

SchulteRoth&Zabel

Private Funds Regulatory

UPDATE

CFTC Aims to Reward Cooperation

November 2020

On Oct. 29, 2020, the CFTC announced [new guidance](#) for enforcement staff when recommending the recognition of a respondent's cooperation, self-reporting or remediation in CFTC orders (without changing the existing policy for how cooperation credit is determined). Chairman Tarbert commented that the CFTC aims to foster a "culture of compliance" and seemingly hopes to incentivize cooperation by recognizing that a respondent cooperated or self-reported, which can lead to a reduced penalty. Further, the CFTC may also recognize a respondent's *failure* to cooperate and self-report.

Under the new guidance, any of the following scenarios may be noted by CFTC staff: (i) no self-reporting, cooperation or remediation; (ii) no self-reporting, but cognizable cooperation and/or remediation that warrant recognition but not a recommended reduction in penalty; (iii) no self-reporting, but substantial cooperation and/or recognition resulting in a reduced penalty; and (v) self-reporting, substantial cooperation and remediation resulting in a substantially reduced penalty.

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