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CFPB Offers Potential Benefits If You Turn Yourself In, But Make Sure You Understand Your Options

Brownstein Hyatt Farber Schreck's past Client Alerts have warned that the Consumer Financial Protection Bureau's reach touches virtually every company that has any interaction with consumers. A recent Bulletin issued by the CFPB does nothing to cede any of this power, but does offer advice to companies on how they can potentially make things easier for themselves if they are confronted with a potentially troubling situation that merits CFPB intervention.

According to the Bulletin, a company's self-policing, self-reporting, remediation and cooperation will be taken into account as part of the CFPB's exercise of its enforcement discretion. These items are in addition to the other factors that the CFPB considers, including (1) the nature, extent, and severity of the violations identified; (2) the actual or potential harm for those violations; (3) whether there is a history of past violations; and (4) a party's effectiveness in addressing the violations.

Cooperation is not a cure-all. Even if a company has self-policed, self-reported, remediated and cooperated, the CFPB still reserves the rights to subject the company to any fines and penalties it deems appropriate.

The Bulletin offers the following guidance with respect to each of its recommendations:

Self-Policing

- Reflects a proactive commitment by the company to prevent and detect early potential violations of law;
- Looks at the nature of the violation and how it arose, its pervasiveness, duration, and effect on the company's profits, how and by whom detected, whether the company has a history of examination by the CFPB or other regulators, and whether there exists a culture of compliance.

Self-Reporting

- Will consider whether the company completely and effectively disclosed the existence of the conduct, whether the conduct was reported timely or whether any delay was justified, and whether the reporting was done because disclosure was imminent.

Remediation

- Will look into what steps were taken upon learning of the misconduct, such as whether the conduct was immediately stopped, the consequences to individuals who were party to the

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misconduct, steps taken to preserve information and identify the extent of the harm to consumers or implement ways to redress the harm, and assurances that the harm will not likely recur.

Cooperation

- Will examine the conduct that occurs after the CFPB becomes involved, such as (1) whether the party cooperated promptly and completely throughout the investigation; (2) whether the party investigated and shared its findings quickly and completely; (3) whether the party produced a written report; and (4) whether the party voluntarily disclosed material information not directly requested that may not have otherwise been discovered.

A company that partially or fully cooperates increases its chances of (1) having an investigation resolved without any public enforcement action; (2) reducing the number of violations pursued; (3) adjusting the amount of sanctions, fines or penalties sought; and (4) having the potential violation treated as less severe.

There is a tangible takeaway from the CFPB's notice: companies with robust training and compliance programs will fare better than those without. Brownstein can assist you in evaluating the effectiveness of the company's current training and compliance programs or assist in implementing them.

Please contact one of our team members below.

This document is intended to provide you with general information regarding preparation for potential CFPB intervention. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorney listed below or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.

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