

THE
NATIONAL LAW REVIEW

The CFTC Settles Another Spoofing Case

Saturday, August 12, 2017

On July 26, 2017, the U.S. Commodity Futures Trading Commission (“CFTC”) issued an order finding that Simon Posen engaged in the “disruptive practice of ‘spoofing’ (bidding or offering with the intent to cancel the bid or offer before execution).” The CFTC’s findings, which spanned more than three years, beginning at least in December of 2011, indicated that Posen, based in New York City, had traded from his home, using his own account, in violation of Section 4c(a)(5)(C) of the Commodity Exchange Act (7 U.S.C. § 6c(a)(5)(C)), which explicitly outlaws spoofing.

The CFTC found Posen placed thousands of orders in gold, silver, copper, and crude oil futures contracts with the intent to cancel them before execution. These orders were placed so as to move the market prices so that smaller orders, which he would also place on the other side of the market, would be filled.

The CFTC permanently banned Posen from trading in any market regulated by the CFTC and from applying for registration or claiming exemption from registration with the CFTC, ordered him to cease and desist from spoofing, and penalized him \$635,000. Posen settled without admitting or denying any of the CFTC’s findings or conclusions. James McDonald, Director of the CFTC’s Division of Enforcement, made clear that spoofing prosecutions remain a priority for the CFTC and people, like Posen, “will face severe consequences.”

Under the new leadership at the CFTC — the future marches on — with a continuing aggressive emphasis on the investigation and civil prosecution of manipulative trading and in particular spoofing. The CME Group had initially investigated aspects of Posen’s trading on two occasions and ordered a \$75,000 fine and five-week trading bar and subsequently, for other activity, ordered a \$90,000 fine and four-week trading bar.

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