

PUBLICATIONS

CFTC Compliance Program Evaluation Factors Released

SRZ Private Funds Regulatory Update

October 2020

On Sept. 10, 2020, the CFTC announced new guidance^[1] from its Division of Enforcement outlining factors that will be considered when evaluating a regulatory compliance program in connection with an enforcement matter. The guidance, which is the first of its kind issued by the Division, is intended to help staff identify whether an examinee's compliance program was reasonably designed and implemented to:

- *Prevent* the underlying misconduct at issue in the enforcement matter (for example, does the examinee have “written policies and procedures in effect throughout the period of misconduct reasonably addressed the type of misconduct at issue”);
- *Detect* any misconduct (for example, were there adequate “internal surveillance and monitoring efforts”); and
- *Remediate* any misconduct (for example, was timely and appropriate action taken to “effectively address any impact of the misconduct, including to mitigate and cure any financial harm to others and restore integrity to the relevant markets”).

While this high-level guidance is ostensibly intended to aid its staff in conducting an investigation — rather than as a guide to market participants in crafting an effective compliance program — it may serve as a useful reference for CFTC-registered managers when self-evaluating the robustness of their compliance programs. Managers whose

compliance programs are benchmarked only against National Futures Association guidance on supervision and internal controls are apt to find that their programs exhibit many of the hallmarks of effectiveness that the CFTC identifies, but should confirm that their programs are broad enough to cover the full breadth of the CFTC's focus.

This article appeared in the October 2020 edition of SRZ's Private Funds Regulatory Update. To read the full Update, click here.

[1] See CFTC Release No. 8235-20, available [here](#).

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