

Spoofing Enforcement Intensifies

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U.S. regulators, in particular the Commodity Futures Trading Commission (“CFTC”), are intently pursuing market manipulation enforcement. The September 30 end of the 2019 fiscal year brought with it a flurry of press releases from four different agencies announcing settlements of spoofing-related enforcement actions against trading firms, banks, interdealer brokers, and traders.

The [Commodity Exchange Act](#), 7 U.S.C. § 1, etc. (“CEA”) prohibits spoofing, defined as the bidding or offering of a financial instrument or asset with the intent to cancel the bid or offer before execution. In January 2018, the CFTC created the Spoofing Task Force to specifically address this form of market manipulation. The concert of spoofing actions over this past year demonstrate the task force is vigorously executing its mandate, and that its zeal is spilling over to other regulators as well.

On September 30, 2019, the CFTC [announced](#) it was settling spoofing charges against Hard Eight Futures, LLC, a Chicago trading firm, and its founder and principal trader, Igor Chernomzav. According to the CFTC, on more than a thousand occasions between March 2014 and March 2015, Chernomzav “spoofed” bids and offers for e-mini futures contracts in order to create a false impression of significant buying or selling interest, that would in turn induce other market participants into transactions, that would in turn result in favorable prices for Chernomzav. Hard Eight and Chernomzav were ordered to pay civil monetary penalties of \$1.75 million and \$750,000, respectively, and Chernomzav was barred from trading in any CFTC-regulated market for nine months.

A day later, on October 1, 2019, the CFTC announced it was settling three separate spoofing actions against a trio of firms for combined civil monetary penalties of \$3 million. In the orders, the CFTC charged these entities with spoofing orders for precious metals and e-mini S&P 500 futures. The orders acknowledged that the entities’ cooperation led to an early resolution of the applicable matters and correspondingly reduced penalties. In addition to penalties, the entities are required to implement and strengthen their internal procedures, trainings, and controls to deter future spoofing.

The next day, on October 2, 2019, the CFTC [announced](#) it was settling charges against interdealer brokers BGC Financial, LP and GFI Securities, LLC for spoofing in the financial futures market. The two brokers falsely posted bids and offers on their company’s respective electronic platforms for EFX options that had not actually taken place and communicated fake trades to their respective clients. At

the same time, the New York State Attorney General announced it was entering into criminal non-prosecution agreements with both entities for related conduct. In all, BCG was ordered to pay \$22.5 million and GFI was ordered to pay \$15 million in penalties, as well as remediation and the appointment of monitors.

Not to be left out, on October 1, 2019, the Securities and Exchange Commission (“SEC”) announced it was entering [final judgments](#) by consent in actions filed against New York brokerage firm Lek Securities Corporation and its executive officer. The SEC had charged the defendants with facilitating a manipulative layering scheme by one of Lek’s customers, a Ukraine-based firm, over a three-year period. In addition to monetary penalties of over \$1 million, the final judgments include admissions of guilt, injunctions against intra-day trading to foreign customers, and the appointment of a compliance monitor.

Finally, the DOJ continues to pursue spoofing-related enforcement actions. In September, the DOJ’s Fraud Section [unsealed an indictment](#) against three traders, Gregg Smith, Michael Nowak, and Christopher Jordan, for spoofing that took place between May 2008 and August 2016 in precious metals futures markets. The indictment, brought in the Northern District of Illinois, charges fourteen counts, including attempted price manipulation and spoofing under the CEA, bank fraud, wire fraud, commodities fraud, and conspiracy to conduct a pattern of racketeering activity. The CFTC also filed [spoofing charges](#) against Smith and Nowak for use of a manipulative and deceptive device and attempted price manipulation under the CEA.

These latest actions by the CFTC, SEC, and DOJ showcase the government’s continuing efforts to crack down on spoofing. In [2018](#), the CFTC prosecuted 26 spoofing cases, the second largest category after retail fraud. The SEC prosecuted 32 spoofing cases in the same period. The CFTC and SEC have not yet disclosed how many spoofing cases they prosecuted in 2019, but given the recent, concerted enforcement actions, it is likely spoofing will remain a key focus for these regulators. Indeed, the CFTC’s Director of Enforcement, James McDonald, stated in a [recent speech](#) that spoofing is at the “core” of CFTC’s mission. In addition, according to a [recent report](#), the DOJ’s fraud section is adding personnel to its spoofing investigation team.

This regulatory zeal for spoofing enforcement is as good an occasion as any for firms to examine their own policies and procedures. Appropriate controls, including automated surveillance, supervisory oversight, and targeted training, should be in place to identify and prevent this misconduct. A failure to act may expose firms to civil and criminal penalties from both federal and state regulators.

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