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CFTC Annual Enforcement Update

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On November 22, 2017, the Commodity Futures Trading Commission ("CFTC") released its ***annual enforcement report*** for fiscal year 2017. As in previous years, this year's report highlights the agency's continued commitment to enforcement and aggressive pursuit of those viewed as engaging in conduct that undermines the integrity of CFTC-jurisdictional markets. In fiscal year 2017, the CFTC brought 49 enforcement actions, with matters involving market manipulation, prohibited trading practices, or retail fraud (*e.g.*, Ponzi schemes) accounting for the vast majority of these actions (35 out of 49). In total, the CFTC obtained $334 million in civil penalties and $79 million in restitution and disgorgement orders during this period. Of the penalties imposed, the CFTC collected and deposited at the U.S. Treasury more than $265 million. The penalties imposed and collected during fiscal year 2017 represent a decrease from 2016, when the CFTC assessed approximately $1.29 billion in monetary penalties and disgorgement and collected and deposited approximately $484 million.

Highlights of the report include:

- Market Surveillance Unit – The report highlights the CFTC's recent decision to incorporate the CFTC's market surveillance unit into the CFTC's Division of Enforcement ("DOE"). The report notes that, following this realignment, the market surveillance unit has been conducting market analysis to "confirm market integrity and [identify] areas that may warrant enforcement inquiry." The CFTC's decision to incorporate its market surveillance unit into the DOE aligns its structure with that of the Federal Energy Regulatory Commission ("FERC"), who's Division of Analytics and Surveillance has been a key division of FERC's Office of Enforcement for years.

- Cooperation Advisories – The report also notes recent efforts by the CFTC to encourage cooperation with staff investigations and self-reporting. As detailed in ***an earlier post*** on the Energy Legal Blog in September 2017, the CFTC announced that it would be implementing a cooperation and self-reporting program that would provide substantial benefits in the form of significantly reduced penalties to those who promptly self-report potential violations and cooperate fully with staff investigations. The CFTC's announcement came only months after the agency entered into its first ever non-prosecution agreement. The agreement in question involved with three traders who had cooperated in an investigation that led to the assessment of civil penalties against their employer and a number of other traders.

- Whistleblower Protections – The report also highlights the CFTC's recent efforts to strengthen the CFTC's Whistleblower Program, under which the CFTC will pay awards to whistleblowers who voluntarily provide information about violations of the Commodity Exchange Act that result in an enforcement action that results in more than $1 million in monetary sanctions. In May 2017, the CFTC revised its Whistleblower Rules to include additional safeguards to protect whistleblowers from retaliation by their employers. Among other things, the CFTC revised its rules to expressly recognize that the CFTC – in addition to a whistleblower -- can bring an enforcement action against an employer for violation of the anti-retaliation provisions of the Commodity Exchange Act. The CFTC also revised its regulations to prohibit a person from taking any action to impede an individual from communicating directly with the Commission's staff about a possible violation of the CEA, including by threatening to enforce a confidentiality agreement or arbitration agreement.

If you have any questions about this legal alert, please feel free to contact any of the attorneys listed below or the Bracewell attorney with whom you regularly work.

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