

THE REVIEW OF
**SECURITIES & COMMODITIES
REGULATION**
AN ANALYSIS OF CURRENT LAWS AND REGULATIONS
AFFECTING THE SECURITIES AND FUTURES INDUSTRIES

Vol. 52 No. 17 October 9, 2019

CFTC ENFORCEMENT ADVISORY ON FOREIGN CORRUPT PRACTICES

In March 2019, the CFTC issued an Enforcement Advisory announcing a focus on violations of the Commodity Exchange Act involving foreign corrupt practices. The authors explore the potential implications of the Advisory, including the extent to which it can be reconciled with the territorial limits of the CEA.

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Compliance with the Foreign Corrupt Practices Act (“FCPA”)¹ has long been on the radar of companies with a U.S. nexus and operations in jurisdictions with a high-risk of potential corruption issues. With decades of enforcement history under the statute, the Department of Justice and the Securities Exchange Commission — the U.S. authorities charged with exclusive enforcement authority under the FCPA — have developed a robust enforcement program with widely recognized incentives for compliance and cooperation. But for participants in global commodity markets, the landscape for anti-corruption enforcement measures has become more complex in recent months, as the Commodity Futures Trading Commission (“CFTC”) has signaled its intention to join this arena in cases where foreign corrupt practices may amount to violations of the Commodity Exchange Act (“CEA”).²

This article describes the CFTC’s recent initiatives related to foreign corruption matters, and explores the

jurisdictional and substantive questions that the CFTC’s pursuit of such matters is likely to present.

CFTC ENFORCEMENT INITIATIVES RELATING TO FOREIGN CORRUPT PRACTICES

The CFTC’s focus on foreign corruption matters was announced on March 6, 2019, when the CFTC Division of Enforcement issued an Enforcement Advisory entitled, “Advisory on Self Reporting and Cooperation for CEA Violations Involving Foreign Corrupt Practices.”³

The March 2019 Advisory announced that the Division of Enforcement would apply a presumption in favor of resolutions with no civil monetary penalty in certain matters involving voluntary disclosures to the CFTC of violations of the CEA involving foreign

¹ 15 U.S.C. §§ 78dd-1, *et seq.* (1998).

² 7 U.S.C. §§ 1-26 (2012).

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³ U.S. Commodity Futures Trading Comm’n, Advisory on Self Reporting and Cooperation For CEA Violations Involving Foreign Corrupt Practices (Mar. 6, 2019), <https://www.cftc.gov/sites/default/files/2019-03/enfadvisoryselfreporting030619.pdf> (*hereinafter* “March 2019 Advisory”).

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