



The CFTC's Evolving Application of its Fraud-Based Manipulation Law and Regulatory Provisions

—
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Overview

1. “Traditional” Manipulation
2. Evolving Fraud-Based Manipulation
3. Trading on and Misappropriation of Material, Non-public Information (MNPI)
4. Foreign Corrupt Practices Act (FCPA)
5. Misstatements to Exchanges and Futures Commission Merchants (FCMs)



1. “Traditional” Manipulation



“Traditional” Manipulation

Do not attempt to purposely and artificially influence futures or cash market prices through exercise of a dominant market position (e.g., corners and squeezes) or otherwise.

- CEA Section 6(c)(3) provides that “it shall be unlawful for any person, directly, or indirectly, to manipulate or attempt to manipulate the price of any swap, or of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity.”¹
- CFTC Regulation 180.2 implemented the provisions of CEA Section 6(c)(3).²
- Generally, traditional manipulation requires that: (1) the defendant possessed an ability to influence market prices; (2) an artificial price existed; (3) the defendant caused the artificial price; and (4) the defendant specifically intended to cause the artificial price.³
 - The CFTC requires the defendant to act with the requisite specific intent. Recklessness will not suffice. The CFTC finds this “level of intent necessary to ensure that legitimate conduct is not captured” by CFTC Regulation 180.2.⁴



“Traditional” Manipulation – *Marathon Petroleum* (CFTC 2007)

The CFTC charged Marathon Petroleum Company with violating CEA Section 6(c) under a theory of traditional manipulation (note that CEA Section 6(c)(3) and CFTC Regulation 180.2 did not exist then):⁵

- The CFTC claimed that, in November 2003, MPC attempted to manipulate a price of spot cash West Texas Intermediate (WTI) crude oil, the U.S. benchmark grade crude oil tracking the NYMEX light (sweet crude oil futures contract).
- **The problem:** According to the CFTC, “MPC purchased NYMEX WTI contracts with the intention of selling physical WTI during the Platts window at prices intended to influence the Platts WTI spot cash assessment downward,” and “if its conduct was successful, MPC would have benefited from a lower Platts spot cash WTI assessment.”
- According to then CFTC Director of Enforcement Gregory Mocek, “[t]he CFTC continues to aggressively ferret out illegal conduct in the energy sector. As the guardian of the nation’s commodity markets, this case is yet another signal to the markets that we hold all companies accountable for their trading activities.”

In a consent order entered on August 1, 2007, MPC agreed to pay the CFTC a fine of \$1 million.⁶



“Traditional” Manipulation – *Kraft Foods* (CFTC 2019)

The CFTC charged Kraft Foods Group with violations of CEA Section 6(c)(3) and CFTC Regulation 180.2:⁷

- The CFTC claimed that Kraft manipulated or attempted to manipulate the wheat markets in the fall of 2011.
- **The problem:** According to the CFTC, “Kraft wheat procurement staff proposed to Kraft senior management that Kraft adopt a strategy of buying \$90 million of December 2011 futures in early December 2011 in order to depress the price of wheat in the cash market and inflate the futures price of wheat.”
- Kraft’s actions allegedly “proximately caused cash wheat prices in Toledo to decline and the December 2011/March 2012 wheat futures spread to narrow, which was favorable to Kraft.”

In a consent order entered on August 14, 2019, Kraft agreed to pay the CFTC a fine of \$16 million. However, after the CFTC released a pair of public statements and a press release regarding the consent order, Kraft filed a motion seeking contempt sanctions against the CFTC for allegedly violating a clause in the order, which limited the parties’ ability to speak publicly on the litigation. Kraft withdrew its motion in March 2020.⁸



“Traditional” Manipulation – *JPMorgan* (CFTC 2020)

The CFTC charged JPMorgan Chase & Company and its subsidiaries with violations of CEA Section 6(c)(3) and CFTC Regulation 180.2:⁹

- The CFTC claimed that JPM traders engaged in a pattern of spoofing in the precious metals futures market and in the U.S. Treasury futures market from at least 2008 to 2016.
- **The problem:** According to the CFTC, “JPM traders placed hundreds of thousands of orders to buy or sell [futures contracts] with the intent to cancel those orders prior to execution...intentionally [sending] false signals of supply or demand designed to deceive market participants into executing against other orders they wanted filled.”
- JPM engaged in many instances of spoofing “with the intent to manipulate market prices and ultimately did in many instances cause artificial prices,” thus benefiting JPM but harming other markets and market participants.

In a consent order entered on September 29, 2020, JPM agreed to pay the CFTC a fine of \$920.2 million – the largest amount of monetary relief ever imposed by the CFTC in any spoofing case.¹⁰

- In a parallel action, the DOJ and the USAO for the District of Connecticut deferred criminal prosecution, and JPM agreed instead, among other things, to pay \$920 million in a criminal fine, disgorgement, and restitution (to be offset against payments under the CFTC order).¹¹
- In another parallel action, the SEC settled charges against JPM imposing \$10 million in disgorgement and a civil monetary penalty of \$25 million (to be offset against payments under the CFTC order).¹²



“Traditional” Manipulation – *Gorman* (CFTC 2021)

The CFTC charged John Gorman III with violations of CEA Section 6(c)(3) and CFTC Regulation 180.2:¹³

- The CFTC claimed that, on February 3, 2015, Gorman helped manipulate interest rate swaps between a bank and bond issuer to make the transaction more profitable for the bank.
- **The problem:** According to the CFTC, Gorman, a U.S. dollar swaps trader and managing director of a global investment bank, purportedly engaged in a scheme to deceive and manipulate the price of US dollar interest rate swap spreads by allegedly timing his trading to artificially move down the price of 10 year swap spreads, which was used to price issuer spreads, resulting in profits for the bank, but at the expense of the issuer.
- According to Vincent McGonagle, Acting Director of Enforcement at the CFTC, “[m]anipulative and deceptive conduct on swap execution facilities and in the swaps markets harms their integrity and market participants, and we will take action to hold those who commit this type of misconduct accountable.”

In its complaint on February 1, 2021, the CFTC seeks civil monetary penalties, disgorgement, restitution and a trading ban, among other sanctions.¹⁴



“Traditional” Manipulation – McAfee (CFTC 2021)

- The CFTC charged John McAfee and Jimmy Watson, his former employee, with violations of CEA Section 6(c)(3) and CFTC Regulation 180.2:¹⁵
 - The CFTC claimed that, from December 2017 to February 2018, McAfee and Watson engaged in a digital asset “pump and dump” scheme in which they fraudulently recommended to the public to purchase digital assets such as verge, reddcoin, and dogecoin.
 - **The problem:** According to the CFTC, McAfee and Watson “secretly accumulated positions in digital assets, deceptively promoted the digital assets through social media as valuable long-term investments, then sold their holdings as prices rose sharply following McAfee’s deceptive endorsements, resulting in profits in excess of \$2 million.” This was to the purported detriment of individuals who purchased the digital assets at the inflated prices.
 - This enforcement action was the first brought by the CFTC alleging a manipulative scheme involving digital assets, and hints at future enforcement actions directed at cryptocurrency trading.
- In its complaint on March 5, 2021, the CFTC seeks civil monetary penalties, disgorgement, restitution and trading bans, among other sanctions.¹⁶
 - Both McAfee and Watson are also defendants in a parallel criminal action brought by the USAO for the Southern District of New York, and a parallel civil enforcement action brought by the SEC.



“Traditional” Manipulation – *Heredia* (CFTC 2021)

The CFTC charged Emilio Heredia Collado with violations of CEA Section 6(c)(3) and CFTC Regulation 180.2:¹⁷

- The CFTC claimed that, from June 2012 to August 2016, Heredia engaged in attempted manipulation and manipulation of a U.S. price-assessment benchmark relating to physical fuel oil products.
- **The problem:** According to the CFTC, Heredia “submitted generally increasing bids or generally decreasing offers to Platts during the trading window which Platts then reported,” hence creating artificial prices “not reflective of legitimate forces of supply and demand.” Heredia allegedly could then buy at artificially low or sell at artificially high prices.

In a consent order entered on March 25, 2021, Heredia agreed to pay the CFTC a fine of \$100,000, and to be permanently banned from trading commodity interests or engaging in other commodity-related activities.¹⁸

- In a parallel action, the DOJ brought a criminal charge against Heredia. Heredia pleaded guilty to one count of conspiracy to manipulate the price of a commodity in interstate commerce. Heredia is facing a maximum sentence of 5 years in prison and a \$250,000 fine.¹⁹



2. Evolving Fraud-Based Manipulation



Fraud-Based Manipulation

Don't engage in fraudulent or manipulative acts purposely or with reckless disregard. This includes trading on proprietary non-public information of employers or counterparties.

- CEA Section 6(c)(1) provides in relevant part that “it shall be unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, *in connection with* any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate...” (emphasis added).²⁰
 - The CFTC interprets the words “in connection with” broadly. However, “[w]hile broad, the elasticity of the ‘in connection with’ language is not limitless.” The CFTC looks to the Supreme Court’s decision in *Zandford*, interpreting SEC Rule 10b-5, for instruction. For example, the court in *Zandford* stated that “if the broker told his client he was stealing the client’s assets, that breach of fiduciary duty might be in connection with a sale of securities, but would not involve a deceptive device or fraud.”²¹
- CFTC Regulation 180.1 implemented the provisions of CEA Section 6(c)(1) and prohibits, among other things, manipulative and deceptive devices regardless of whether the conduct in question was intended to create or did create an artificial price.²²
- CEA Section 6(c)(1) and CFTC Regulation 180.1 augment the Commission’s existing authority to prohibit fraud and manipulation, and should be applied “not technically and restrictively, but flexibly to effectuate its remedial purposes.”²³
- Spoofing allegations under CEA Section 4c(a)(5) are often coupled with CEA Section 6(c)(1) and CFTC Regulation 180.1 allegations.²⁴



Heavy CFTC Enforcement Focus on Fraud-Based Manipulation

It is clear from the CFTC's enforcement actions in the last several years that the heavy weight of the CFTC's enforcement focus is on fraud-based manipulation.

- This is not surprising considering the broad view the CFTC has taken on its anti-manipulation authority. The CFTC sees CEA Section 6(c)(1) and CFTC Regulation 180.1 as “broad, catch-all provision[s] reaching fraud in all its forms.”²⁵
- In recent years, the CFTC has sought to punish a wide range of alleged misconduct beyond traditional market manipulation including, among other offenses, spoofing, insider trading, and manipulation of price-assessment benchmarks.

From November 2018 to November 2021, the CFTC brought 51 enforcement cases under CEA Section 6(c)(1) and CFTC Regulation 180.1 alone.

- In contrast, in the same time period, the CFTC brought 6 enforcement cases under CEA Section 6(c)(3) and CFTC Regulation 180.2 (“traditional” manipulation).



Fraud-Based Manipulation – *Société Générale* (CFTC 2018)

The CFTC charged Société Générale with violations of CEA Section 6(c)(1) and CFTC Regulation 180.1:²⁶

- The CFTC claimed that, from 2006 to mid-2012, Société Générale engaged in attempted manipulation and false reporting in connection with the London Interbank Offered Rate (LIBOR) and the Euro Interbank Offered Rate (Euribor).
- **The problem:** According to the CFTC, Société Générale, among other violations, promulgated falsely deflated U.S. Dollar LIBOR submissions to make it look as though it was able to borrow money at more favorable interest rates than it was actually able to do, and “attempted to manipulate the fixing of LIBOR and Euribor by making false submissions to benefit money market and derivatives trading positions.”

In a consent order entered on June 4, 2018, Société Générale agreed to pay the CFTC a fine of \$475 million. Note that the CFTC charged Société Générale with violating CEA Section 6(c)(1), but only settled on CEA Section 6(c) generally.²⁷

- In a parallel criminal action, Société Générale agreed to pay the DOJ a criminal fine of \$275 million.²⁸



Fraud-Based Manipulation – *TFS-ICAP* (CFTC 2020)

The CFTC charged TFS-ICAP with violations of CEA Section 6(c)(1) and CFTC Regulation 180.1:²⁹

- The CFTC claimed that, between January 2014 and August 2015, TFS-ICAP engaged in the misconduct, known as “flying” prices and “printing” trades.
- **The problem:** According to the CFTC, “TFS-ICAP brokers represented to U.S.-based bank clients that there were bids or offers for an FX option at a particular level when, in fact, no trading institution had bid or offered the option at that level.” Further, “TFS-ICAP brokers on the Emerging Markets desks in both London and New York communicated to one or more U.S.-based bank clients that trades had occurred when a trade had not, in fact, occurred.” These two practices are known as “flying” prices and “printing” trades, respectively.

In a consent order entered on December 4, 2020, TFS ICAP agreed to pay the CFTC a fine of \$7 million. Apart from the company, the court held the TFS-ICAP former CEO and its former Emerging Markets desks head accountable for their purported failure to supervise. Both of them were fined \$500,000 each and agreed to forfeit their CFTC registrations.³⁰



Fraud-Based Manipulation – *Coinbase* (CFTC 2021)

The CFTC charged Coinbase with violations of CEA Section 6(c)(1) and CFTC Regulation 180.1:³¹

- The CFTC claimed that, between January 2015 and September 2018, Coinbase engaged in reckless false, misleading, or inaccurate reporting as well as wash trading by a former employee on Coinbase’s GDAX platform.
- **The problem:** According to the CFTC, “Coinbase operated at least two trading programs which generated orders that, at times, matched with one another. Coinbase included the transactional information for these transactions, such as price and volume data, on its website and provided that information to reporting services...resulting in a perceived volume and level of liquidity of digital assets, including Bitcoin, on GDAX that was false, misleading or inaccurate.”
 - Further, a former Coinbase employee “intentionally placed buy and sell orders in the Litecoin/Bitcoin trading pair on GDAX, which he intended to match with one another and result in no loss or gain while creating the appearance of liquidity and trading interest in Litecoin.”

In a consent order entered on March 19, 2021, Coinbase agreed to pay the CFTC a fine of \$6.5 million.³²



Fraud-Based Manipulation – *McAllister* (CFTC 2021)

The CFTC charged Charles McAllister with violations of CEA Section 6(c)(1) and CFTC Regulation 180.1:³³

- The CFTC claimed that, from August 2011 to July 2015, McAllister and his defunct company BullionDirect, Inc. (BDI) engaged in defrauding precious metal traders throughout the U.S.
- **The problem:** According to the CFTC, “BDI customers sent money to McAllister and BDI for the purported purchase of gold, silver, palladium, and platinum that was to either be immediately delivered or stored on the customers’ behalf. Contrary to their promises, McAllister and BDI did not purchase or store metal for customers, but instead misappropriated the customer funds to pay back other customers, cover BDI business expenses, and invest in other businesses.”

In a consent order entered on August 18, 2021, McAllister agreed to pay the CFTC a fine of \$16.1 million, and be permanently enjoined from registering with the CFTC or trading in any CFTC-regulated markets.³⁴

- In a parallel criminal action, the jury found McAllister guilty of two counts of wire fraud and one count of engaging in monetary transactions in criminally-deprived property. McAllister was sentenced to 10 years in prison, and ordered to pay approximately \$16 million in restitution.³⁵



Fraud-Based Manipulation – *Tether* (CFTC 2021)

The CFTC charged four Tether-related companies (“Tether”) with violations of CEA Section 6(c)(1) and CFTC Regulation 180.1:³⁶

- The CFTC claimed that, from June 2016 to February 2019, Tether made untrue or misleading statements and omissions of material fact in connection with the U.S. dollar tether token (USDT) stablecoin.
- **The problem:** According to the CFTC, Tether, among other violations, “misrepresented to customers and the market that Tether maintained sufficient U.S. dollar reserves to back every USDT in circulation with the ‘equivalent amount of corresponding fiat currency’ held by Tether and ‘safely deposited’ in Tether’s bank accounts. In fact Tether reserves were not ‘fully-backed’ the majority of the time.”
- The Tether Order is significant because it marks the first U.S. enforcement action against a major stablecoin. Further, the CFTC has now asserted that it has some enforcement authority over stablecoins.

In a consent order entered on October 15, 2021, Tether agreed to pay the CFTC a fine of \$41 million.³⁷

- The New York AG settled with Tether in February 2021 and Tether agreed to pay \$18.5 million in penalties and cease any further trading activity with New Yorkers.³⁸



3. Trading on and Misappropriation of MNPI



Misappropriation of MNPI – *Motazed* (CFTC 2015)

The CFTC charged Arya Motazed with violations of CEA Section 6(c)(1) and CFTC Regulation 180.1:³⁹

- The CFTC claimed that, from September 2013 to November 2013, Motazed engaged in fraudulent transactions in energy future contracts for gas and oil, involving two personal accounts he owned or controlled and a company account he traded for his former employer, by misappropriating non-public, confidential, and material information.
- **The problem:** According to the CFTC, “[b]ased on his position as a gasoline futures trader, Motazed routinely had access to material non-public information, and material information,” and “Motazed breached his duties to his employer by using this information to trade in personal trading accounts and by failing to disclose such trading to his employer.”
- This Order is the first case in which the CFTC charged an individual with trading on material, non-public information.

In a consent order entered on December 2, 2015, Motazed agreed to pay the CFTC a fine of \$100,000 and his former employer around \$217,000 in restitution. In addition, Motazed received a permanent trading and registration ban.⁴⁰

- In a parallel action by the Chicago Mercantile Exchange, Motazed agreed to pay a fine of \$100,000, restitution around \$217,000, and be suspended from trading on the Exchange’s platforms for 5 years.⁴¹



Misappropriation of MNPI – *Ruggles* (CFTC 2016)

The CFTC charged Jon Ruggles – previously, Vice President of Fuels at Delta Airlines -- with violations of CEA Section 6(c)(1) and CFTC Regulation 180.1:⁴²

- The CFTC claimed that, from March 2012 to December 2012, Ruggles engaged in fraudulent, fictitious, and noncompetitive trades in crude oil and heating oil futures and options by misappropriating his employer’s confidential, material, non-public trading information.
- **The problem:** According to the CFTC, Ruggles “owed a duty of trust and confidence to act in the employer’s best interest and to keep confidential the employer’s material, [non-public] information regarding its trading activity,” but Ruggles “breached these duties to the employer and misappropriated [this information] for his own personal benefit – namely, by trading the same NYMEX products he traded for his former employer in personal accounts in his wife’s name, which he controlled.”

In a consent order entered on September 29, 2016, Ruggles agreed to pay the CFTC a fine of \$1.75 million and disgorge around \$3.5 million in ill-gotten gains. In addition, Ruggles received a permanent trading and registration ban.⁴³

- In a parallel action by the Chicago Mercantile Exchange, Ruggles agreed to pay a fine of \$300,000, disgorge \$2.81 million in profits, and be permanently barred from applying for membership or trading at any exchange operated by the Chicago Mercantile Exchange.⁴⁴



Misappropriation of MNPI – EOX (CFTC 2018)

The CFTC charged EOX Holdings and one of its registered Associated Persons, Andrew Gizienski, with violations of CEA Section 6(c)(1) and CFTC Regulation 180.1.⁴⁵

- The CFTC claimed that, from August 2013 to May 2014, EOX and Gizienski misused material, non-public information in connection with block trades of energy contracts on ICE Futures US.
- **The problem:** According to the CFTC, “Gizienski disclosed to his friend confidential information about other customers, such as their identities, trading activity, and positions, in breach of a pre-existing duty of trust and confidence owed to those customers,” and traded the discretionary account, belonging to his friend, while in possession of, and on the basis of, confidential information relating to EOX customers.
- According to then CFTC Enforcement Director James McDonald, “[i]llegal use of inside or otherwise confidential information significantly undermines market integrity and harms customers in our markets,” and the enforcement action today “shows that the Commission will vigorously pursue this type of misconduct.”

In its complaint on September 28, 2018, the CFTC seeks civil monetary penalties, disgorgement, restitution and trading bans, among other sanctions.⁴⁶

- In a parallel action by the Intercontinental Exchange Futures U.S., EOX agreed to pay a fine of \$442,500 and Gizienski agreed to pay a fine of \$50,000 and a 6-week ban from the Exchange’s markets.⁴⁷



Trading on MNPI – *Schultz* (CFTC 2020)

The CFTC charged Marcus Schultz with violations of CEA Section 6(c)(1) and CFTC Regulation 180.1:⁴⁸

- The CFTC claimed that, from April 2013 to February 2016, Schultz engaged in a fraudulent scheme to misappropriate his employer’s confidential information and enter into fictitious trades.
- **The problem:** According to the CFTC, Schultz gave his employer’s block trade information to a broker, with whom he orchestrated a series of trades in which the broker, Schultz, and others purportedly traded with Schultz’s employer at non-bona fide prices. Schultz allegedly defrauded his employer by “creating the false impression that he was executing trades at bona fide prices that were in [the company’s] best interest, when in fact he was executing trades at prearranged bids and offers that were designed instead to enable [the scheme participants] to make a profit on offsetting trades with other market participants.”

In a consent order entered on September 30, 2020, Schultz agreed to pay the CFTC a fine of around \$670,000 and disgorge approximately \$427,000 in ill-gotten gains. Schultz also received a 6-year trading and registration ban.⁴⁹

- In a parallel criminal action by the DOJ and the USAO for the Southern District of Texas, Schultz pleaded guilty to a one-count information charging him with conspiracy to commit wire fraud and to violate various provisions of the CEA. Sanctions have not yet been assessed.⁵⁰



Trading on MNPI – Webb (CFTC 2021)

The CFTC charged Classic Energy LLC and Mathew Webb, the firm's owner, with violations of CEA Section 6(c)(1) and CFTC Regulation 180.1:⁵¹

- The CFTC claimed that, from September 2015 to November 2019, Webb participated in a scheme to misappropriate the confidential block trade order information of Classic's (an introducing broker) brokerage customers and facilitate fictitious trades.
- **The problem:** According to the CFTC, Webb “[worked] in concert with certain individual traders employed by Classic’s brokerage customers to disclose block trade order information to another individual trader involved in the scheme” and “this trader then used the information disclosed by Webb to arrange fictitious, non-arm’s length block trades between himself and the Classic customer at prices that allowed this trader to make a profit on offsetting trades.” Profits were then shared with Webb and the other traders involved in the scheme.

In a consent order entered on June 14, 2021, Webb agreed to disgorge around \$585,000 in ill-gotten gains. In addition, Webb received a permanent trading and registration ban.⁵²

- In a parallel criminal action by the DOJ, Webb pleaded guilty to one count of conspiracy both to confirm the execution of fictitious trades and engage in a scheme to defraud.



Trading on MNPI – Coquest (CFTC 2021)

The CFTC charged Coquest with violations of CEA Section 6(c)(1) and CFTC Regulation 180.1:⁵³

- The CFTC claimed that, from May 2015 to November 2019, Coquest and its owners misappropriated the block trade order information of Coquest’s brokerage customers and traded on such information.
- **The problem:** According to the CFTC, Coquest’s broker and owner, Weinmann, “used material, [non-public] information relating to Coquest customers, such as their identities, trading activity, positions, and the prices at which they were willing to buy or sell, in order to broker and execute block trades opposite the Coquest customers profits” to the detriment of Coquest customers.

In its complaint on October 20, 2021, the CFTC seeks civil monetary penalties, disgorgement, restitution and trading bans, among other sanctions.⁵⁴



4. Foreign Corrupt Practices Act



Foreign Corrupt Practices Act – *Vitol* (CFTC 2020)

The CFTC charged Vitol with violations of CEA Section 6(c)(1) and CFTC Regulation 180.1.⁵⁵

- The CFTC claimed that, from 2005 to early 2020, Vitol engaged in manipulative and deceptive conduct involving foreign corruption and physical and derivatives trading in the U.S. and global oil markets.
- **The problem:** According to the CFTC, Vitol made “corrupt payments (e.g., bribes and kickbacks) to employees and agents of certain state-owned entities (“SOEs”) in Brazil, Ecuador, and Mexico. Vitol or its affiliates made the corrupt payments in exchange for improper preferential treatment and access to trades with the SOEs. Regarding Brazil, the corrupt payments also were in exchange for [non-public] information from employees and agents of the SOE, including information material to Vitol’s transactions with the SOE or related trading.”
- This was the first public action arising out of the CFTC’s initiative to pursue violations of the CEA involving foreign corruption.

In a consent order entered on December 3, 2020, Vitol agreed to pay the CFTC a fine of \$95 million.⁵⁶

- In a parallel action, the DOJ and the USAO for the Eastern District of New York deferred criminal prosecution, and Vitol agreed instead, among other things, to pay a criminal fine of \$135 million (offset in part by payments under the CFTC order).⁵⁷



5. Misstatements to Exchanges and FCMs



Misstatements to FCMs – *Seidenfeld* (CFTC 2019)

The CFTC charged Aron Seidenfeld with violations of CEA Section 6(c)(1) and CFTC Regulation 180.1:⁵⁸

- The CFTC claimed that, from July 2014 to October 2018, Seidenfeld made material misrepresentations in account opening documents submitted to multiple futures commission merchants (FCMs).
- **The problem:** According to the CFTC, Seidenfeld made a series of misrepresentations to the FCMs as part of a deceptive course of business “intended to induce the FCMs to open trading accounts, even though unsecured debits were outstanding in preexisting FCM trading accounts controlled by the [family] trust.”
- According to then CFTC Enforcement Director James McDonald, “this matter should serve as a clear message to market participants that the CFTC will not tolerate conduct that inhibits the ability of an FCM or other regulated entity to appropriately assess the risk of allowing a person or entity access to CFTC-regulated markets.”

In a consent order entered on September 30, 2019, Seidenfeld agreed to pay the CFTC a fine of \$160,000. In addition, a 90-day ban on trading or registering with the CFTC was imposed.⁵⁹



Misstatements to Exchanges – *Easterday* (CFTC 2021)

The CFTC charged Cody Easterday and Easterday Ranches, Inc. with violations of CEA Section 6(c)(1) and CFTC Regulation 180.1:⁶⁰

- The CFTC claimed that, from October 2016 to November 2020, Easterday and his co-owned-company engaged in fraud in connection with the sale of more than 200,000 non-existent head of cattle to a beef processor, made false statements to an exchange, and violated exchange-set position limits.
- **The problem:** According to the CFTC, Easterday “[reported] false or misleading information concerning its cattle inventory, purchases, and sales to the Chicago Mercantile Exchange in at least two hedge exemption applications seeking permission to exceed the exchange’s position limits.”

In its complaint on March 31, 2021, the CFTC seeks civil monetary penalties, disgorgement, restitution and trading bans, among other sanctions. The CFTC also charged Easterday with violations of CEA Section 9(a)(4) and 7 U.S.C. § 13(a)(4) for making false statements to a registered entity (here, the Chicago Mercantile Exchange).⁶¹

- Easterday settled with the CFTC in November 2021, and agreed to pay the CFTC a fine of \$30 million, but only after other creditors are paid.⁶²
- In a parallel criminal action by the DOJ, Easterday pleaded guilty to one count of wire fraud and agreed to pay \$244 million in restitution.⁶³



Questions?





Glossary for Today's Presentation

AG:	Attorney General
CEA:	Commodity Exchange Act
CFTC:	Commodity Futures Trading Commission
DOJ:	U.S. Department of Justice
Euribor:	Euro Interbank Offered Rate
FCM:	Futures Commission Merchant
FCPA:	Foreign Corrupt Practices Act
LIBOR:	London Interbank Offered Rate
MNPI:	Material Non-Public Information
NYMEX:	New York Mercantile Exchange
SEC:	U.S. Securities and Exchange Commission
SOE:	State-Owned Entity
USAO:	United States Attorney's Office
USDT:	U.S. Dollar Tether Token



Footnotes

Footnotes here.... It's in 3 columns, but 2 may work better.
check it out and test it out.



Thank you for joining us today!

Upcoming Webinar:



FIA Exchange Briefing: Euronext
2:00 PM - 3:00 PM GMT

FIA

The logo consists of three characters: 'F', 'I', and 'A'. The 'F' is a solid dark grey block. The 'I' is a solid dark grey block. The 'A' is formed by two overlapping shapes: a light green triangle pointing upwards and a light blue triangle pointing downwards. The background features large, overlapping geometric shapes in light green, light blue, and a pale yellowish-green.