillance program had a number of deficiencies, including producing high volumes of unproductive and false alerts, and, for certain trading flows, not capturing market data.[7] To remediate, the firm enhanced existing and established new governance bodies and frameworks, launched additional surveillance tools, improved quality assurance processes, and assessed historic alerts and trading activity. Though the volume of impacted trading activity was small, the CFTC expressed concern with the time it took the firm to detect and correct the deficiencies in the configuration and operation of this tool. The firm received a $5 million civil monetary penalty with a remediation and review undertaking.

The other matter involved a firm submitting inaccurate large trader reports for seven years due to a programming error that inaccurately netted calculations for accounts under common control or ownership, and separately lacked reliable trade records for 10 weeks due to a trade reporting system failure.[8] Some employees learned of the netting issue but failed to make a required regulatory notification to the CFTC. Once the firm uncovered these issues, it made prompt disclosures to the Commission's Market Participants Division, and also provided the Enforcement Division with a thorough accounting of the alleged concealment of the regulatory reporting event. The firm corrected the errors, corrected and recovered corrupted data, and updated its systems, while taking disciplinary action against the employees who concealed the regulatory reporting event. As a result, the firm received exemplary self-reporting and cooperation credit, and it received a civil monetary penalty of $1.5 million with no additional remedial undertakings.

Off-Channel Communications

Three matters involved the use of unauthorized off-channel communications, which resulted in $500,000 penalties for each firm, with each firm receiving the exemplary cooperation credit.[9] All three firms identified extensive off-channel communications related to their CFTC-regulated business.[10] The firms presented their findings to the Commission and remediated by enhancing their policies and procedures, training, surveillance efforts, and communication technology.[11]

Swap Data Reporting

The final matter involved a firm that, over two years, misreported a single field in over 10 million swap data reports for over 80,000 swaps and misreported valuation data for 10,000 unique swaps.[12] The firm corrected its reporting on the same day it identified the issue, promptly disclosed the issues in its CCO reporting, and evaluated its reporting to confirm the scope of the errors and identify any others. The firm promptly self-reported to the Division and Market Participants Divisions, provided voluntary written reports, devoted resources to internal projects, hired third-party consultants to assess its reporting errors, and submitted corrected historical swap data for impacted reports.[13] The firm received exemplary self-reporting and cooperation credit, resulting in a $325,000 civil monetary penalty, the lowest of the six Sprint matters.

Key Takeaways

While the long-term precedential value of these orders seems limited, the settlements resulting from the Sprint addressed several questions that market participants have raised related to the Advisory and the Division's enforcement efforts moving forward.

1. **While the CFTC imposed some lower starting civil monetary penalties for certain types of cases, those types of cases seem unlikely to return, at least during Acting Chairman Pham's tenure.** Acting Chairman Pham indicated that, as part of the Sprint, the CFTC would consider the past 10 years of disciplinary history in assessing a reasonable civil monetary penalty, offering the possibility to reverse a recent increase in civil monetary penalties over the last few years, which she had criticized.[14] The results of the Sprint indicate that the CFTC was willing to issue smaller civil monetary penalties in some cases. For example, in the off-channel communications and swap reporting matters, the CFTC's starting civil monetary penalties, prior to reductions for self-reporting and cooperation credits, were in the upper six figures, which is substantially less than the previous off-channel communication and swap reporting matters that resulted in seven- or eight-figure penalties in the previous years. While these fines were much lower, given the Division's increased focus on fraud and customer harm, these types of cases seem unlikely to be brought in the near future.

2. **The CFTC detailed a variety of conduct that qualifies for credit under the Advisory, which may be helpful to market participants seeking credit in the future.** After the Advisory was released, some wondered how the CFTC would distinguish between the categories on the Matrix.[15] These six orders provide some guidance as to what conduct qualifies for credit under the Advisory. Five of the six orders from the Sprint awarded "exemplary" self-reporting and/or cooperation credit. They included a detailed summary of each firm's efforts to qualify for the credits, indicating that a broad array of cooperative conduct can qualify for exemplary cooperation. For example, to qualify for exemplary cooperation, a market participant must show "significant completion of remediation."[16] Yet, in some of the cases, the firms had ongoing remediation efforts in place and were ordered by the CFTC to implement the findings of those reviews, but were still eligible to receive exemplary cooperation credit. While this is just a limited set of cases, market participants can look to these orders in the future as a point of reference in identifying the types of self-reporting and cooperation the CFTC views as worthy of a mitigation credit.

Conclusion

Overall, the settlements resulting from the Sprint show that Acting Chairman Pham kept her promises to the industry by resolving a number of older matters that focused on issues with no customer harm. Of note, the Sprint's settlements highlight how the CFTC will apply the new Matrix to enforcement matters so that market participants can receive meaningful reductions in their civil monetary penalties by self-reporting and cooperating.

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1 See Keynote Address by Acting Chairman Caroline D. Pham, FIA BOCA50 (Mar. 11, 2025), available at https://www.cftc.gov/PressRoom/SpeechesTestimony/opapham13; *see also* https://quickreads.ext.katten.com/post/102k3lq/cftc-acting-chairman-pham-announces-effort-to-quickly-resolve-recordkeeping-and-r.

2 *See* https://katten.com/clearer-skies-ahead-cftc-enforcement-divisions-new-advisory-opens-doors-for-self-reporting-and-increased-cooperation. The CFTC also issued updated guidance related to how the various operating divisions would assess the materiality of issues in determining whether to refer a matter to the Division for enforcement. CFTC Staff Issues Advisory on Referrals to the Division of Enforcement (Apr. 7, 2025), available at https://www.cftc.gov/PressRoom/PressReleases/9067-25.

3 *See* Acting Chairman Pham Announces Successful Completion of Enforcement Sprint (Sep. 4, 2025), available at https://www.cftc.gov/PressRoom/PressReleases/9114-25.

4 *Id.*

5 *Id.*

6 *See* CFTC No. 25-05 & CFTC No. 25-02.

7 CFTC No. 25-05.

8 CFTC No. 25-02.

9 Acting Chairman Pham Announces Successful Completion of Enforcement Sprint (Sep. 4, 2025), *supra* n. 5.

10 CFTC No. 25-01; CFTC No. 25-04; CFTC No. 25-03.

11 *See* CFTC No. 25-01, at 3. Two of the firms were also tasked with undertakings, requiring them to complete an internal audit/independent review of their companywide policies and compliance efforts to eliminate the use of unapproved communication channels for business discussions, and to implement the findings of that audit/review.

12 CFTC No. 25-06.

13 *See id.* at 3–4.

14 *See* https://katten.com/will-history-repeat-itself-peering-into-the-past-to-predict-the-next-four-years-of-cftc-enforcement-actions; Statement of Commissioner Caroline D. Pham on Swap Data Reporting Settlement Order and the Examination Process (Oct. 1, 2024), available at https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement100124.

15 https://katten.com/clearer-skies-ahead-cftc-enforcement-divisions-new-advisory-opens-doors-for-self-reporting-and-increased-cooperation.

16 CFTC Div. of Enforcement, Advisory on Self-Reporting, Cooperation, and Remediation (Feb. 25, 2025), at ¶ II.a.viii, available at https://www.cftc.gov/media/11821/EnfAdv_Resolutions022525/download.

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