THE NATIONAL LAW REVIEW

Bridging the Week by Gary DeWaal: January 29 to February 2, and February 5, 2018 (Spoofing; FCMs; Software Development; ICOs; Block Trades) [VIDEO]

Monday, February 5, 2018

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Bridging the Week

Communications, Media & Internet
Financial Institutions & Banking
Securities & SEC
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Last week, the Commodity Futures Trading Commission announced enforcement actions against four banking organization companies, a software development firm and six individuals, while the US Department of Justice disclosed that criminal charges had been filed against the same six individuals and two other persons, all in spoofing-related cases. These actions signal a significantly heightened emphasis by the CFTC and DOJ in prosecuting spoofing activities involving futures contracts traded on United States markets. Additionally, the CFTC actions and simultaneous settlements with the four banking organization companies may provide useful insight into the Commission's evolving views regarding future commission merchants (if not all registrants') duty to supervise, software development firms' potential obligations when they are requested to design custom trading software, and the benefits persons may reap if they voluntarily disclose possible wrongdoing to the CFTC before the Commission discovers it. As a result, the following matters are covered in this week's edition of *Bridging the Week*:

- CFTC Names Four Banking Organization Companies, a Trading Software Design Company and Six Individuals in Spoofing-Related Cases; the Same Six Individuals Criminally Charged Plus Two More (includes **My View, Legal Weeds** and**Compliance Weeds**);
- SEC Obtains Court Order Freezing Allegedly Fraudulent ICO (includes **Legal Weeds**);
- Senate Ag Committee Asks Questions About Bitcoin Oversight; Senate Finance Committee Schedules Hearing (includes **My View**):
- Trader Settles NYMEX Disciplinary Action Claiming Alleged Pre-Hedging of Block Trades (includes **Compliance Weeds**); and more.

Video Version:

Article Version:

Briefly:

- **CFTC Names Four Banking Organization Companies, a Trading Software Design Company and Six Individuals in Spoofing-Related Cases; the Same Six Individuals Criminally Charged Plus Two More**: On January 29, the Commodity Futures Trading Commission and the Department of Justice coordinated announcements regarding the filing of civil enforcement actions by the CFTC, naming five corporations and six individuals, and criminal actions by the DOJ against eight individuals – including six of the same persons named in the CFTC actions – for engaging in spoofing activities in connection with the trading of futures contracts on United States markets.

Four of the corporations – part of global banking organizations – simultaneously resolved their CFTC-brought civil actions. These four corporations were Deutsche Bank AG and its wholly owned subsidiary Deutsche Bank Securities Inc., UBS AG and HSBC Securities (USA), Inc. DB and DBSI settled their CFTC enforcement actions by agreeing to jointly and severally pay a fine of US $30 million; UBS settled by consenting to a sanction of US $15 million; and HSBC settled by agreeing to a fine of US $1.5 million. The companies additionally agreed to continue to maintain surveillance systems to detect spoofing; ensure personnel “promptly” review reports generated by such systems and follow-up as necessary if potential spoofing conduct is identified; and maintain training programs regarding spoofing, manipulation and attempted manipulation.

Generally, DB, UBS and HSBC were charged for the spoofing activities of their employees on the Commodity Exchange, Inc. in gold and other precious metal futures contracts. Typically, alleged the CFTC, the employees placed a small lot order on one side of a market and larger lot orders on the other side of the same market for the purpose of artificially moving the market to effectuate the execution of the smaller lot order. As soon as the small lot order was executed, the larger lot orders were cancelled.

DB was also charged with manipulation and attempted manipulation, and UBS was additionally charged with attempted manipulation. The CFTC claimed that one DB and one UBS employee placed orders to try to trigger customers’ stop loss orders to benefit proprietary trading.

DBSI – a registered futures commission merchant – was charged with failure to supervise. According to the CFTC, DBSI maintained a surveillance system that detected many instances of potential spoofing by DB traders, whose accounts it carried. However, said the CFTC, DBSI failed to follow up on “the majority” of potential flagged issues.

The CFTC acknowledged each firm’s cooperation during its investigation. The Commission additionally noted that UBS self-reported its own misconduct in response to a firm-initiated internal investigation. The CFTC said that it was previously not aware of the misconduct.

Additionally, the CFTC charged Jitesh Thakkar and Edge Financial Technologies, Inc. – a company Mr. Thakkar founded and for which he served as president – with spoofing and engaging in a manipulative and deceptive scheme for designing software that was used by an unnamed trader to engage in spoofing activities. This enforcement action was filed in a federal court in Chicago, Illinois.

According to the CFTC, Mr. Thakkar and Edge Financial aided and abetted the unnamed trader's spoofing by designing a custom "Back-of-Book" function. This function automatically and continuously modified the trader's spoofing orders by one lot to move them to the back of relevant order queues (to minimize their chance of being executed) and cancelled all spoofing orders at one price level as soon as any portion of an order was executed. The CFTC said that the unnamed trader admitted using the Back-of-Book function to engage in spoofing activities involving E-mini S&P futures contracts traded on the Chicago Mercantile Exchange from January 30 through October 30, 2013.

It appears from language in a parallel criminal complaint also filed against Mr. Thakkar in a federal court in Chicago, Il., that the trader he is alleged to have assisted was likely Navinder Sarao. In November 2016, Mr. Sarao pleaded guilty to criminal charges for allegedly engaging in manipulative conduct through spoofing-type activity involving E-mini S&P futures contracts traded on the CME between April 2010 and April 2015, including illicit trading that contributed to the May 6, 2010 "Flash Crash." He also settled a CFTC enforcement action related to the same conduct. (Click here for background regarding Mr. Sarao's settlement and initial charges in the article "Alleged Flash Crash Spoofer Pleads Guilty to Criminal Charges and Agrees to Resolve CFTC Civil Complaint by Paying Over $38.6 Million in Penalties," in the November 13, 2016 edition of *Bridging the Week*.)

Previously, Mr. Thakkar has served as a member of the High Frequency Trading Subcommittee of the CFTC's Technology Advisory Committee.

The CFTC also filed civil complaints against Cedric Chanu, Andre Flotron, Krishna Mohan, James Vorley and Jiongsheng Zhao, alleging spoofing and engaging in a manipulative and deceptive scheme. The DOJ announced that criminal complaints were filed against the same persons, as well as Edward Bases and John Pacilio. The criminal case against Mr. Flotron was filed in September 2017. (Click here for details in the article "Spoofing Case Filed in Connecticut Against Overseas-Based Precious Metals Trader," in the September 17, 2017 edition of *Bridging the Week*.) Both the civil and criminal actions were filed in federal courts in Connecticut, Illinois and Texas.

CME brought and settled a disciplinary action against Mr. Zhao, alleging disruptive trading in November 2017 (click herefor details). To resolve the CME action, Mr. Zhao agreed to pay a fine of US $35,000 and be barred from access to all CME Group exchanges for ten business days.

Prior to the filing of the eight criminal actions by the DOJ, only three persons had previously been criminally prosecuted for spoofing. (Click here for background in the article "Former Newbie Bank Trader Pleads Guilty to Criminal Charges and Settles CFTC Civil Charges for No Fine for Spoofing, Attempted Manipulation and Manipulation of Gold and Silver Futures," in the June 4, 2017 edition of *Bridging the Week*.)

My View: The settlement against DB for spoofing and DBSI for failure to supervise was resolved by an agreement by the firms to jointly and severally pay a fine of US $30 million.

In settlements, the rationale for any provision – including the precise amount of a fine – is correctly not part of the public record. As a result, it would be disingenuous to speculate why any one provision might have been agreed.

Hopefully, however, through this settlement, the CFTC is not signaling that it equates the acts of a principal spoofer with the failure of a carrying FCM to follow up on its surveillance system's detection of possible misconduct by a customer. If this was the CFTC's intent, it raises the supervisory obligation of FCMs to a new and highly unfair level. Certainly, the commission of an illegal act, or even the affirmative aiding and abetting of such act, must be regarded as far more serious than the failure of a carrying broker to act after it detects such potential misconduct through its ordinary surveillance system.

This matter is the second recent settlement entered into by the CFTC in recent months that seems to impose an extraordinarily high standard of oversight responsibility on FCMs.

Just a few months ago, Merrill Lynch, Pierce, Fenner & Smith Incorporated agreed to pay a fine of US $2.5 million to resolve charges brought by the CFTC that it failed to diligently supervise responses to a CME Group Market Regulation investigation related to block trades executed by its affiliate, Bank of America, N.A. on the CME and the Chicago Board of Trade. The CFTC said that the responses provided by BANA were not accurate. However, there was no indication that Merrill Lynch was aware or had reason to believe that its affiliate's responses were inaccurate. (Click here for further details in the article "FCM Agrees to Pay US $2.5 Million CFTC Fine for Relying on Affiliate's Purportedly Misleading Analysis of Block Trades for a CME Group Investigation," in the September 24, 2017 edition of *Bridging the Week*.)

Earlier, in 2016, Advantage Futures LLC, Joseph Guinan (its majority owner and chief executive officer), and William Steele (who until May 2016 was Advantage's chief risk officer), settled charges brought by the CFTC related to the firm's handling of the trading account of one customer in response to three exchanges' warnings and for the firm's alleged failure to follow its own risk management policies. The CFTC claimed that, after three exchanges alerted Advantage to concerns they had regarding the trading of one unspecified customer's account which they considered might constitute disorderly trading, spoofing and manipulative behavior, the firm initially failed "to adequately respond to the Exchange inquiries and did not conduct a meaningful inquiry into the suspicious trading." (Click here for background and analysis in the article "FCM, CEO and CRO Sued by CFTC for Failure to Supervise and Risk-Related Offenses," in the September 25, 2016 edition of *Bridging the Week*.)

FCM supervisory systems may, on occasion, fail to live up to regulator expectations. When that happens, a FCM may be fairly subject to penalties and other sanctions. However, in this settlement, the CFTC seems to equate the magnitude of the principal offense of spoofing with a failure to act after the detection of such potential offense by a customer – albeit an affiliated entity. If this is the intended message, the potential cost of engaging in the FCM business, or other businesses requiring CFTC registration, has just increased dramatically and unfairly.

Legal Weeds: Late last year, James McDonald, the CFTC's Director of its Division of Enforcement, indicated during multiple public speeches that potential wrongdoers who voluntarily self-report their violations, fully cooperate in any subsequent CFTC investigation, and fix the cause of their wrongdoing to prevent a re-occurrence will receive "substantial benefits" in the form of significantly lesser sanctions in any enforcement proceeding and "in truly extraordinary circumstances," no prosecution at all. The Division also released a formal *Updated Advisory on Self Reporting and Full Cooperation,* which memorialized and expanded the elements of Mr. McDonald's presentations (click here to access).

The current settlements by DB, DBSI and UBS may provide some insight into what self-reporting might concretely be worth.

Factually, the allegations against DB and UBS were materially similar. In both actions, traders at each firm engaged in alleged spoofing activity that constituted attempted manipulation for a significant period of time – in DB's circumstance, from February 2008 through at least September 2014, and in UBS's situation, from January 2008 through at least December 2013. Some facts varied in each enforcement action, but the agreed fine was US $30 million combined for DB and DBSI and $15 million for UBS. Although the CFTC acknowledged both firms' cooperation in its investigations, the CFTC noted that, in connection with UBS, "[d]uring the course of an internal investigation, [the firm] discovered potential misconduct, of which the Division was previously unaware" and promptly self-reported the misconduct. The CFTC said that both firms' fines were "substantially reduced" because of their cooperation, but UBS's fine was one-half that of the DB entities' combined fine.

Under the Division of Enforcement's new math – come forward + come clean + remediate = substantial settlement benefits – it appears that, at least in these two matters, coming forward was worth a 50% saving off an already reduced settlement attributable to coming clean!

(Click here for details on the CFTC's new approach to settlements in the article, "New Math: Come Forward + Come Clean + Remediate = Substantial Settlement Benefits Says CFTC Enforcement Chief" in the October 1, 2017 edition of*Bridging the Week*.)

Compliance Weeds: The Thakkar and Edge Financial Technologies CFTC enforcement and criminal actions must be taken as a significant warning to programmers and technology firms that developing software to assist a trader in violating the law could result in a charge against such persons for such violation as if they ultimately committed the violation themselves. As a result, developers and their employers requested to customize software should raise any concerns about the purpose for such customization if the purpose seems contrary to law. They should not just accept all instructions and program! However, this may impose a heightened burden on programmers and could stifle the development of legitimate new technology.

- **SEC Obtains Court Order Freezing Allegedly Fraudulent ICO**: The Securities and Exchange Commission brought a lawsuit in a federal court in Texas and obtained a court order halting an allegedly fraudulent initial coin offering. The SEC's action was filed against AriseBank, Jared Rice, the CEO and co-founder of AriseBank and Stanley Ford, the other co-founder of AriseBank.

According to the SEC, AriseBank claimed to be the world's first decentralized bank offering numerous consumer banking products and access to over 700 virtual currencies. It allegedly began an ICO in November 2017 with a goal to raise US $1 billion, offering its own digital currency – the AriseCoin. AriseBank claimed that it had raised US $600 million by the time the SEC halted the ICO at the end of January.

The SEC charged that AriseBank's ICO constituted the unlawful offer of securities without registration or a qualified exemption. The SEC also charged that AriseBank committed fraud in its solicitations by falsely claiming that a new subsidiary of the firm was a FDIC-insured bank and that it was able to offer an AriseBank-branded VISA card, and by not disclosing the criminal background of AriseBank's principals: Mr. Rice is currently on probation for felony theft while Mr. Spencer served a five-year sentence for felony robbery.

On January 25, AriseBank issued a statement "clarifying" its statements about FDIC insurance. According to the statement, AriseBank is in the process of acquiring an FDIC-insured bank, but does not currently own one (click here to access the relevant press release).

The SEC seeks a permanent injunction, disgorgement and a fine, among other sanctions.

Previously, the Texas Department of Banking brought a cease and desist order against AriseBank for using the term "bank" in its name, as it was not licensed to conduct a banking business in Texas (click here to access the relevant order). Separately, the Texas State Securities Board issued an emergency cease and desist order against R2B Coin, a Hong Kong-based company, from selling investments to Texas residents tied to a cryptocurrency called the "R2B Coin" (click here for a copy of the relevant order).

Legal Weeds: The SEC continues to evidence zero tolerance for ICOs that offer digital tokens for sale that are likely securities and are not lawfully registered or exempt from registration. Two weeks ago, SEC Chairman Jay Clayton also cautioned lawyers who may not be instructing clients that digital tokens issued as part of initial coin offerings are securities and subject to possible registration requirements, when the digital tokens are "likely" securities under applicable law standards. According to Mr. Clayton, such lawyers provide their clients "it depends" advice, when there is little doubt regarding the nature of the product offered during an ICO. In response, Mr. Clayton warned he has instructed SEC personnel "to be on high alert for approaches to ICOs that may be contrary to the spirit of our securities laws and the professional obligations of the U.S. securities bar." (Click here for further background in the article "SEC Chairman Warns Lawyers Providing 'It Depends' Advice on ICOs," in the January 28, 2018 edition of*Bridging the Week*.)

- **Senate Ag Committee Asks Questions About Bitcoin Oversight; Senate Finance Committee Schedules Hearing**: The US Senate Committee on Banking, Housing & Urban Affairs will host a hearing on virtual currencies this week, on February 6 at 10 am. Both SEC Chairman Jay Clayton and CFTC Chairman J. Christopher Giancarlo will present their views on the oversight role of their two agencies over this new asset class.

Separately, the Senate Committee on Agriculture, Nutrition and Forestry sent a formal letter to Mr. Giancarlo asking for his view on the CFTC surveillance activities related to new futures contracts on Bitcoin; how safeguards to protect against volatility in Bitcoin futures have performed; how the CFTC's resource limits have impacted its oversight of Bitcoin markets; and what specific information is shared between Bitcoin futures exchanges and underlying Bitcoin markets. The Committee also seeks to understand how the CFTC is coordinating with other government entities regarding cryptocurrencies. The Senate Committee did not provide a specific return date for Mr. Giancarlo's response.

My View: It may be that, in order to rationally oversee spot market activity in cryptocurrencies, including exchanges and intermediaries, the Commodity Exchange Act should be amended to give the CFTC exclusive jurisdiction over all purchases and sales of cryptocurrencies in interstate commerce that are not securities (i.e., virtual currencies) whether or not they constitute commodity interests. (Commodity interests generally are futures or swaps on commodities or commodities sold to retail persons with leverage; click here to access CFTC Rule 1.3(yy). Consistent with ordinary parlance, I use the terms "cryptocurrency" and "virtual currency." However, to me this nomenclature may be misleading if not incorrect.)

Under such an amended law, it is likely the SEC and CFTC will still need to identify a formal test – as they have done in connection with derivatives on broad- and narrow-based indices – regarding when the purchase of a cryptocurrency is under the sole jurisdiction of the CFTC (because it is primarily a virtual currency), the jurisdiction of the SEC (because the cryptocurrency is principally a security), or the combined oversight of the CFTC and SEC (because the cryptocurrency may have characteristics of both a virtual currency and a security). Parameters of such a test could evaluate a number of objective characteristics, including whether a cryptocurrency was mined or issued as part of an offering prior to or after the material completion of a project and what percentage of such cryptocurrencies are utilized in commerce for a functional purpose.

The current hodgepodge of potentially overlapping state and federal requirements and proposed new laws (including, at the state level, potential adoption of the Uniform Regulation of Virtual Currency Business Act) will potentially impede development of decentralized distributed ledger technologies and applications, as well as associated cryptocurrencies that may be utilized as payment to help ensure the integrity of such projects. The quilt of applicable laws may also permit bad folks to fall within the cracks and harm the retail public. More consolidated federal oversight is likely preferable, although it will have to be thought through carefully to minimize unintended consequences and ensure that valid state interests are addressed. (Click here to access background on the Uniform Regulation of Virtual Currency Business Act in the article "Model State Law Regarding Virtual Currency Businesses Virtually Finalized," in the August 20, 2017 edition of *Bridging the Week*.)

- **Trader Settles NYMEX Disciplinary Action Claiming Alleged Pre-Hedging of Block Trades**: Peter Miller, a member of the New York Mercantile Exchange, agreed to resolve a disciplinary action brought by the Exchange, alleging that he used non-public information regarding block trades, in violation of an Exchange rule in effect at the time. According to NYMEX, on various dates between January 1 and March 31, 2016, Mr. Miller hedged block trades after receiving a solicitation from a counterparty but prior to finalizing the transaction. At the time, he was solely authorized to enter into a hedging transaction after the consummation of a block trade (although prior to the public report of the transaction).

Mr. Miller agreed to resolve this matter by paying a fine of US $35,000, disgorging profits of US $61, 519, and agreeing to a ten-day suspension of access to all CME Group exchanges.

Separately, Mr. Miller settled a second NYMEX disciplinary action that alleged he engaged in spoofing transactions between September 1, 2014 and October 31, 2016. Mr. Miller agreed to also resolve this transaction by payment of a fine of US $35,000 and a ten-day suspension of access to all CME Group exchanges to run concurrently with his other suspension.

Merrill Lynch Pierce Fenner & Smith Incorporated agreed to pay a fine of US $80,000 to resolve a disciplinary action brought by NYMEX related to a problem in its automated order routing system that allegedly caused an unnatural 90-tick price spike in the Heating Oil Spread Market on December 22, 2015. Specifically, NYMEX claimed that on that date, Merrill Lynch misrouted an unsupported type of customer order as a market order, instead of rejecting the order. The entry of the unsupported order caused the price spike, claimed NYMEX.

NYMEX also charged Merrill Lynch with failure to have specific procedures or internal controls to reject the unsupported order type.

Finally, Marc Sonnabend agreed to pay US $65,000, disgorge profits of US $19,003 and be suspended from accessing all CME Group exchanges for six months for allegedly engaging in spoofing transactions on multiple occasions from January 2 through August 31, 2016.

Compliance Weeds: In late 2016, both CME Group and ICE Futures U.S. updated their block trading guidance to authorize the pre- or anticipatory hedging of futures and related options block trades by principal counterparties prior to a transaction's execution under limited circumstances. Qualified parties to a block trade (e.g., not persons initially acting as agents taking the opposite side of customer orders) may now "engage in transactions to hedge positions which they believe in good faith will result from the consummation of the block trade which is under negotiation." (Click here to access the relevant CME Group MRAN – Q/A 11, and here for the applicable IFUS FAQs – Q/A 24. Clickhere for more background in the article "Pre-Hedging by Principals Authorized in Block Trade Clarification Implemented by IFUS and Adopted by CME Group," in the October 30, 2016 edition of *Bridging the Week*.)

Separately, for purposes of the applicable CME Group rule dealing with strict liability, "the act, omission or failure of any official, agent, or other person acting for any party within the scope of his employment or office shall be deemed the act, omission or failure of the party." (Click here to access the full text of CME Group Rule 433.)

In a Market Regulation Advisory Notice entitled *Supervisory Obligations for Employees* (click here to access the relevant CME Group MRAN), the CME Group notes that, under one of its rules, "it is an offense for any party to fail to diligently supervise its employees and agents in the conduct of their business relating to the CME Group Exchanges" (Click here to access CME Group Rule 432.W.) Importantly, in this MRAN, the CME Group makes it clear that agents include not only natural persons, but also "any automated trading systems … operated by any party."

However, in the same MRAN, the CME Group suggests that for purposes of its strict liability rule "agent" may also include an ATS . Under this CME Group interpretation, ATSs include a computer system that generates and/or routes messages without human intervention. (Click here to access the relevant CME Group MRAN – *CME Globex Tag 50 ID Requirements.*)

Member and nonmember firms using proprietarily developed or third-party ATSs must be aware of these CME

Group regulatory provisions and guidance should an ATS they use malfunction and disrupt the marketplace. Moreover, they should consider what steps they might take in advance to minimize the likelihood of a potential problem, given the CME Group's apparent views.

More Briefly:

- **International Bank Agrees to Pay US $70 Million to Resolve CFTC Charges That it Attempted to Manipulate ISDAFIX Benchmark**: Deutsche Bank Securities Inc. agreed to pay a fine of US $70 million to resolve charges brought by the Commodity Futures Trading Commission alleging that, from at least January 2007 through May 2012, it attempted to manipulate the US Dollar International Swaps and Derivatives Association Fix benchmark. The CFTC claimed that DBSI engaged in such violation through the acts of some of its traders who caused the firm to make false submissions in order to impact the Fix in a direction to help benefit the firm's trading book.
- **New Measure of Size of Swaps Market Proposed by CFTC Relying on Entity-Netted Notionals**: J. Christopher Giancarlo, chairman of the Commodity Futures Trading Commission, announced a new measure of interest rate swap market size and risk – rather than notional value as currently is used – that he termed "entity netted notionals." ENNs, said Mr. Giancarlo, more accurately measure the size and risk of the IRS market as they represent the net of longs and shorts between pairs of counterparties within each currency. According to this measure, the size of the IRS market is US $15 trillion, which approximately equates to the size of the US Treasury market (US $16 trillion) and corporate bond market (US $12 trillion). Mr. Giancarlo introduced this new measure at DerivCon 2018.
- **CFTC Commissioner Describes Three Pillars of Optimal Position Limits Regime**: Brian Quintenz, a relatively new commissioner at the Commodity Futures Trading Commission, argued that, in any proposed new speculative position limit rules, the Commission should authorize commercial enterprises to engage in hedging activities that address not just price risk, but also operational, liquidity, credit, locational, political and season risks. Mr. Quintenz also said that any new rule should ensure that enumerated bona fide hedges include common commercial hedging strategies and that market participants should have an "efficient, simple process" for non-enumerated hedges that is not subject to being overturned. Mr. Quintenz provided his views before the Commodity Markets Council State of the Industry 2018 conference. (Click hereto access background on the CFTC's 2016 amended speculative position limits proposal in the article "CFTC Proposes to Authorize Exchanges to Grant Physical Commodity Users Non-Enumerated Hedging Exemptions and Other Relief Related to Speculative Position Limits," in the May 27, 2016 edition of *Between Bridges*.)
- **IOSCO Proposes Best Practices for Funds to Enhance Liquidity Risk Management**: The International Organization of Securities Commissions issued final recommendations to improve liquidity risk management practices of investment funds. Principal among its recommendations is that funds have "robust" liquidity risk management programs. Additionally, advised IOSCO, funds should establish liquidity thresholds that are proportionate to their redemption obligations and liabilities, and that its subscription and redemption arrangements are "appropriate" in light of its investment strategy and held assets through their entire product life cycle. Funds should also ensure that they have adequate information for liquidity management and disclose liquidity risk and their liquidity risk process to investors and prospective investors.
- **NFA Bars Combined IB and CPO from Membership for Not Complying with Enhanced Supervisory Requirements**: Managed Capital Advisory Group Ltd. – a Commodity Futures Trading Commission registered introducing broker and commodity pool operator as well as a designated swap firm, agreed to settle an administrative complaint filed by the National Futures Association in September 2013 by agreeing to withdraw as an NFA member within 90 days and never applying again for membership. In 2011, MCA became subject to NFA's enhanced supervisory requirements requiring the firm to tape record all sales solicitations, submit all promotional material to NFA in advance of first use for review and approval, and maintain minimum capital of US $90,000. In the complaint, the NFA charged that MCA violated these requirements and that associated persons conducted "misleading and unbalanced" sales solicitations.