Recent Developments in Commodity Exchange Act Litigation: Exchange Liability, CFTC Jurisdictional Boundaries, and the Extraterritorial Reach of the Dodd-Frank Act

A Survey of Three Recent Federal Court Decisions

Prepared for the 2026 Futures Industry Association Law and Compliance
April 16, 2026

Jon Ammons
Tamika Bent
Michael Loesch
Rob Schwartz

I. Introduction

While much attention has been paid to ongoing litigation over event contracts, the Commodity Exchange Act ("CEA") continues to generate significant litigation across a variety of other contexts, from the private right of action available to traders against designated contract markets, to the scope of the CFTC's enforcement jurisdiction over precious metals dealers, to the extraterritorial application of the CEA's anti-fraud provisions to foreign conduct involving swaps. Three recent federal court decisions illuminate the current state of play. *Global Carbon Opportunity (Cayman) Fund Ltd. v. CME Group Inc.*, No. 24 Civ. 4562 (LGS), 2025 WL 1993703 (S.D.N.Y. July 17, 2025), addresses the narrow scope of the private right of action under CEA § 22(b) when a trader challenges an exchange's interpretation of its own rules. *Commodity Futures Trading Commission v. TMTE, Inc.*, No. 3:20-CV-2910-X, 2025 WL 2043718 (N.D. Tex. July 21, 2025), raises fundamental questions about whether gold and silver bullion fall within the CEA's definition of "commodity" and the interplay between the CFTC's section 6(c) enforcement authority and the actual delivery exception for retail transactions. *United States v. Phillips*, 155 F.4th 102 (2d Cir. 2025), the first appellate decision interpreting CEA § 2(i)(1), construes the Dodd-Frank Act's extraterritoriality provision and affirms the conviction of a U.K.-based hedge fund manager for commodities fraud involving manipulation of a foreign-exchange barrier option.

This paper examines each decision in turn.

II. Global Carbon Opportunity v. CME Group: The Narrow Scope of CEA § 22(b)

A. Factual Background

This case arose from a dispute over the Global Emissions Offset Futures Contract (the "GEO Futures Contract"), a physically-delivered carbon credit futures contract traded on the New York Mercantile Exchange ("NYMEX"). Under NYMEX rules, the GEO Futures Contract required delivery of carbon offsets meeting "all GEO Screening Criteria, including CORSIA Eligibility." *Global Carbon*, 2025 WL 1993703, at *2. The "CORSIA" framework—the Carbon Offsetting and Reduction Scheme for International Aviation—is a United Nations-sponsored program requiring airline operators to offset carbon emissions using eligible credits, with eligibility criteria that evolve across successive compliance phases: the Pilot Phase (2021–2023), the First Phase (2024–2026), and the Second Phase (2027–2035). *Id.* at *1.

Three investment fund plaintiffs purchased long positions in GEO Futures Contracts settling in December 2024 and December 2025. The core dispute centered on whether the contract's deliverable credits would be those eligible under CORSIA's First Phase—which the plaintiffs understood to be required—or those eligible under the Pilot Phase, which NYMEX specified in a Special Executive Report known as SER 9197 in May 2023. The distinction was economically significant: Pilot Phase credits (vintages 2016-2020) would no longer satisfy CORSIA compliance obligations after 2023, while First Phase credits (vintages 2021–2026) would retain compliance value. *Id.* at *2. The plaintiffs alleged that SER 9197 effected a material, unilateral rule change that devalued their long positions by tens of millions of dollars. Defendants maintained that SER 9197 merely clarified existing contract terms.

B. The CEA § 22(b) Claim

The U.S. District Court for the Southern District of New York held that the plaintiffs failed to state a claim under CEA § 22(b), 7 U.S.C. § 25(b). Section 22(b) provides the exclusive private right of action against registered entities, permitting a trader to sue only when an exchange "fails to enforce any bylaw, rule, regulation, or resolution that it is required to enforce" or, in enforcing such a rule, "violates this chapter or any Commission rule." 7 U.S.C. § 25(b)(1). The plaintiff must also establish that the entity "acted in bad faith." *Id.* at § 25(b)(4).

The court emphasized that § 25(b) targets an exchange's refusal to police third-party misconduct under existing rules. Challenges to an exchange's own rule-interpretation or rulemaking decisions, by contrast, are "a type of dispute Congress consigned to exchange oversight and CFTC review, not to private litigation." *Global Carbon*, 2025 WL 1993703, at *4. And even assuming that the statute could reach rule-interpretation disputes, the court found that the plaintiffs failed to allege that NYMEX's construction was "so unreasonable as to be irrational." *Id.* at *5. The court recognized that NYMEX has "reasonable discretion" in establishing and enforcing contract market rules under 7 U.S.C. § 7(d)(1)(B), and that while there was "tension between the requirements of the CBL Standards Instrument Program and the evolving CORSIA eligibility criteria," the exchange's resolution of that tension was not "so irrational as to repudiate the terms of the Contract." *Id.*

C. Significance

The decision reinforces the well-established but frequently tested principle that the CEA's private right of action against exchanges is narrow by design. The CFTC, and not federal courts, is responsible for overseeing exchange rules ad contract terms.   The case also highlights the practical challenges that arise when futures contract specifications reference external, evolving regulatory standards, creating ambiguity that an exchange must resolve through its own interpretive processes.

III. CFTC v. TMTE, Inc.: Precious Metals, the "Commodity" Definition, and the Actual Delivery Exception

A. Factual Background

The CFTC and thirty states brought a fraud enforcement action against the operators of Metals.com, who sold gold and silver bullion to consumers from approximately 2017 to 2020. The defendants allegedly convinced customers to convert retirement accounts into self-directed IRAs and purchase bullion at dramatically inflated prices. Transaction agreements disclosed that spreads for bullion would "generally" be between one and five percent and that spreads for numismatic coins would "generally" be between seventeen and thirty-three percent. *CFTC v. TMTE, Inc.*, 2025 WL 2043718, at *2. In practice, actual markups averaged 128% for the Silver Royal Canadian Mint Polar Bear Bullion, 91% for the Gold Royal Canadian Mint Polar Bear Bullion, and 108% for Gold British Standard Bullion. *Id.* The defendants assured customers who questioned the pricing that their products were exclusive or collectible semi-numismatic coins worth more than their melt value—assurances the government alleged were false.

The government charged the individual defendants with violating CEA § 6(c)(1), 7 U.S.C. § 9(1), and CFTC Regulation 180.1(a)(1)–(3), which prohibit manipulative or deceptive practices in connection with contracts to sell commodities. Ten states also brought their own claims under various state commodities fraud, securities fraud, investment advisor, unfair trade practices, and elder exploitation statutes.

B. The "Commodity" Definition: Section 1a(9) and Ejusdem Generis

The district court denied the CFTC's motion for summary judgment in an opinion squarely addressing a question the CFTC has long taken for granted: whether gold and silver constitute "commodities" under CEA § 1a(9), 7 U.S.C. § 1a(9). The court applied the canons of *ejusdem generis* and *noscitur a sociis* to the statutory definition, which enumerates twenty-five agricultural products—from wheat and barley to wool and livestock—before adding the catchall phrase "all other goods and articles ... in which contracts for future delivery are presently or in the future dealt in." *TMTE*, 2025 WL 2043718, at *4–5. Invoking the Supreme Court's admonition that Congress does not "hide elephants in mouseholes," *Whitman v. American Trucking Ass'n*, 531 U.S. 457, 468 (2001), and citing *Yates v. United States*, 574 U.S. 528, 545–49 (2015) (holding that "other object" in an enumerated list did not include a fish), the court concluded that precious metals are "neither agricultural products nor movie tickets" and therefore fall outside the enumerated list. *TMTE*, 2025 WL 2043718, at *5.

The court then identified CEA § 19, 7 U.S.C. § 23, as the only provision in the CEA that expressly mentions precious metals, noting that § 19(b) specifically addresses transactions involving "silver bullion, gold bullion, bulk silver coins, bulk gold coins, or platinum under a standardized contract." *Id.* However, because the CFTC had not addressed § 19 in its briefing, the court could not resolve the jurisdictional question at summary judgment. The court directed the parties to brief the § 19 question in trial briefs, leaving the CFTC's jurisdictional theory unresolved.

This analysis is potentially significant. If sustained at trial, it would represent a sharp departure from the CFTC's longstanding position that the catchall language of § 1a(9) encompasses precious metals—a position that courts in other circuits have accepted. *See, e.g., CFTC v. Monex*, 2020 WL 7786540 (C.D. Cal. Dec. 28, 2020). The opinion invites a textualist challenge to the CFTC's enforcement authority over retail precious metals transactions, particularly in the Fifth Circuit, where the major questions doctrine and narrow readings of agency authority have found a receptive audience.

C. The Actual Delivery Exception and Section 6 Enforcement Authority

The court also scrutinized the interaction between the Dodd-Frank Act's expansion of CFTC retail commodity jurisdiction under CEA § 2(c)(2)(D) and the CFTC's separate enforcement authority under § 6(c). Section 2(c)(2)(D) brought retail transactions involving leverage, margin, or financing within the CFTC's purview but excepted contracts resulting in "actual delivery within 28 days." 7 U.S.C. § 2(c)(2)(D)(ii)(III)(aa). The CFTC argued that its § 6(c) enforcement authority operates independently of § 2's jurisdictional framework, making the actual delivery exception "wholly irrelevant." *Id.* at *6. The court was unpersuaded, observing that "it seems the CFTC is the one that misunderstands how its own enforcement mechanisms interact." *Id.* at *4.

D. The Government's Renewed Summary Judgment Motion

The CFTC next filed an amended motion for summary judgment to engage the jurisdictional questions left open by the court's earlier opinion. Following its decision, the court posed five questions regarding the scope of the term "commodity" under the CEA. The government's principal argument was that the court's application of *ejusdem generis* to limit § 1a(9)'s catchall language to agricultural products was mistaken in light of the broader statutory context. The brief advanced several structural arguments: that the CEA's express exclusion of "motion picture box office receipts" from the commodity definition would be superfluous if the definition encompassed only agricultural goods; that the statutory definition of "exempt commodity" in § 1a(20)—defined as a commodity that is "not an excluded commodity or an agricultural commodity"—would be a null set if "commodity" meant only agricultural products; and that § 19 of the CEA, 7 U.S.C. § 23, itself presupposes that precious metals are "commodit[ies]" by prohibiting certain standardized contracts for delivery of gold and silver bullion and then authorizing regulatory exceptions. The CFTC also argued that the court was bound by the Fifth Circuit's holding in *CFTC v. Muller*, 570 F.2d 1296 (5th Cir. 1978), which held that precious metals are commodities under the CEA, and that neither the major questions doctrine nor the nondelegation doctrine was implicated because the statute itself, and not any exercise of CFTC interpretive discretion, defines "commodity" to include "all other goods and articles." The agency further supported its position with a "*corpus linguistics*" analysis, submitted at the court's request, showing that the term "commodity" was consistently used in American English to describe precious metals both in the 1930s (when the CEA was enacted) and in the 1970s (when the CFTC Act of 1974 expanded the statutory definition). As of this writing, the court has not ruled on the renewed motion, and no further relevant decisions have been issued in the case.

IV. United States v. Phillips: Extraterritorial Reach of the CEA and the Elements of Commodities Fraud

A. Factual Background

Neil Phillips, a citizen of the United Kingdom and co-founder of Glen Point Capital, a London-based hedge fund, purchased a "one-touch barrier option" on the dollar-rand exchange rate in October 2017. The option would pay $20 million if the exchange rate dropped below 12.50 rand per dollar at any moment between October 30, 2017, and January 2, 2018; Glen Point paid approximately $2 million for it. Phillips was confident that the election of Cyril Ramaphosa as leader of South Africa's ruling party would strengthen the rand. *United States v. Phillips*, 155 F.4th 102, 108–09 (2d Cir. 2025).

The option was structured through a series of transactions involving multiple financial institutions. Glen Point purchased it through JPMorgan's London branch. The option was written by Morgan Stanley International's London office and brokered through JB Drax Honoré, a U.K. broker that kept counterparty identities anonymous. Morgan Stanley International, in turn, entered an offsetting option with Morgan Stanley Capital Services, a U.S.-based entity—making Morgan Stanley Capital the ultimate bearer of the $20 million risk. *Id.* at 109.

When Ramaphosa's election on December 18, 2017, pushed the rate to 12.52 but not through the 12.50 barrier, Phillips took matters into his own hands. On December 26, with only Asian markets open and liquidity extremely thin, Phillips logged onto Bloomberg and directed a Singapore-based banker to sell dollars for rand with the stated "aim" of trading "thru" the 12.50 barrier. He instructed the banker to "give bids," meaning to sell at whatever price was available without seeking best execution. In under an hour, Phillips sold $725 million for approximately 9 billion rand, pushing the rate to 12.499 and triggering the option. He immediately told the banker to "stop" and get "proof of the print." *Id.* at 110. Two days later, Phillips triggered a second barrier option at 12.25 using similar tactics, then promptly sold off the rand positions.

B. CEA Extraterritoriality: Interpreting § 2(i)(1)

The centerpiece of the *Phillips* was the meaning of CEA § 2(i)(1), which extends the CEA's regulation of swaps to "activities outside the United States" that "have a direct and significant connection with activities in, or effect on, commerce of the United States." 7 U.S.C. § 2(i)(1). The Second Circuit's decision was the first appellate opinion to construe this provision.

Phillips argued that "significant" in § 2(i)(1) should require proof of "systemic risk to the U.S. financial system." *Phillips*, 155 F.4th at 117. The Second Circuit rejected this reading, emphasizing that the provision is disjunctive: it covers activities with a "direct and significant connection with activities in" U.S. commerce *or* a "direct and significant ... effect on" U.S. commerce. Congress thereby set "a far higher bar" for regulating conduct lacking direct ties to the United States, while applying a lower threshold when there is a direct and important nexus to U.S. commercial activity. *Id.* at 117. Phillips's reading would collapse this distinction, requiring systemic risk for both prongs, "despite Congress's decision to use two different words in disjunctive clauses." *Id.* (citing *Pulsifer v. United States*, 601 U.S. 124, 149 (2024)). The court further noted that when Congress wants to reference systemic importance in the CEA, it does so expressly, as in the "major swap participant" definition at 7 U.S.C. § 1a(33). *Id.* at 117–18.

The court identified two direct and significant connections to U.S. commerce. First, Glen Point's contract to purchase the option was with JPMorgan Chase Bank, N.A., identified in the contract as organized under U.S. law with its main office in Columbus, Ohio. *Id.* at 120. Second, Morgan Stanley Capital Services—a U.S. entity—was required to pay $20 million as an immediate consequence of Phillips's actions. The court held that a connection need not be foreseeable to be "direct" under § 2(i)(1), citing *Atlantica Holdings, Inc. v. Sovereign Wealth Fund Samruk-Kazyna JSC*, 813 F.3d 98, 115 (2d Cir. 2016), and that the involvement of an intermediary broker does not render the connection indirect. *Phillips*, 155 F.4th at 121. The $20 million fraud against U.S. financial institutions was sufficiently "significant" to those institutions' commercial activities. *Id.* at 121–22.

V. Conclusion

These three decisions, all issued in the summer of 2025, collectively illustrate the dynamic and contested boundaries of the Commodity Exchange Act. *Global Carbon Opportunity* confirms that the private right of action against exchanges remains tightly circumscribed, channeling disputes about contract interpretation to the CFTC's oversight process rather than the courts. *CFTC v. TMTE* poses a fundamental challenge to the CFTC's long-assumed jurisdiction over precious metals as "commodities" under the catchall language of § 1a(9), applying textualist interpretive canons that could significantly constrain the Commission's enforcement reach over retail physical commodity transactions, though the agency's renewed summary judgment brief offers a vigorous rebuttal grounded in statutory structure, legislative history, and corpus linguistics. And *United States v. Phillips* establishes the first appellate framework for applying the Dodd-Frank Act's extraterritoriality provision, holding that the "direct and significant connection" prong of § 2(i)(1) does not require systemic risk; rather, harm to U.S. financial institutions can satisfy the "significant" requirement.

Practitioners advising clients in derivatives regulation, exchange governance, precious metals markets, or cross-border trading should take note. The *TMTE* decision, in particular, warrants close monitoring as the court considers the government's renewed motion: a ruling that precious metals fall outside § 1a(9)'s commodity definition could upend decades of CFTC enforcement practice. The *Phillips* decision, coming fully fifteen years after Dodd-Frank, finally provides authoritative guidance on the jurisdictional standards that will govern future extraterritorial enforcement actions under the CEA's anti-manipulation provisions.