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CAN COOPERATION BE FURTHER INCENTIVIZED? A PROPOSAL FOR MORE TOOLS IN RESOLVING CFTC INVESTIGATIONS

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Market participants are expected to cooperate with investigations by the Commodity Futures Trading Commission. It is also often in their self-interest—but only to the degree that their cooperation will be rewarded, such as by mitigation of punishment at the end of the investigation. For a market participant to make an informed decision on whether to provide full cooperation, it must be able to determine the benefit of cooperation credit it would receive. The Commission has indicated an intent to reward valuable cooperation in its recently issued Enforcement Advisories on Cooperation, it states its intention "to further incentivize individuals and companies to cooperate fully and truthfully," to emphasize the "high value" it places on cooperation, and to make the benefits of cooperation "more transparent."[1]

But the nature and certainty of the Commission's "incentives" are far from clear. The Advisories contain demanding requirements for cooperation credit, including some that may not be possible to meet except in rare circumstances. Moreover, it is impossible for market participants to know the full extent to which their cooperation will benefit them in the end. There is nothing that would allow a market participant to identify what the potential penalty would have been absent cooperation, and thus no basis to compare the potentially different penalties. In contrast, other governmental authorities such as the Securities and Exchange Commission (SEC) and the Department of Justice (DOJ) have utilized tools to incentivize cooperation through cooperation agreements, non-prosecution agreements, and deferred prosecution agreements, and have publicized the availability and use of such tools. The result is not only greater flexibility in dealing with different matters, but a clearer prospect of reward, and thus a stronger incentive to cooperate. The CFTC should follow suit, thus permitting market participants to see how cooperation is credited and creating positive motivation for them to cooperate. This article will discuss and compare the cooperation programs used by the Commission, the SEC, and DOJ, and then propose that the Commission borrow the use of tools such

as cooperation, non-prosecution, and deferred prosecution agreements, and publicize such use, to address and better incentivize cooperation by the targets of its investigations.[2]

I. Summary of Commission's 2017 Enforcement Advisories on Cooperation

The Commission had previously issued advisories on cooperation in 2004 and 2007,[3] but its most fulsome pronouncements are the Enforcement Advisories on Cooperation issued earlier this year—one for companies and the other for individuals (collectively, the Advisories).[4] Both are based on weighing: 1) the value of the cooperation to the Enforcement Division's investigations and enforcement actions; 2) the value to the Commission's broader law enforcement interests; and 3) the balancing of the level of culpability and prior misconduct with the acceptance of responsibility, mitigation, and (for companies) remediation of future conduct. In light of the relative newness of the Advisories, some detail on what they require is useful.

A. Value of Cooperation to CFTC's Investigations or Enforcement Actions

The Advisories state that the CFTC's Division of Enforcement (DOE) will assess the cooperation value to its investigation or enforcement action by considering four factors: material assistance, timeliness, nature, and quality. All are necessarily subjective determinations, and none are novel or surprising, but some of the commentary in the Advisories is noteworthy.

For example, the Advisories make clear that DOE is most interested in cooperation that arises from self-reporting. They indicate that timeliness will be determined based on whether the party is the first to report misconduct or offer cooperation to the CFTC, or provides cooperation before any knowledge of a pending investigation or related action, or whether the investigation and related enforcement action is initiated based on the cooperator's information.[5]

This section also reflects DOE's increased emphasis on individuals, in that it advises companies to encourage its employees to cooperate in the investigation or litigation,[6] and notes that such efforts will be evaluated as part of the value of the companies' own cooperation. The focus on individuals is not new in the realm of government investigations, but the Commission's decision to provide a separate Advisory for Individuals and to ask companies to assist in these efforts reflect the importance the Commission is placing on such focus. It also increases the chances and risks that a company whose cooperation is partial or grudging may be outflanked by the superior cooperation of one of its employees or officers.

As to the "quality" of the cooperation, the Advisories encourage both companies and individuals to conduct their own investigation, review, and analysis, and then provide it to the DOE. The Advisory to Individuals states that they are expected to provide key non-privileged information, explain transactions, and interpret information.[7] It goes further, asking that they also identify productive lines of inquiry for DOE to pursue. This mirrors the work that DOE itself must do in every investigation (and plainly is directed at the oft-stated goal of "conserving resources"). Additionally, the Advisory to Companies asks the company to explain the misconduct and provide facts on responsible individuals; to provide a financial analysis of any gain

from the unlawful activity; and to outline its findings and evidence from the internal investigation, including information on culpable individuals both inside and outside the organization.[8]

B. Cooperation's Value to the CFTC's Broader Law Enforcement Interests

The Advisories not only seek assistance with the work DOE must do in the investigation at hand, they also extend beyond such investigation to include a broader consideration of the CFTC's role in policing the markets it regulates—what the Advisories refer to as the Commission's "broader programmatic interests."[9] In so doing, the CFTC effectively is asking cooperating companies and individuals to put themselves in the Commission's shoes—not only regarding how to address the immediate misconduct at issue but also its possible impact on the industry as a whole.

Both the Company and the Individual Advisories point to three factors: 1) the importance of the matter, including whether it is a CFTC priority, whether it involves regulated entities, whether industry-wide practices are exposed, and the egregiousness and harm caused by the misconduct; 2) resources conserved by the CFTC as a result of the cooperation provided; and 3) enhancement of the CFTC's ability to detect and pursue violations.[10] A fourth factor, only for companies, is consideration of whether the company encouraged "high-quality" cooperation from *other* entities.[11] This would appear to be difficult to satisfy—and to quantify when evaluating the extent of cooperation.

In focusing on whether the subject matter is a Commission "priority" and in seeking a company's or individual's assistance in "expos[ing] an industry-wide practice," DOE effectively is placing the market participant in the role of policing the industry along with the CFTC.[12] This ideal may be almost impossible to reach in practice. To be sure, observed instances of disruptive trading may be reported; but the CFTC's remit is very broad, including any violation of the Commodity Exchange Act (CEA) or any of its regulations. These include a multitude of diverse subject matters that are either not readily apparent or not easily recognizable as an "industry-wide practice." In expecting the cooperator to not only police itself but also that it diligently strive to police other market participants and industry competition, the Commission is asking much of those whom it investigates.

C. Culpability, Culture and Other Relevant Factors

The factors addressing culpability and culture are typical of what traditionally has been evaluated as part of considering cooperation. These include (in both Advisories): 1) the circumstances of the misconduct—for example, the cooperator's role, the instances and nature of the misconduct, the extent the cooperator benefitted by it, the egregiousness of the misconduct, the level of intent (*e.g.*, negligence, recklessness, willfulness), and for companies, how long it lasted after supervisors learned of it; 2) prior misconduct; 3) any actions to mitigate losses or harm caused, such as whether individuals assisted in recovery of the fruits of the misconduct or made restitution or disgorged gains; and 4) whether the cooperator has admitted or accepted responsibility for the misconduct.[13]

Remediation is an additional factor in the Company Advisory and addresses whether mean-

ingful remedial efforts to prevent future wrongdoing were made, for example: taking immediate steps to address it and implement an effective response; implementing additional internal controls, procedures, and oversight targeting the misconduct and reducing the likelihood of recurrence; implementing measures intended to anticipate and avoid the misconduct in the future across different divisions or product lines; and addressing the employment of responsible individuals, and their supervisors, if employed by the company.[14]

D. Uncooperative Conduct

In addition to the detailed lists of what the CFTC's DOE seeks as part of cooperation, the Advisories also identify conduct deemed "uncooperative"—as a result of which any cooperation credit that would have been earned could be lost.[15] Most of the examples of uncooperative conduct are straightforward, but some are broad and subject to conflicting interpretation—and yet could unexpectedly eliminate the benefits of good-faith cooperation. For example, the Advisories refer to "misrepresenting or minimizing the nature or extent" of the misconduct and providing "specious explanations" for it. Although no one would ask or expect that a misrepresentation be condoned, the market participant and the CFTC may well have different views on the significance or interpretation of particular facts, such that an explanation of context could be construed by DOE as unduly "minimizing" the nature of the misconduct or, in an especially contentious matter, providing a "specious explanation" for it.[16]

The broad and sometimes onerous requirements for obtaining cooperation credit along with the potential pitfalls have the effect of reducing the incentives for the cooperation the CFTC is seeking. A potential solution is for the Commission to emphasize the benefit of cooperation in more demonstrable ways, such as those used by the SEC and DOJ.

II. Other Governmental Cooperation Programs

The SEC and DOJ have made use of additional tools that are more detailed than general pronouncements on cooperation, and thus provide greater incentive value. For example, the SEC has taken the approach that cooperation will be highlighted and recognized in a tangible and public manner, including through its press releases announcing resolutions. It also has used cooperation agreements, non-prosecution agreements, and deferred prosecution agreements as ways to address the varying degrees of matters it investigates and potential remedies to redress them. DOJ also has publicized cooperation—and non-cooperation—and used non-prosecution and deferred prosecution agreements in resolution of its investigations, and it has been experimenting more recently with demonstrating the benefit to cooperation by reducing penalties where cooperation has been extensive.

A. The SEC Cooperation Framework

There are several similarities between the CFTC's Advisories and the cooperation standards used by the SEC. The SEC issued a Report of Investigation and Commission Statement (the Seaboard Report) in 2001 to explain its decision not to bring an enforcement action against a company it had investigated for misconduct in its handling of books and records and financial reporting.[17] In the Seaboard Report, the SEC articulated four broad measures for determining

cooperation credit for corporations: self-policing prior to the discovery of misconduct; self-reporting misconduct when it is discovered, including to the public, to regulatory agencies, and to self-regulatory organizations; remediation, including dismissing or appropriately disciplining wrongdoers, modifying and improving internal controls and procedures to prevent recurrence of the misconduct, and appropriately compensating those adversely affected; and finally, providing the Commission staff with all information relevant to the underlying violations and the company's remedial efforts.[18]

The SEC followed this Report with another in January 2010 addressed to individuals.[19] It identified four general and familiar considerations: 1) the value and nature of the cooperation; 2) importance of the underlying matter, including any danger posed to investors by the underlying misconduct; 3) interest in holding the individual accountable, including weighing his or her culpability relative to that of others involved; and 4) acceptance of responsibility for the misconduct.[20] The factors included many of the same issues identified above in respect of the CFTC's Advisories, including also whether the subject matter was a SEC priority, *i.e.*, serious, widespread or ongoing violations.[21]

But to incentivize cooperation, the SEC has gone beyond demanding these standards, and has made specific agreements with companies and individuals of the following three types: 1) cooperation agreements, 2) non-prosecution agreements, and 3) deferred prosecution agreements.

Cooperation agreements, which provide the individual or company credit when they provide substantial assistance, may be the most commonly used type of agreement. When the SEC publicizes these cooperation agreements, it provides specific guidance to other companies and individuals as to how others have earned cooperation credit for addressing misconduct. The SEC has entered into many cooperation agreements, such as those involving violations of the Foreign Corrupt Practices Act (FCPA), in which reduced penalties were assessed to the cooperator.[22] In one such matter, the individual cooperator was one of three company associates involved in an alleged manipulation scheme—and the benefit of his cooperation is reflected in the different sanctions imposed on each person: the other associates were ordered to pay millions of dollars in disgorgement and penalties, while the cooperator agreed to a penny stock bar with financial sanctions to be determined later.[23] In another such matter, the SEC decided not to charge a bank due to its cooperation, which included self-reporting to the SEC, providing prompt public disclosure of corrected financial results, voluntarily terminating the four culpable employees, and implementing enhanced internal controls to prevent a recurrence of the misconduct.[24] These are helpful, specific examples of the recognized cooperation, by which others can be motivated to cooperate similarly with the prospect of similar rewards.

The SEC also has used non-prosecution and deferred prosecution agreements, which it considers are additional instruments in the SEC's tool kit to garner cooperation from companies and individuals, according to the SEC's Enforcement Manual. In a non-prosecution agreement, the SEC agrees not to pursue any enforcement action against the company or individual in exchange for an agreement to cooperate with the SEC's investigation and enforcement action, as well as compliance with express undertakings in

certain circumstances.[25] In SEC deferred prosecution agreements, the SEC agrees to forego any enforcement action against a company or individual in exchange for cooperation with the SEC's investigation and enforcement action, compliance with express prohibitions or undertakings, and an agreement to admit or not contest underlying facts of misconduct.[26]

Last year, two companies received non-prosecution agreements after they promptly self-reported and then cooperated extensively with the ensuing SEC investigations into violations of the FCPA.[27] The non-prosecution agreements stipulated that the companies would not be charged with violations and would pay no monetary penalties, though they were required to disgorge profits.[28] The Director of the SEC Enforcement Division at the time commented that saving the government substantial time and resources was a factor in the SEC's providing extensive cooperation credit.[29] Even earlier, in May 2011, the SEC announced its first-ever deferred prosecution agreement, in which the SEC refrained from bringing a civil action against the company provided that it complied with certain undertakings.[30] This agreement resulted from the company's conducting a thorough internal investigation with a worldwide review of its operations and controls, discovering the FCPA violations, and self-reporting to the SEC.[31] In the first matter using a deferred prosecution agreement with an individual, the SEC agreed to defer charges for FCPA violations for five years against a former hedge fund administrator who accepted responsibility for his misconduct, disgorged fees he received, and provided significant cooperation during the SEC's investigation of a hedge fund manager charged with stealing investor funds and securities fraud.[32]

Each of these agreements, particularly when publicized, provides tangible and specific guidance to encourage future companies and individuals to provide the same level of cooperation being rewarded in the publicized cases. Importantly, when the SEC uses these methods to elicit cooperation, it addresses the various agreements in the press releases that accompany the announcements of enforcement actions. This easily conveys to the industry the tangible benefits that can be gained by appropriate cooperation within the guidelines the SEC has provided. These press releases also often explain the cooperation in a complimentary manner and tone, which provides additional incentives.

B. DOJ's Additional Cooperation Tools

DOJ also has issued various policies on cooperation,[33] and it has long used non-prosecution and deferred prosecution agreements. It has more recently experimented with other tools that are worthy of consideration for application to the CFTC's enforcement program. One example is DOJ's FCPA Pilot Program, which identifies specific percentages of the reduction in fines that will be provided for cooperation credit.[34] In this program, a company that voluntarily self-discloses its misconduct and fully cooperates, and has taken timely and appropriate remedial measures, qualifies for a 50% reduction off the bottom of the Sentencing Guidelines fine range.[35] A company that does not voluntary self-report, but cooperates in the investigation, can receive at most a 25% reduction off the bottom of the fine range. The Pilot Program, which has been extended beyond its initial one-year time period,[36] provides among the most specific, concrete benefits afforded to those who comply with the program's requirements for cooperation.

III. CFTC's Use of Additional Cooperation Tools

The use by the SEC and DOJ of cooperation agreements, non-prosecution agreements, deferred prosecution agreements, specific reductions of fines, and the publicizing of the benefits of cooperation are examples of demonstrable benefits—and thus powerful incentives—to those considering the full extent to which it or they will cooperate in any investigation. Many of these would be easily transferable to the CFTC's enforcement program—indeed, there appears to be little barrier to the CFTC's doing so. The CFTC does decline to prosecute certain matters, but does not provide any information to the public on the frequency with which it does so—or any information as to the circumstances. Thus, market participants are left with uncertainty and no official guidance from the CFTC as to the extent to which cooperation ever results in meaningful credit. As to borrowing from the DOJ's FCPA Pilot Program, the obvious distinction is that DOJ has criminal Sentencing Guidelines and the CFTC does not. But the CFTC does have a statutory limit in setting civil monetary penalties (most at $140,000 per violation, adjusted for inflation),[37] and any resolution resulting in such penalties could be reduced in quantifiable terms to demonstrate the specific benefit for the cooperation. And although the CFTC has recently noted in press releases the cooperation provided by companies that have agreed to settle charges, it also has criticized the same companies for instances of non-cooperation. [38] This sends a mixed message and thus reduces the incentive to cooperate to the maximum extent. The absence of these other tools used by the SEC and DOJ represent missed opportunities by the CFTC to incentivize future cooperation by companies and individuals.

IV. Conclusion

An indispensable motivation for maximizing cooperation in an investigation is understanding the perceived benefit, *i.e.*, how that cooperation will pay off. The CFTC has outlined general considerations in its Advisories on the discretionary factors DOE will consider in according credit for cooperation—and these are helpful as far as they go. However, if the CFTC hopes to increase and deepen the cooperation by companies and individuals, it should go to the next level by adopting the same steps taken by the SEC and DOJ. To the extent the benefits of cooperation are clear, reasonably certain, and in appropriate cases, quantifiable, the result will be greater cooperation. Only if the Commission is willing to move in that direction will it succeed in strengthening and increasing the level and frequency of cooperation—to the benefit of the CFTC, the industry, and the public.

ENDNOTES:

[1]Press Release, CFTC, CFTC's Enforcement Division Issues New Advisories on Cooperation, Jan. 19, 2017, *available at* http://www.cftc.gov/PressRoom/PressReleases/pr7518-17.

[2] As if reading the minds of the authors, after submission of this paper but before publication, the CFTC issued a press release announcing its first-ever use of non-prosecution agreements. Press Release, CFTC, CFTC Enters into Non-Prosecution Agreements with Former Citigroup Global Markets Inc. Traders Jeremy Lao, Daniel Liao, and Shlomo Salant, June 29, 2017, *available at* http://www.cftc.gov/PressRoom/PressReleases/pr7581-17. This is a step in the right direction. We encourage broader and publicized use of such tools and related ones discussed in

this article.

[3]CFTC, Enforcement Advisory: "*Cooperation Factors in Enforcement Division Sanction Recommendations*" (Mar. 1, 2007) (2007 Advisory), *available at* http://www.cftc.gov/idc/groups/public/@cpdisciplinaryhistory/documents/file/enfcooperation-advisory.pdf; CFTC, Enforcement Advisory: Cooperation Factors in Enforcement Division Sanction Recommendations (Aug. 11, 2004), *available at* http://www.cftc.gov/files/enf/enfcooperation-advisory.pdf.

[4]CFTC, Enforcement Advisory: "*Cooperation Factors in Enforcement Division Sanction Recommendations for Companies*" (Jan. 19, 2017) [CFTC Company Advisory], *available at* http://www.cftc.gov/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfadvisorycompanies011917.pdf. CFTC, Enforcement Advisory: "*Cooperation Factors in Enforcement Division Sanction Recommendations for Individuals*" (Jan. 19, 2017) [CFTC Individual Advisory], *available at* http://www.cftc.gov/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfadvisoryindividuals011917.pdf.

[5]CFTC Company Advisory, *supra* note 4, at 2; CFTC Individual Advisory, *supra* note 4, at 2.

[6]CFTC Company Advisory, *supra* note 4, at 2.

[7]CFTC Individual Advisory, *supra* note 4, at 3.

[8]CFTC Company Advisory, *supra* note 4, at 3-4.

[9]CFTC Company Advisory, *supra* note 4, at 4; CFTC Individual Advisory, *supra* note 4, at 3.

[10]*Id*.

[11]CFTC Company Advisory, *supra* note 4, at 4.

[12]*Id.* and CFTC Individual Advisory, *supra* note 4, at 3.

[13]CFTC Company Advisory, *supra* note 4, at 4-6; CFTC Individual Advisory, *supra* note 4, at 3-4.

[14]CFTC Company Advisory, *supra* note 4, at 5-6.

[15]CFTC Company Advisory, *supra* note 4, at 6-7; CFTC Individual Advisory, *supra* note 4, at 4-5.

[16]*Id*. The "minimizing the nature or extent of the misconduct" factor was not included in the 2007 Advisory, *see* 2007 Advisory, *supra* note 3, at 4.

[17]Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions, Securities Exchange Act Release No. 44969 (Oct. 23, 2001), *available at* www.sec.gov/litigation/investreport/34-44969.htm.

[18]SEC, SEC Spotlight: Enforcement Cooperation Program (last modified Sept. 20, 2016), *available at* https://www.sec.gov/spotlight/enforcement-cooperation-initiative.shtml.

[19]Policy Statement of the Securities and Exchange Commission Concerning Cooperation by Individuals in its Investigations and Related Enforcement Actions, Securities Exchange Act Release No. 61340 (Jan. 13, 2010) [SEC Policy Statement], *available at* www.sec.gov/rules/policy/2010/34-61340.pdf.

[20]SEC Spotlight: Enforcement Cooperation Program, *supra* note 18.

[21]SEC Policy Statement, *supra* note 19, at 5.

[22]Press Release, SEC, SEC Charges Toronto-Based Consultant and Four Others in Reverse Merger Schemes Involving China-Based Companies (May 5, 2014), *available at* http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370541731661.

[23]*Id*.

[24]Press Release, SEC, SEC Charges Former Credit Suisse Investment Bankers in Subprime Bond Pricing Scheme During Credit Crisis (February 1, 2012), *available at* https://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171485904.

[25]*Id*. at 103-104.

[26]*Id*. at 101-102.

[27]Press Release, SEC, SEC Announces Two

Non-Prosecution Agreements in FCPA Cases (June 7, 2016), *available at* http://www.sec.gov/news/pressrelease/2016-109.html.

[28]*Id*.

[29]*Id*.

[30]Press Release, SEC, Tenaris to Pay $5.4 Million in SEC's First-Ever Deferred Prosecution Agreement (May 17, 2011), *available at* https://www.sec.gov/news/press/2011/2011-112.htm.

[31]*Id*.

[32]Press Release, SEC, SEC Announces First Deferred Prosecution Agreement With Individual (November 12, 2013), *available at* http://www.sec.gov/news/pressrelease/2013-241.html.

[33]Memorandum from Eric H. Holder, Jr., Deputy Att'y Gen., U.S. Dep't of Justice, Bringing Criminal Charges Against Corporations (Jun. 16, 1999), *available at* https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2010/04/11/charging-corps.PDF; Memorandum from Larry D. Thompson, Deputy Att'y Gen., U.S. Dep't of Justice, Principles of Federal Prosecution of Business Organizations (Jan. 20, 2003), *available at* https://www.americanbar.org/content/dam/aba/migrated/poladv/priorities/privilegewaiver/2003jan20_privwaiv_dojthomp.authcheckdam.pdf; Memorandum from Paul J. McNulty, Deputy Att'y Gen., U.S. Dep't of Justice, Principles of Federal Prosecution of Business Organizations (Dec. 12, 2006), *available at* https://www.justice.gov/sites/default/files/dag/legacy/2007/07/05/mcnulty_memo.pdf; Memorandum from Mark Filip, Deputy Att'y Gen., U.S. Dep't of Justice, Principles of Federal Prosecution of Business Organizations (Aug. 28, 2008), *available at* https://www.justice.gov/sites/default/files/dag/legacy/2008/11/03/dag-memo-08282008.pdf; Memorandum from Sally Q. Yates, Deputy Att'y Gen., U.S. Dep't of Justice, Individual Accountability for Corporate Wrongdoing (Sept. 9, 2015), *available at* https://www.justice.gov/dag/file/769036/download; Memorandum from Andrew Weissmann, Chief (Fraud Section), Crim. Div., U.S. Dep't of Justice, The Fraud Section's Foreign Corrupt Practices Act Enforcement Plan and Guidance (Apr. 5, 2016), *available at* https://www.justice.gov/criminal-fraud/file/838416/download; U.S. Dep't of Justice, Crim. Div., Fraud Section, Evaluation of Corporate Compliance Programs (Feb. 8, 2017), *available at* https://www.justice.gov/criminal-fraud/page/file/937501/download.

[34]Weissmann, *supra* note 34, at 8-9.

[35]*Id.* at 8.

[36]Press Release, U.S. Dep't of Justice Office of Public Affairs, Acting Assistant Attorney General Kenneth A. Blanco Speaks at the American Bar Association National Institute on White Collar Crime, (March 10, 2017) *available at* https://www.justice.gov/opa/speech/acting-assistant-attorney-general-kenneth-blanco-speaks-american-bar-association-national.

[37]7 U.S.C. § 9(10)(c)(i); Annual Adjustment of Civil Monetary Penalties for Inflation—2017, 82 Fed. Reg. 7643 (Jan. 23, 2017), *available at* https://www.federalregister.gov/documents/2017/01/23/2017-00488/annual-adjustment-of-civil-monetary-penalties-for-inflation-2017.

[38]Press Release, CFTC, CFTC Orders Citibank to Pay $250 Million for Attempted Manipulation and False Reporting of U.S. Dollar ISDAFIX Benchmark Swap Rates (May 25, 2016), *available at* http://www.cftc.gov/PressRoom/PressReleases/pr7371-16; Press Release, CFTC, Deutsche Bank to Pay $800 Million to Settle CFTC Charges of Manipulation, Attempted Manipulation, and False Reporting of LIBOR and Euribor (April 23, 2015), *available at* http://www.cftc.gov/PressRoom/PressReleases/pr7159-15.