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CFTC ENFORCEMENT: BEST PRACTICES AND RECENT DEVELOPMENTS

The CFTC's new chair, J. Christopher Giancarlo, and its new Director of Enforcement, James McDonald, have vowed to continue the Commission's robust enforcement program. In this article, the authors identify eight essential steps firms should take when contacted by the Enforcement Division. They then discuss strategies for engaging with the Division during the investigative process and the difficult decisions whether to self-report and cooperate in the investigation. They close with the CFTC's first use of a non-prosecution agreement.

By Mary P. Hansen, James G. Lundy, Antoinette M. Snodgrass *

For the past several years, the Division of Enforcement for the Commodity Futures Trading Commission has steadily increased its aggressiveness. While the CFTC's annual budget is significantly smaller than the Securities and Exchange Commission's, the "Annual Enforcement Results for Fiscal Year 2017" evidences the CFTC's ongoing zealous enforcement efforts.¹ Specifically, the data indicate that the CFTC collected total monetary sanctions amounting to more than \$413 million from cases involving six different categories, as shown in Appendix A.

For the CFTC's Fiscal Year 2017, and going forward, CFTC Chairman J. Christopher Giancarlo has made clear that there will be "no pause, let up or reduction in [the CFTC's] duty to enforce the law and punish wrongdoing" in the markets under the CFTC's jurisdiction.² Consistent with his commitment to maintaining a robust enforcement program, Chair Giancarlo appointed veteran federal prosecutor James McDonald as Director of the CFTC's Enforcement Division. Enforcement Director McDonald has

¹ Rel. No. pr7650-17, *CFTC Releases Annual Enforcement Results for Fiscal Year 2017* (Nov. 22, 2017), available at <http://www.cftc.gov/PressRoom/PressReleases/pr7650-17>.

² Remarks of Acting Chairman J. Christopher Giancarlo before the 42nd Annual International Futures Industry Conference in Boca Raton, FL, *CFTC: A New Direction Forward* (Mar. 15, 2017), available at http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-20#P17_3230.

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