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COMMODITY FUTURES TRADING COMMISSION

Policy Statement Concerning Agency Referrals for Potential Criminal Enforcement

AGENCY: Commodity Futures Trading Commission.

ACTION: Policy statement.

SUMMARY: This notice describes plans of the Commodity Futures Trading Commission (the "Commission") to address criminally liable regulatory offenses under the recent executive order on Fighting Overcriminalization in Federal Regulations.

DATES: The Commission's policy statement is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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SUPPLEMENTARY INFORMATION:

On May 9, 2025, the President issued Executive Order 14294 ("E.O."), titled Fighting Overcriminalization in Federal Regulations. 90 FR 20363 (published May 14, 2025). Section 7 of E.O. 14294 provides that within 45 days of the order, and in consultation with the Attorney General, each agency should publish guidance in the *Federal Register* describing its plan to address criminally liable regulatory offenses, including by considering certain factors when deciding whether to refer alleged violations of criminal regulatory offenses to the Department of Justice. The Executive Order defines a criminal regulatory offense to mean "a Federal regulation that is enforceable by a criminal penalty." In accordance with the Executive Order, the Commission is publishing this framework for Commission staff consideration of whether to refer potential violations, including of criminal regulatory offenses, to the Department of Justice.

Consistent with that requirement, the Commission advises the public that by May 9, 2026, the Commission, in consultation with the Attorney General, will provide to the Director of the Office of Management and Budget ("OMB") a report containing: (1) a list of all criminal regulatory offenses enforceable by Commission or the Department of Justice ("DOJ"); and (2) for each such criminal regulatory offense, the range of potential criminal penalties for a violation and the applicable mens rea standard[1] for the criminal regulatory offense.

This notice also announces a general policy, subject to appropriate exceptions and to the extent consistent with law, that when the Commission is deciding whether to refer alleged violations of criminal regulatory offenses[2] to DOJ, Commission staff should consider, among other factors:

- The harm or risk of harm, pecuniary or otherwise, caused by the potential offense;
- The potential gain to the putative defendant that could result from the offense;
- Whether the putative defendant held specialized knowledge, expertise, or was licensed in an industry related to the rule or regulation at issue;
- Evidence, if any is available, of the putative defendant's general awareness of the unlawfulness of his conduct as well as his knowledge or lack thereof of the regulation at issue;
- Whether the putative defendant is a recidivist or has otherwise engaged in a pattern of misconduct; and
- Whether the involvement of the Department of Justice will provide additional meaningful protection to participants in the derivatives markets.

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[1] "Mens rea" means the state of mind that by law must be proven to convict a particular defendant of a particular crime. E.O. 14294, sec. 3(c).

[2] *See* section 9 of the Commodity Exchange Act ("CEA"), 7 U.S.C. 13, which, among other things, makes it a felony to willfully violate any rule or regulation promulgated under the CEA. Section 9(a)(5) of the CEA, 7 U.S.C. 13(a)(5).

This general policy is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Issued in Washington, DC on September 5, 2025, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

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