

CFTC and SRO Enforcement Trends: The year in review

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Agenda

- 1. CFTC & SRO Enforcement Priorities**
- 2. Key CFTC & SRO Metrics**
- 3. CFTC Enforcement Trends**
- 4. CFTC Enforcement Manual & Whistleblower Program**
- 5. SRO Enforcement Trends**
- 6. Key Takeaways & Questions**



CFTC Enforcement Priorities

Preserving Market Integrity



Commodities and derivative markets only function when participants have confidence in their integrity. Detecting, investigating, and prosecuting misconduct like **fraud, manipulation, spoofing, and other disruptive trading** is central to ensuring market integrity.

Promoting Individual Accountability



Holding responsible individuals accountable **deters bad actors** and incentivizes companies developing **cultures of compliance**.

Protecting Customers



Protecting customers requires aggressive prosecution of **fraud and other abuses** e.g. in precious metals, forex, and binary options trading and new markets, including digital assets.

Coordination with Other Regulators & Criminal Authorities



Coordination in the enforcement and regulatory community **both domestically and internationally** is essential as markets evolve and become more interconnected.

SRO Enforcement Priorities

Vary across SROs with some common features...

- **The Chicago Mercantile Exchange (the “CME”)** – *conducting investigations/market surveillance and resolving violations*
- **The Intercontinental Exchange (the “ICE”)** – *supporting the integrity of its markets and protecting investors by investigating and prosecuting violations of the ICE’s rules and federal securities laws*
- **The National Futures Association (the “NFA”)** – *safeguarding the integrity of the derivatives markets, protecting investors, and ensuring NFA Members meet their regulatory responsibilities*



Key Metrics – CFTC

What do the numbers from FY 2019 tell us?

- Docket of **over 140** pending cases against corporate entities and individuals – *more litigation and active enforcement is on the horizon for 2020*
- Total monetary relief of **\$1.3 billion** awarded in CFTC enforcement actions (39% increase from FY 2018) – *reflects broad range of significant actions pursued by the Division of Enforcement (the “Division”)*
- **16 CFTC actions** filed in parallel with criminal authorities (the most in the CFTC’s history) – *CFTC coordination with the DOJ and FBI is on the rise*



Key Metrics – CFTC

Total of 69 actions filed by the CFTC in FY 2019

CFTC Enforcement Actions Filed FY 2019	
Case Category	Number
Manipulative Conduct, Spoofing	16
Commodities Fraud	25
Misappropriation of Confidential Information, Trade Allocation Schemes, Mismarking	4
Protection of Customer Funds, Supervision, and Financial Integrity	6
Swap Data Reporting & Pricing	7
Illegal Off-Exchange Contracts, Failure To Register	1
Other Trade Practice, Including Wash Trades, Fictitious Trades, Position Limits	4
Recordkeeping, Other Reporting	3
False Information to CFTC or SRO, Violation of Prior Orders	3
Total	69



Key Metrics – SROs

What do the numbers from 2019 tell us?

- **158 settlements/disciplinary actions** taken by the CME's Market Regulation Enforcement Team – *demonstrates active use of the CME's disciplinary process*
- **33 disciplinary notices** issued by the ICE – *targeting both multiple and single violations of ICE rules*
- **18 disciplinary decisions** and **\$1.7 million** in fines issued by the NFA – *achieved through close collaboration with the CFTC and other regulators*



Key Metrics

How do we interpret the numbers from 2019?

- Provide tangible benchmarks and measures of successes
- Reflect broader enforcement trends
- Only tell part of the story, *i.e.*, overall amounts of monetary relief and total numbers of cases filed may serve as imprecise measures
- Combining quantitative and qualitative data is the best approach



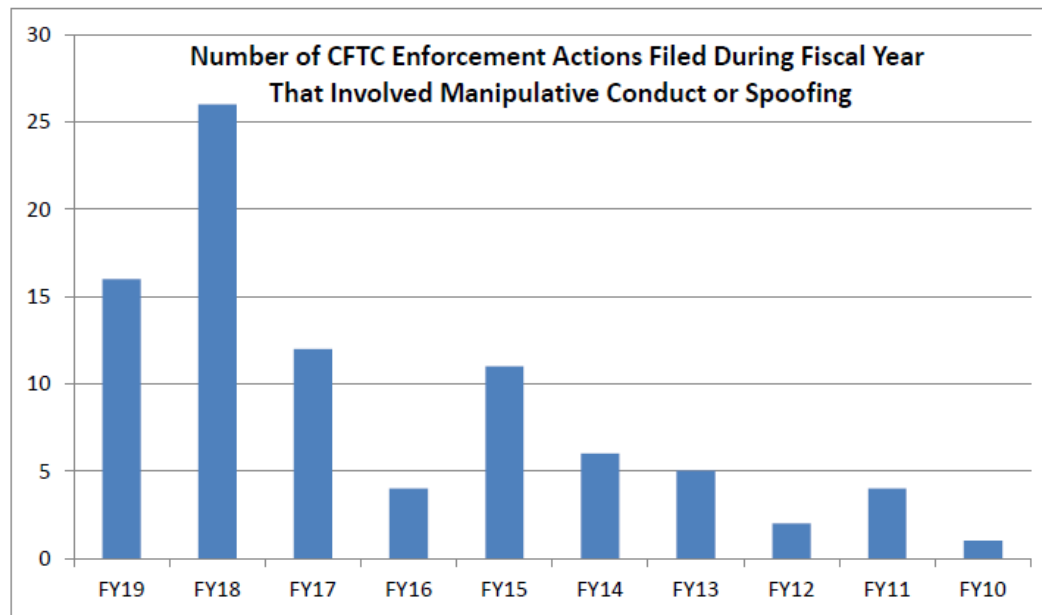
CFTC Enforcement Trends

1. Manipulative Conduct, Spoofing, & Commodities Fraud
2. Misappropriation of Confidential Information, Trade Allocation Schemes, & Mismarking
3. Protection of Customer Funds, Supervision, & Financial Integrity
4. Swap Data Reporting & Pricing
5. Illegal Off-Exchange Contracts & Failure to Register
6. Wash Trades, Fictitious Trades, & Position Limits
7. Recordkeeping & Other Reporting
8. False Information to CFTC or SRO & Violation of Prior Orders



Manipulative Conduct, Spoofing, & Commodities Fraud

- **41 actions** involving manipulative conduct, spoofing, and commodities fraud (represents **65%** of all actions filed in FY 2019) – *upward trend in enforcement*
- Aimed at **preserving market integrity and protecting market participants** – *reflects dual enforcement priorities*



Manipulative Conduct, Spoofing, & Commodities Fraud

- **Spotlight on spoofing** – *high-frequency trading that is used to manipulate market conditions and mislead other traders*



Image source: <https://cryptocurrencyfacts.com/cryptocurrency-and-spoofing/>



Manipulative Conduct, Spoofing, & Commodities Fraud

- **6 actions** where spoofing, manipulative trading, and/or commodities fraud charges were filed concurrently (as well as RICO Act and wire fraud actions)
- Increased CFTC and DOJ collaboration



CME Enforcement Activity – Spotlight on Spoofing Investigations & Collaboration

- Examples:
 1. ***In re Tower Research Capital, LLC, Nov. 7, 2019*** – three former traders manipulated trading prices in equity index futures products traded on the CME and CBOT and the CFTC imposed \$67.4 million penalty on the firm (comprised of \$32.5 million criminal monetary penalty/victim compensation, \$10.5 million in disgorgement, and \$24.4 million civil monetary penalty – the largest total monetary relief ever ordered in a spoofing case; the firm also entered into a deferred prosecution agreement with the DOJ)
 2. ***In re Hard Eight Futures, LLC/In re Igor Chernomzav, Sept. 30, 2019*** – partner and trader at proprietary trading firm engaged in spoofing in E-mini S&P 500 futures contracts and on the CME and the CFTC imposed \$1.75 million civil monetary penalty and \$750,000 civil monetary penalty and 9 month trading ban on Chernomzav
 3. ***In re Kevin Crepeau, Jan. 31, 2019*** – trader at a proprietary trading firm engaged in spoofing in the CME soybeans futures market over a 3 year period and the CFTC imposed \$120,000 civil monetary penalty and 4 month trading suspension



Spoofing and RICO Act violations

- To succeed in RICO Act violation case the DOJ must show a “**pattern of racketeering activity**” vs. spoofing cases involve establishing intent through complex order entry, cancellation, and fulfillment data – *potentially more straightforward path to convictions*
- Maximum sentence of **20 years’ imprisonment** for RICO Act violations vs. 10 year maximum for spoofing – *potential for greater penalties to be imposed*



Spoofing and wire fraud

- Potential **10 year statute of limitations period**
- Placing electronic market orders with the intention of canceling them constitutes a “**false representation**” for the purposes of wire fraud – *empowers the DOJ to prosecute a broader scope of alleged market rigging*
- Maximum sentence of **30 years’ imprisonment** for wire fraud vs. 10 year maximum for spoofing – *carries far greater potential penalties*



Manipulative Conduct, Spoofing, & Commodities Fraud

- Examples:
 1. ***CFTC v. Nowak & Smith, Sept. 16, 2019*** – two traders at JPMorgan Chase manipulated trading prices in precious metals futures markets charged with spoofing by CFTC and indicted by DOJ on charges of manipulation, spoofing, and wire fraud as well as under the RICO Act
 2. ***In re Krishna Mohan, Feb. 25, 2019*** – manipulative and deceptive schemes used by Mohan in precious metals futures markets led to CFTC spoofing charges and DOJ bringing parallel charges of commodities fraud, spoofing, and wire fraud



Misappropriation of Confidential Information, Trade Allocation Schemes, & Mismarking

- **4 actions** involving misappropriation of confidential information, trade allocations schemes, and mismarking



Misappropriation of Confidential Information, Trade Allocation Schemes, & Mismarking

- Examples:
 1. ***In re Classic Energy, LLC & Mathew D. Webb, Sept. 30, 2019*** – CFTC-registered introducing broker and affiliated person (Webb) misappropriated customers' material nonpublic information by executing customer orders for block trades against an account owned and controlled by Webb without disclosing Webb was the principal on the other side of the trades
 2. ***In re Swapnil Rege, Jul. 18, 2019*** – \$700K monetary penalty imposed on portfolio manager for hedge fund registered with the CFTC as a commodity pool operator (“CPO”) for fraudulently mismarking swap valuations to artificially inflate the profits of the fund's trading book to obtain an increased performance bonus



Protection of Customer Funds, Supervision, & Financial Integrity

- **6 actions** involving protection of customer funds, supervision, and financial integrity
- Vigorous enforcement of rules requiring CFTC registrants to properly supervise their business activities



- Examples:
 1. ***In re RBC Capital Markets, LLC, Sept. 30, 2019*** – \$5 million monetary penalty and 3-year cooperation order imposed on registered futures commission merchant (“FCM”) for failing to meet its supervisory obligations, which resulted in hundreds of unlawful trades and other violations over 2011-2017
 2. ***In re Tullett Prebon Americas Corp., Sept. 13, 2019*** – \$13 million monetary penalty imposed on interdealer broker and CFTC-registered introducing broker for failing to supervise employees and making false or misleading statements to CFTC staff

Swap Data Reporting & Pricing

- **8 actions** involving swap data reporting and pricing
- Goes hand in hand with CFTC's introduction of the revised **Weekly Swaps Report** in July 2019
- Importance of swap data being freely available in a form that is readily usable by both market participants and the general public



Swap Data Reporting & Pricing

- Examples:
 1. **CFTC v. Christophe Rivoire, Dec. 20, 2019** – complaint filed against former Head of North American Rates at HSBC New York for engaging in a deceptive scheme to manipulate the pricing of an interest rate swap between a bond issuer and a global investment bank; including prices for U.S. dollar interest rate basis swaps with a five-year maturity, to maximize the bank’s profit at the issuer’s expense
 2. **In re PNC Bank, Sept. 30, 2019** – \$300,000 monetary penalty imposed on provisionally registered swap dealer for failing to comply with its swap reporting obligations i.e. failing to properly report legal entity identifiers (“LEIs”), primary economic terms, and continuation data to its swap data repository (“SDR”), not filing large trader reports for its physical commodity swaps, and failing to timely report trades to its SDR
 3. **In re The Northern Trust Company, Sept. 30, 2019** – \$1 million monetary penalty imposed on provisionally registered swap dealer for numerous violations of the CEA and CFTC regulations relating to swap reporting, *i.e.*, failed to correctly report hundreds of thousands of swap transactions to its SDR



Illegal Off-Exchange Contracts & Failure to Register

- **1 action** involving illegal off-exchange contracts and the failure to register
- Requirement that contracts be offered by registered entities on a bona fide exchange part of the CFTC's comprehensive regulatory regime to protect the public from unscrupulous trading outfits



Illegal Off-Exchange Contracts & Failure to Register

- Example:
 1. ***In re Curtis Dalton (d/b/a Binary International)***, Jul. 29, 2019 – \$200,000 monetary penalty and permanent trading ban imposed on principal of binary options trading firm for offering illegal off-exchange retail commodity transactions in foreign currencies to U.S. and overseas customers while failing to be registered with the CFTC as an FCM



Wash Trades, Fictitious Trades, & Position Limits

- **4 actions** involving wash trades, fictitious trades, and position limits
- Ensuring that the derivatives markets remain open and competitive, and are not undermined by unlawful wash sales and noncompetitive trading is a key CFTC initiative
- Increased collaboration between the CFTC and the Chicago Mercantile Exchange, Inc. (“CME”)



Wash Trades, Fictitious Trades, & Position Limits

- Examples:
 1. ***In re ARMKAT, LLC, Sept. 25, 2019*** – \$140,000 monetary penalty imposed by CFTC and disciplinary action taken by CME for family-operated trading entity violating spot-month speculative position limits in soybean oil and soybean meal futures
 2. ***In re Eagle Market Makers, Inc., June 28, 2019*** – \$350,000 and \$150,000 monetary penalties imposed by CFTC order and parallel CME disciplinary action on firm that engaged in wash sales and noncompetitive transactions traded on the Chicago Board of Trade (“CBOT”) and the CME



Recordkeeping & Other Reporting

- **3 actions** involving recordkeeping and other reporting violations
- Highlights the importance of recordkeeping, supervision, and transparency in reporting to the CFTC in safeguarding the integrity of markets



Recordkeeping & Other Reporting

- Examples:
 1. ***In re Goldman Sachs & Co., Nov. 26, 2019*** – \$1 million monetary penalty imposed for failing to make and keep certain audio recordings as required under CFTC regulations for swap dealers which impeded an unrelated investigation conducted by the Division (spot-check of the affected office's recording system)
 2. ***In re BGC Financial, LP, Nov. 22, 2019*** – \$3 million monetary penalty and compliance reporting and monitoring undertakings imposed on futures industry voice broker/FCM for numerous supervision, reporting, and recordkeeping violations spanning over 5 years



False Information to CFTC or SRO & Violation of Prior Orders

- **3 actions** involving false information and violation of prior orders
- The CFTC's ability to bring contempt actions to enforce monetary penalties/restitutions awards is currently under review by the courts
- Both individuals and entities that violate reporting obligations and/or prior orders will be held accountable



False Information to CFTC or SRO & Violation of Prior Orders

- Examples:
 1. ***CFTC v. Robert & Susan Escobio, LLC, Jan. 6, 2020*** – Eleventh Circuit Court of Appeals panel reversed a District Court decision permitting the CFTC to bring a coercive civil contempt action against the defendants for failing to pay an equitable restitution award to investors who were victims of their commodity-fraud scheme and District Court’s modification of the award
 2. ***In re Coby Tresner, Sept. 30, 2019*** – \$250,000 monetary penalty and permanent trading ban imposed on commodity trading advisor for failing to register with the CFTC, misappropriating client funds, and making false and misleading statements to the CFTC during its investigation into his misconduct
 3. ***In re CHS, Inc., Sept. 30, 2019*** – \$500,000 monetary penalty imposed on for violating the cease and desist provision of a 2016 CFTC order (involving a reporting violation)



CFTC Enforcement Manual

- Published for the first time in **May 2019**
- Aims to increase **transparency, certainty, and consistency** by providing the policies and procedures that guide the Division's detection, investigation, and prosecution of violations of the CEA and CFTC Regulations
- “**Living document**” that will be updated to reflect new policies and any changes to existing policies



Enforcement Manual



CFTC Whistleblower Program

- Continued advancement and growth over FY 2018-FY 2019
- **14/117** claims for whistleblower awards granted by CFTC
- **In total > \$100 million** awarded to deserving whistleblowers
- CFTC actions associated with whistleblower awards have resulted in **judgments totaling > \$800 million**



SRO Enforcement Trends

1. CME Enforcement Activity
 - Spotlight on Spoofing Investigations & Collaboration
2. ICE Enforcement Activity
 - 7 Key Enforcement Areas
3. NFA Enforcement Activity
 - Enforcement Focus & Disciplinary Mandate
 - Regulatory Coordination & Cooperation (Internationally & Domestically)
 - Updates to Regulatory Systems & Policies



CME Enforcement Activity – Spotlight on Spoofing Investigations & Collaboration

- **8 actions** where the CME conducted parallel investigations and took disciplinary action for spoofing against individuals and trading firms
- **2 actions** where the CBOT also assisted and collaborated with the CFTC and the CME
- Penalties imposed include fines, disgorgement of profits, and trading suspensions



ICE Enforcement Activity – 7 Key Areas

1. **13 enforcement actions** for violations of audit trail requirements for orders submitted on the electronic trading system – *crackdown on reporting violations and compliance with auditing requirements*
2. **11 enforcement actions** for trade practice violations and failure to supervise – *increased monitoring of the purpose of transactions*
3. **6 enforcement actions** for conduct detrimental to the ICE – *focus on promoting just and equitable principles of trade and deterring conduct detrimental to the ICE's best interests*
4. **4 enforcement actions** for block trading violations – *emphasis on meeting applicable minimum quantity threshold and reporting requirements for block trades*



ICE Enforcement Activity – 7 Key Areas

- 5. 5 enforcement actions** for failure to include required identifiers in orders and to comply with order ticket/general recording requirements – *increased scrutiny of individual orders*
- 6. 4 enforcement actions** for inaccurate reporting of open interest and large trader positions – *focus on compliance with reporting requirements*
- 7. 3 trading access denials** for failure to pay monetary penalties according to settlement terms of prior disciplinary actions – *penalties imposed for violations go beyond further fines*



Exchange Enforcement Activity

1. Audit trail data irregularities
2. Failure to comply with block trading & trade practices requirements
3. Repetitive violations
4. Reporting violations
5. Failure to comply with cross trading practice requirements
6. Spoofing enforcement actions in parallel with the CFTC



NFA Enforcement Activity – Enforcement Focus & Disciplinary Mandate

- **20 complaints against 37 respondents** issued by the NFA's Business Conduct Committee – *focus on failures to supervise, to cooperate with NFA investigations, and to observe just and equitable principles of trade*
- **5 trading bans and 6 suspensions** ordered by NFA disciplinary panels – *range of penalties imposed goes beyond fines*
- **1,300 registration investigations** opened by the NFA's Registration Investigations Group – *increased scrutiny of registration forms and disciplinary information obtained during NFA background checks*



NFA Enforcement Activity – Regulatory Coordination & Cooperation (Internationally & Domestically)

- Assumed leadership role as **Chair of the IOSCO Affiliate Members Consultative Committee (the “AMCC”)** and completed examinations in **the UK, Australia, Canada, and Sweden** – *opportunity to contribute and drive global policy development, coordination, and cooperation*
- Close collaboration with **criminal authorities and agencies** conducting parallel investigations leading to greater sentences – *domestic regulatory coordination is also on the rise*



NFA Enforcement Activity – Updates to Regulatory Systems & Policies

- Updates address **current challenges e.g. cyber security and virtual currencies** – *changing regulatory systems and policies reflect evolving market conditions*
- Re-design of “**BASIC**” **NFA search directory system** – *improved search capabilities and user interface*
- Interpretive Notice establishing **disclosure requirements for virtual currency activities** – *increased oversight of spot market virtual currencies and virtual currency derivatives*
- Introduction of more comprehensive **cyber security examinations and educational workshops** – *aim of enhancing compliance with cyber security requirements*



Key Takeaways – CFTC

Preserving market integrity and protecting customers are core CFTC priorities.

Key metrics reflect broader enforcement trends.

Collaboration and coordination with criminal authorities and SROs is on the rise.

The CFTC views individual accountability as central to deterring bad actors.

Transparency, certainty, and consistency in CFTC policies and procedures is key.

The CFTC recognizes the value of whistleblowers in investigations.



Key Takeaways – SROs

SROs view adequate member supervision as an enforcement priority.

Key metrics illustrate enforcement trends but the devil is in the detail.

International and domestic regulatory coordination and collaboration is on the rise.

SROs are cracking down on registration and reporting violations.

Penalties imposed by SROs go beyond fines e.g. trading bans and suspensions.

Updates to regulatory systems and policies reflect evolving market conditions.

QUESTIONS?



Your Presenters



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