This webinar will begin shortly.

FIA

Commodities Enforcement

An L&C Division Webinar

November 7, 2024

Reminders

- The webinar will be recorded and posted to the FIA website within 24 hours of the live webinar.
- Please use the “question” function on your webinar control panel to ask a question to the moderator or speakers.
- *Disclaimer: This webinar is intended for informational purposes only and is not intended to provide investment, tax, business, legal or professional advice. Neither FIA nor its members endorse, approve, recommend, or certify any information, opinion, product, or service referenced in this webinar. FIA makes no representations, warranties, or guarantees as to the webinar’s content.*

Presenters

Host:

Michael Sorrell, Deputy General Counsel, FIA

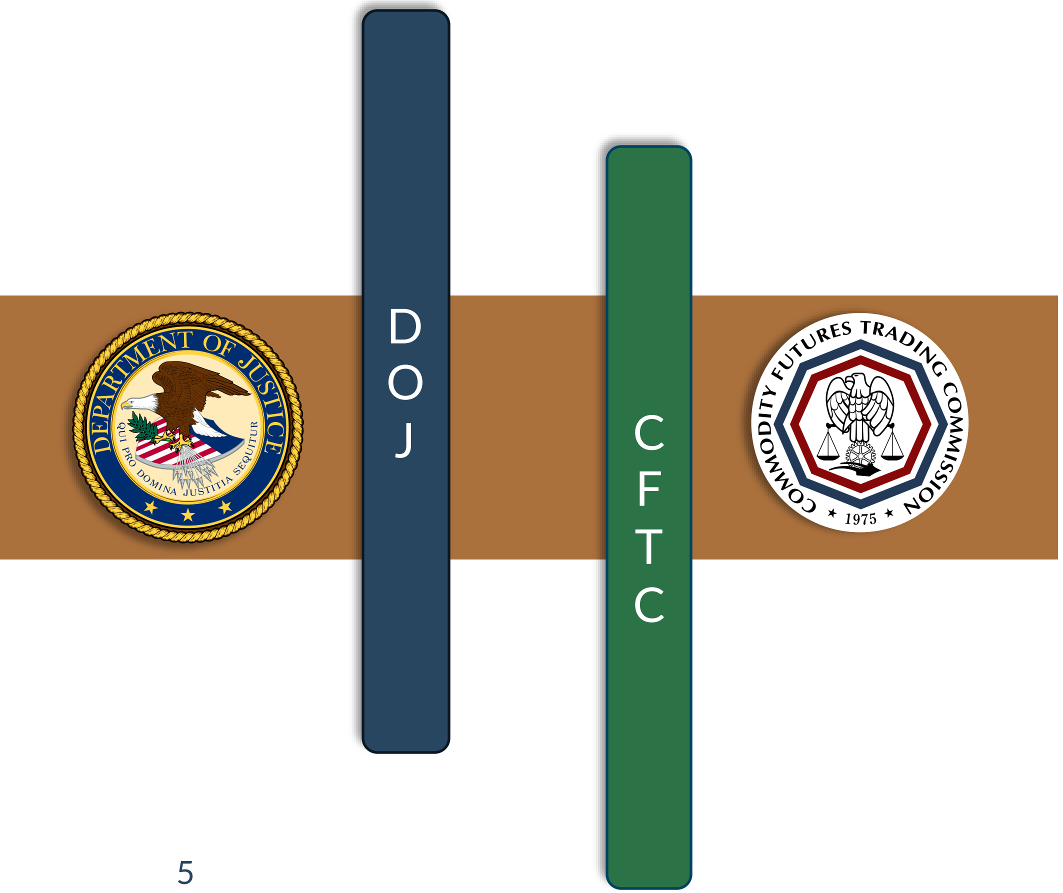
Speakers:

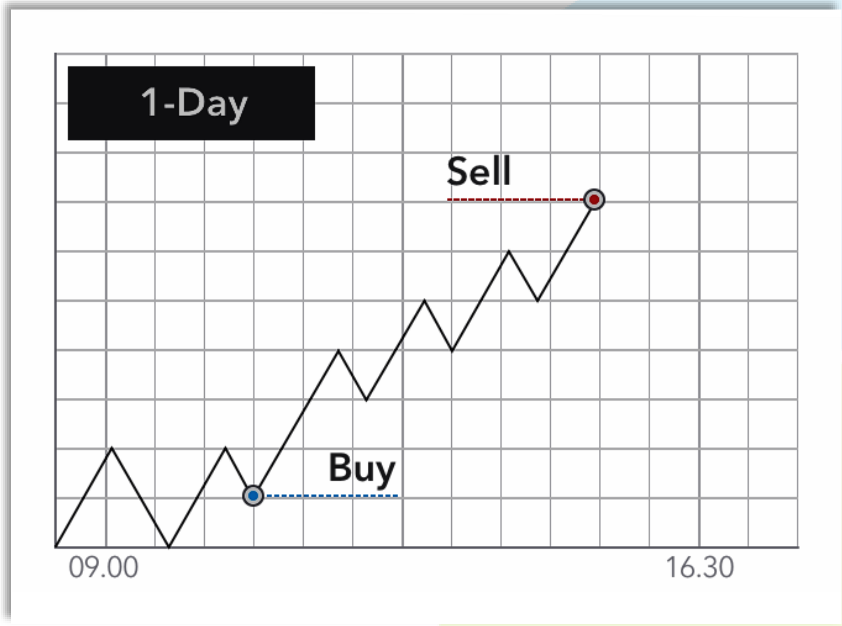
Edward Imperatore, Partner, Morrison & Foerster

Brian Kidd, Partner, Morrison & Foerster

DOJ & CFTC Investigative Techniques

- DOJ and the CFTC undertake separate but parallel investigations.





- DOJ and the CFTC closely collaborate with investigative tools to develop a relevant timeline of events.

CFTC Enforcement Trends

- Four broad categories of enforcement actions:
  - **Business Practices**: Reporting, Risk Management, Adequate Compliance Programs
  - **Deceptive Conduct**: Manipulation, Spoofing, Misappropriation of Material Non-Public Information
  - **Consumer Protection**: Fraud, Investment Schemes
  - **Digital Assets**: Anti-Evasion, Intermediary Liability, Money Laundering and Supervisory Claims

Key Commodities Statutes

Name	Statute	Penalties
Commodities Fraud	7 U.S.C. § 9(1)(A)	A fine not more than $1,450,040 per violation
Futures Fraud	7 U.S.C. § 6b(a)(2)(A), (C)	A fine not more than $1,450,040 per violation
Retail Leveraged or Margined Transactions, Regulated Like Futures	7 U.S.C. § 2(c)(2)(D)	* Depends on underlying charge
Manipulative Device or Contrivance (includes Insider Trading)	17 C.F.R. § 180.1	A fine not more than $1,450,040 per violation
Commodity Pool Operator Fraud	7 U.S.C. § 6o(l)(A)-(B)	A fine not more than $1,450,040 per violation

Key Commodities Statutes (Cont.)

Name	Statute	Penalties
Off-Channel Communications	7 U.S.C. §§ 6g, 6s 17 C.F.R. §§ 1.31, 1.35, 23.201, 23.202	A fine not more than $1,107,332 per violation
Failure to Supervise	17 C.F.R. § 166.3	A fine not more than $1,107,332 per violation
Swap Reporting Failure	7 U.S.C. §§ 2(a), 6s 17 C.F.R. §§ 23.431, 43.3, 45.3, 45.4, 45.6	A fine not more than $1,107,332 per violation
Swap Dealer Supervision	7 U.S.C. § 6s(h)(1)(B) 17 C.F.R. § 23.602	A fine not more than $1,107,332 per violation
Spoofing	7 U.S.C. §§ 6c(a)(5)(C), 13(a)(2)	A fine not more than $1,450,040 per violation

Key Commodities Statutes (Cont.)

Name	Statute	Penalties
Failure to Implement Customer Information Program	**17 C.F.R. § 240.13B2-1 15 U.S.C. §§ 78m(b)(2), 78m(b)(5), 78ff(a)**	A fine not more than $1,107,332 per violation
Anti-Evasion	**17 C.F.R. § 240.13b2-2 15 U.S.C. § 78ff(a)**	A fine not more than $1,107,332 per violation

Key Federal Statutes

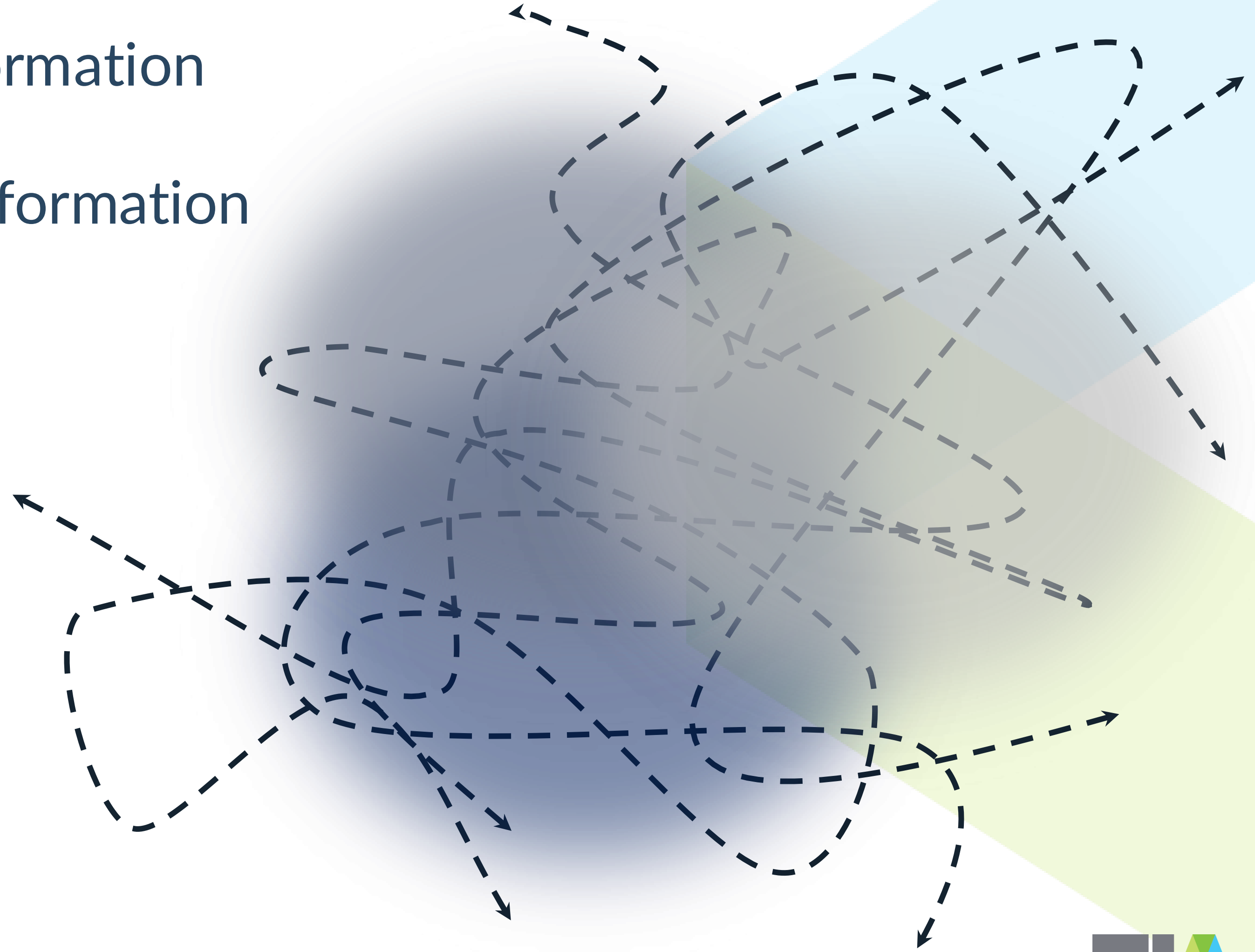
Name	Statute	Penalties
Wire Fraud	**18 U.S.C. § 1343**	Imprisonment for not more than 20 years and a fine of not more than $250,000 (not more than $500,000 for organizations), or a fine of not more than $1 million and imprisonment for not more than 30 years if the victim is a financial institution or the offense was committed in relation to a natural disaster
Securities and Commodities Fraud	**18 U.S.C. § 1348**	Imprisonment for not more than 25 years and a fine of not more than $250,000 (not more than $500,000 for organizations)
Conspiracy	**18 U.S.C. § 1349**	Subject to the same penalties as those prescribed for the offense
Insider Trading	**17 C.F.R. § 240.10b-5**	Imprisonment for not more than 20 years and a fine of $5 million for an individual and $25 million for a corporation
Spoofing	**7 U.S.C. §§ 6c(a)(5)(C), 13(a)(2)**	Imprisonment for not more than 10 years and a fine of $1 million or three times the monetary gain, whichever is greater

Recent Significant Cases

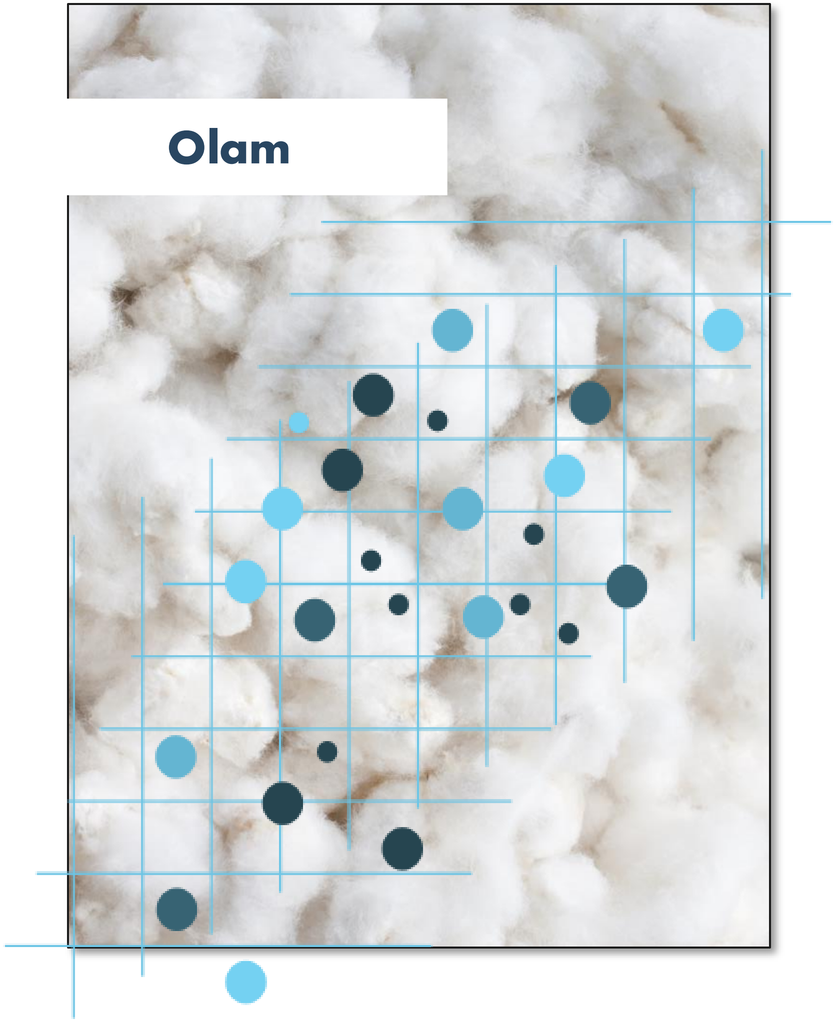
Deceptive Conduct

Deceptive Conduct

- False or Misleading Reporting Information
- Trading on Material Non-Public Information
- Market Manipulation
- Wash Sales
- Spoofing



Olam Misleading Data Reporting: $3.25M



Violations and Settlement

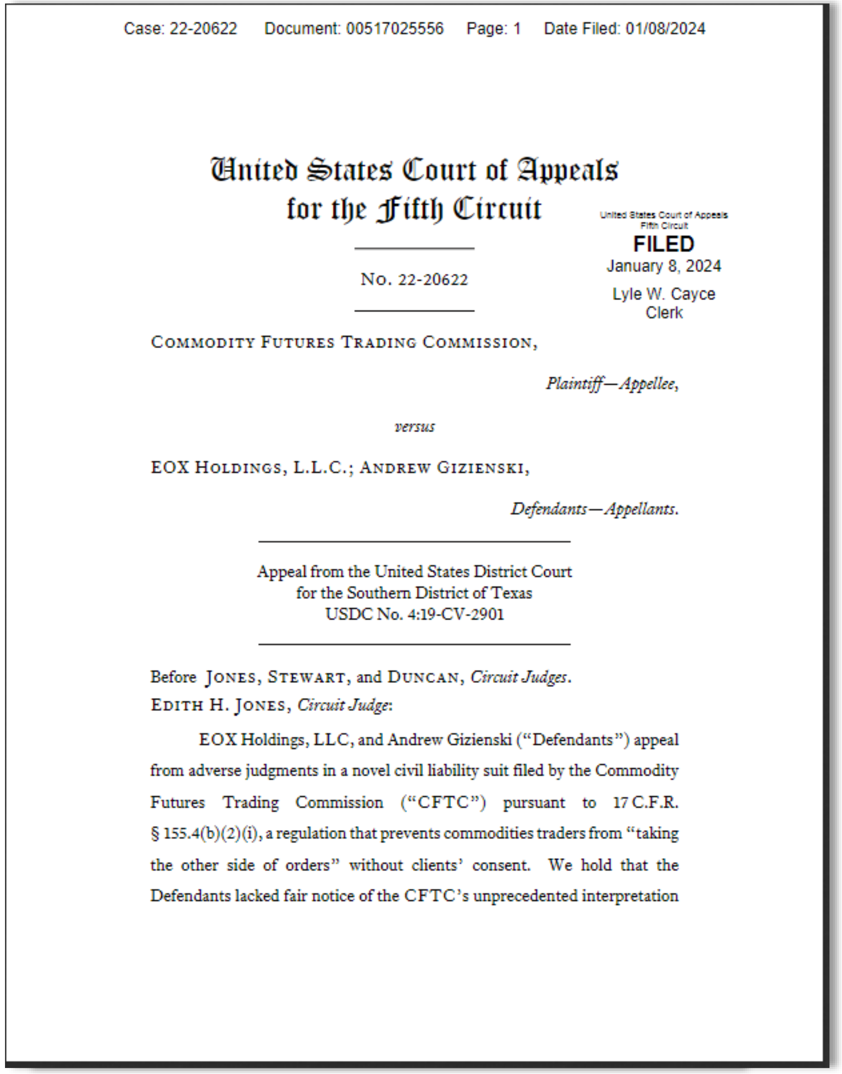
Order/**$3.25 million**

- Olam submitted to the USDA false, misleading, or inaccurate data regarding the sale of physical cotton, either knowingly or recklessly, violating CFTC rules against reporting misleading crop or market information.

Remediation

- Updated policies for timely reporting
- Advisory note to employees describing regulatory reporting responsibilities
- Guidelines and desktop procedure manuals
- Engaging in ongoing monitoring

MNPI Litigation: *CFTC v. EOX Holdings LLC*



Case: 22-20622 Document: 00517025556 Page: 1 Date Filed: 01/08/2024

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

January 8, 2024

Lyle W. Cayce
Clerk

No. 22-20622

COMMODITY FUTURES TRADING COMMISSION,

Plaintiff—Appellee,

versus

EOX HOLDINGS, L.L.C.; ANDREW GIZIENSKI,

Defendants—Appellants.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:19-CV-2901

Before JONES, STEWART, and DUNCAN, *Circuit Judges.*
EDITH H. JONES, *Circuit Judge:*

EOX Holdings, LLC, and Andrew Gizienski ("Defendants") appeal from adverse judgments in a novel civil liability suit filed by the Commodity Futures Trading Commission ("CFTC") pursuant to 17 C.F.R. § 155.4(b)(2)(i), a regulation that prevents commodities traders from "taking the other side of orders" without clients' consent. We hold that the Defendants lacked fair notice of the CFTC's unprecedented interpretation

District Court

Jury Trial (**$7.9 million** penalty)

- The CFTC alleged that EOX misused customer information by trading on material, non-public information (MNPI) and disclosing confidential customer information to a favored client.
- Jury found in favor of ***defendant*** on MNPI charges.
- Jury found in favor of the ***CFTC*** on charges that EOX shared order information improperly and secretly took the other side of trades against customers.

Fifth Circuit

- *Count related to "taking other side of trades" appealed*
- **Jury verdict reversed – penalty judgment rejected**
- CFTC failed to give **fair notice**, "taking the other side of trades"
- Text of Rule 155.4 ambiguous, and no CFTC guidance

Freepoint Commodities $91M MNPI Violation

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

RECEIVED CFTC
Office of Proceedings
Proceedings Clerk
8:29 am, Dec 14, 2023

In the Matter of:

Freepoint Commodities LLC,

Respondent.

CFTC Docket No. 24-02

ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I. INTRODUCTION

The Commodity Futures Trading Commission ("Commission") has reason to believe that from in or about June 2012 through November 2018 ("Relevant Period"), Respondent Freepoint Commodities LLC ("Respondent" or "Freepoint") violated Section 6(c)(1) of the Commodity Exchange Act ("Act"), 7 U.S.C. § 9(1), and Regulation 180.1(a)(1)–(3), 17 C.F.R. § 180.1(a)(1)–(3) (2022), of the Commission Regulations ("Regulations") promulgated thereunder. Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, except to the extent that Respondent admits those findings in any related action against Respondent by, or any agreement with, the United States Department of Justice ("DOJ") or any other governmental agency or offices, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions ("Order"), and acknowledges service of this Order.[1]

[1] Respondent consents to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondent does not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding in any other jurisdiction.

Violations & Settlement

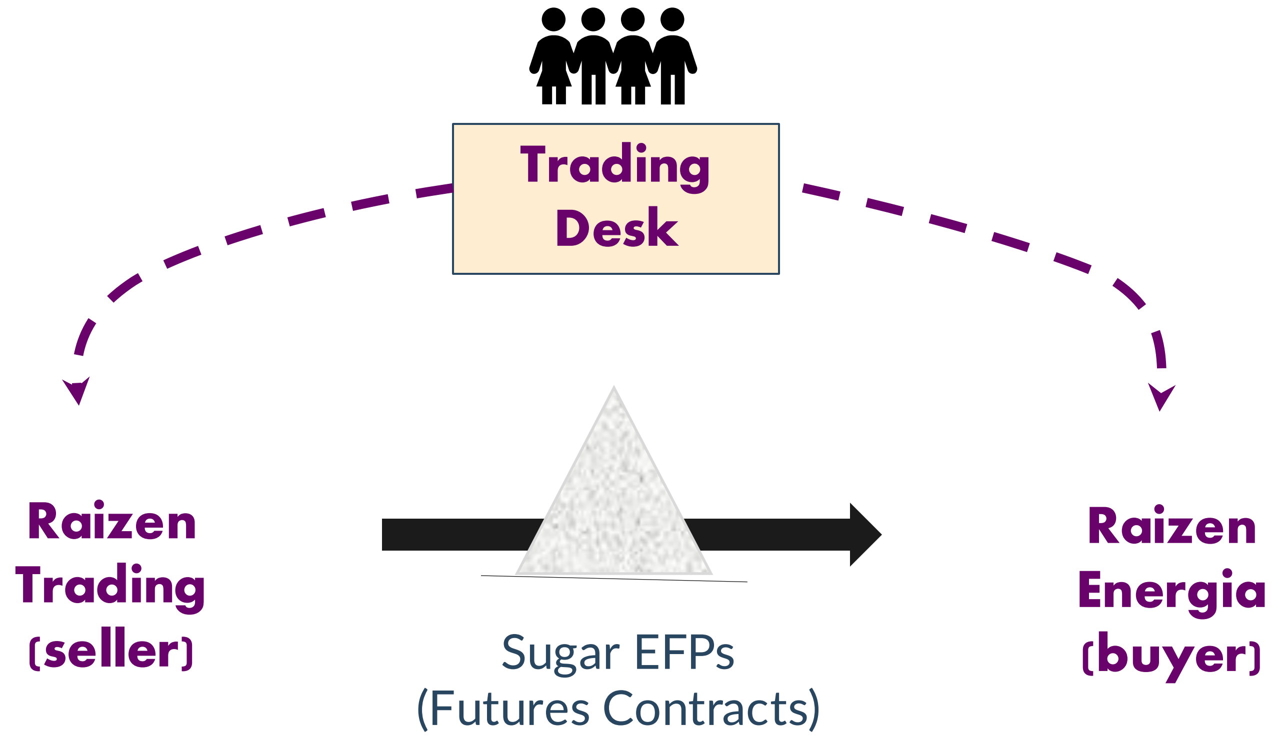
Order/**$91 million** (**$30.5M** disgorgement, **$61M** penalty)

- One or more Freepoint Commodities traders engaged in a fraudulent scheme to misappropriate MNPI from employees of a South American state-owned enterprise using bribes.
- **DOJ charged Freepoint for FCPA violations.**

Remediation

- Third-party compliance consultant
- Updated and implemented KYC policies and controls
- New employees hired for KYC and due diligence
- Mandatory anti-corruption training

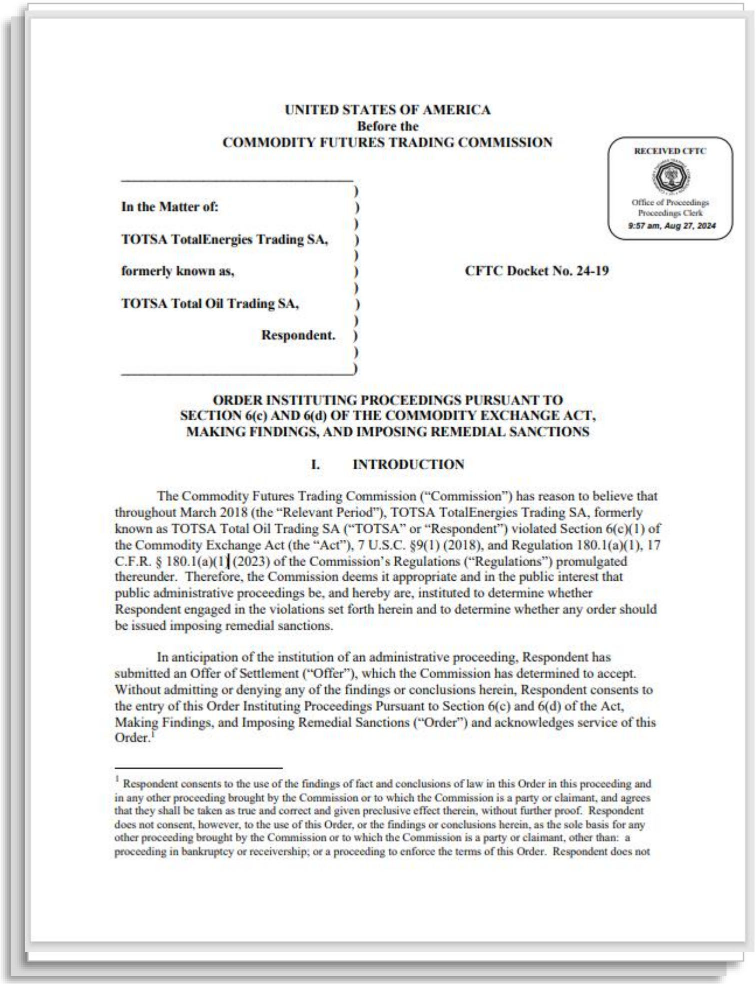
Raizen Energia and Raizen Trading Wash Trading



44 sugar EFPs sold by Raizen Trading to Raizen Energia representing 50,000 sugar contracts

Worth more than $1 billion

TOTSA: $48M Attempted Market Manipulation



UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

RECEIVED CFTC
Office of Proceedings
Proceedings Clerk
9:57 am, Aug 27, 2024

In the Matter of:

TOTSA TotalEnergies Trading SA,

formerly known as,

TOTSA Total Oil Trading SA,

Respondent.

CFTC Docket No. 24-19

ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 6(c) AND 6(d) OF THE COMMODITY EXCHANGE ACT, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I. INTRODUCTION

The Commodity Futures Trading Commission ("Commission") has reason to believe that throughout March 2018 (the "Relevant Period"), TOTSA TotalEnergies Trading SA, formerly known as TOTSA Total Oil Trading SA ("TOTSA" or "Respondent") violated Section 6(c)(1) of the Commodity Exchange Act (the "Act"), 7 U.S.C. §9(1) (2018), and Regulation 180.1(a)(1), 17 C.F.R. § 180.1(a)(1) (2023) of the Commission's Regulations ("Regulations") promulgated thereunder. Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and 6(d) of the Act, Making Findings, and Imposing Remedial Sanctions ("Order") and acknowledges service of this Order.[1]

[1] Respondent consents to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondent does not

Violations & Settlement

Order/**$48 million**

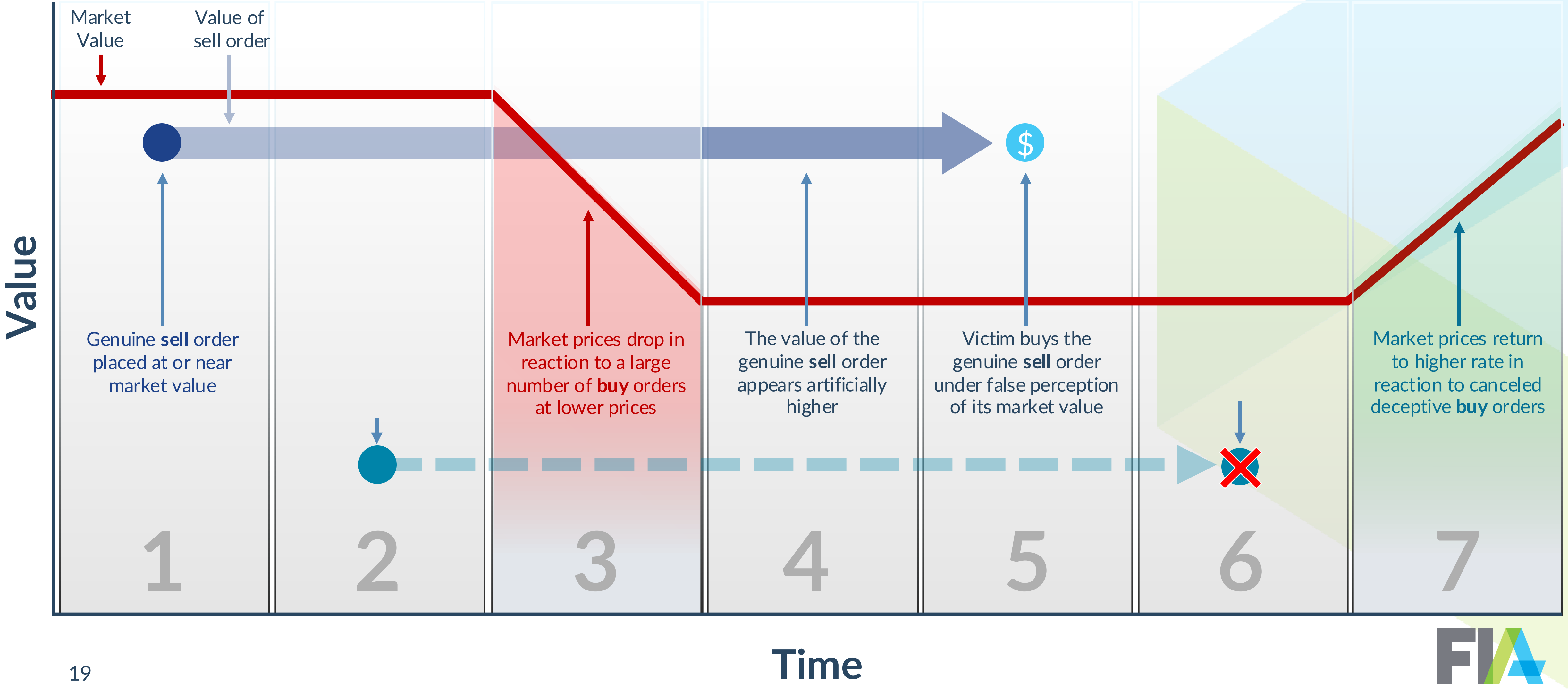
- TOTSA TotalEnergies Trading SA attempted to manipulate the market for EBOB futures by selling physical EBOB at below-market prices.
- Attempted EBOB benchmark manipulation to profit from futures position.

Statement

"I respectfully dissent on In re TOTSA TotalEnergies Trading SA because of the lack of evidence to support the alleged charges and the consequences of asserting that legitimate commercial hedging activity is illegal."

– Commissioner Pham

Spoofing



Market Value
Value of sell order
Value
Genuine sell order placed at or near market value
Market prices drop in reaction to a large number of buy orders at lower prices
The value of the genuine sell order appears artificially higher
Victim buys the genuine sell order under false perception of its market value
Market prices return to higher rate in reaction to canceled deceptive buy orders
$
1
2
3
4
5
6
7
Time

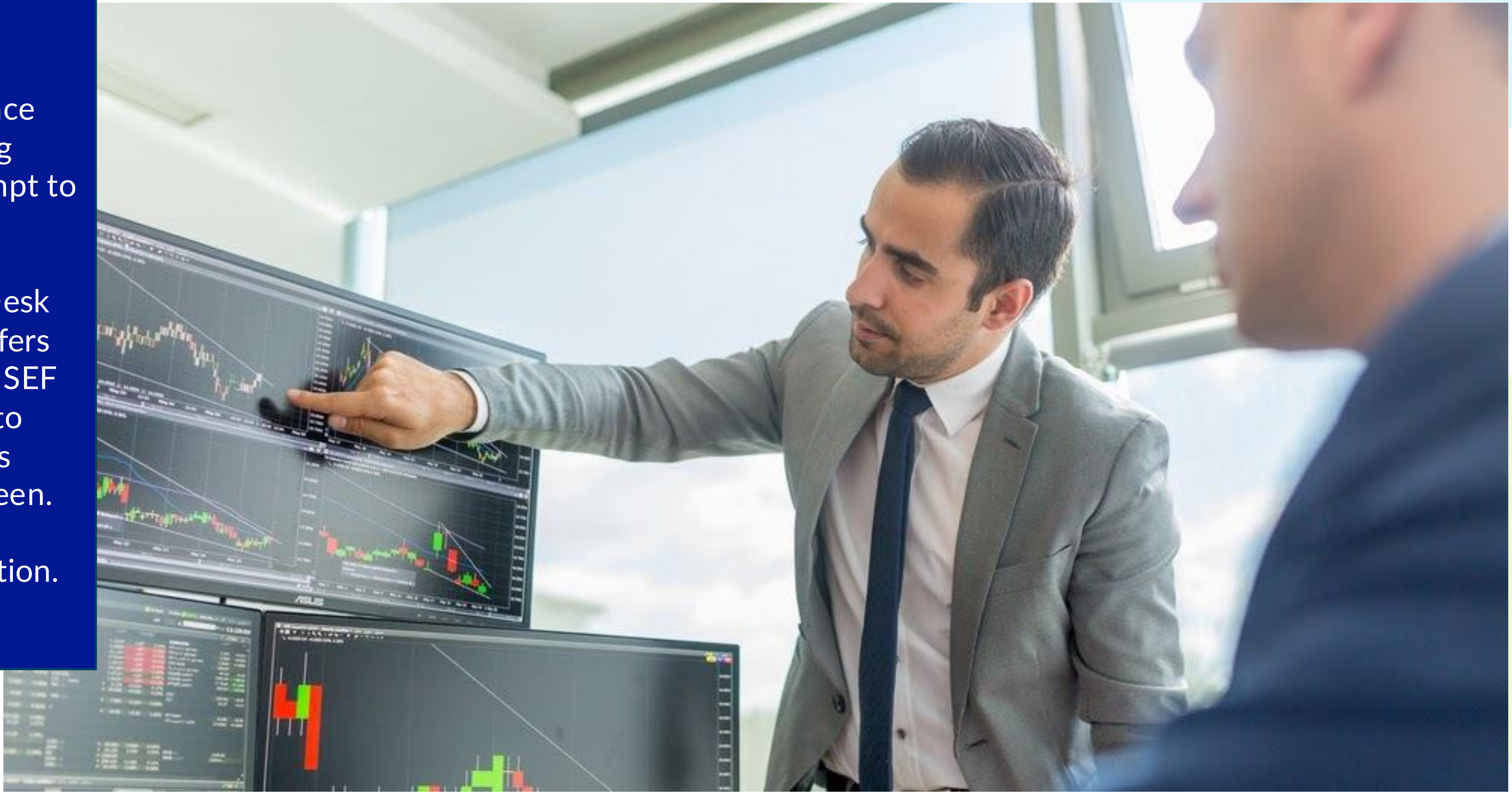
Spoofing and Wire Fraud

- Traditionally, spoofing charges were brought pursuant to the CEA and the Commodities Fraud statute (18 U.S.C. § 1348).
- The SOL for the CEA is 5 years, while the SOL under the Commodities Fraud statute is 6 years.
- In addition to these provisions, DOJ has begun charging spoofing violations under the Wire Fraud statute (18 U.S.C. § 1343), and more specifically, as Wire Fraud Affecting a Financial Institution, which expands the SOL from 5 to 10 years.
- The U.S. District Court for the Northern District of Illinois has twice approved of DOJ's Wire Fraud theory of prosecution, and over the past year, four defendants have been convicted of these counts at trial.

Bank Market Manipulation and Spoofing

"Move the screen"

- Bank traders would place repetitive orders during pricing calls in an attempt to move prices.
- The Bank USD Swap Desk Head placed bids or offers to a voice broker at an SEF that he did not intend to execute to affect prices shown on a pricing screen. The orders would be canceled before execution.



Bank $45M Penalty

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

RECEIVED CFTC
Office of Proceedings
Proceedings Clerk
7:05 am, May 12, 2023

In the Matter of:

HSBC Bank USA, N.A.,

Respondent.

CFTC Docket No. 23-26

ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I. INTRODUCTION

The Commodity Futures Trading Commission ("Commission") has reason to believe that at various times from in or about March 2012 to July 2020 ("Relevant Period"), HSBC Bank USA, N.A. ("HSBC" or "Respondent") violated Sections 4c(a)(5)(C), 4s(h)(1)(A), (B) and (D), and 6(c)(1), 7 U.S.C. §§ 6c(a)(5)(C), 6s(h)(1)(A), (B), (D), 9(1), of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 1–26, and Regulations 1.31(b)(2), 23.202(a)(1) and (b)(1), 23.410(a)(3) and (c)(1)(ii), 23.433, 23.602, and 180.1(a)(1)-(3), 17 C.F.R. §§ 1.31(b)(2), 23.202(a)(1), (b)(1), 23.410(a)(3), (c)(1)(ii), 23.433, 23.602, 180.1(a)(1)-(3) (2022), of the Commission Regulations ("Regulations") promulgated thereunder. Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions ("Order") and acknowledges service of this Order.[1]

[1] Respondent consents to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order.

Settlement & Remediation

Order/**$45 million**

- Conducted a global multi-year remediation program
- Enhanced global policies and guidance on topics such as order handling, pre-hedging, and spoofing
- Improved internal governance framework to ensure that management IDs employee misconduct
- Implemented mandatory training requirements
- Increased surveillance tools for electronic and voice communications, including tools to detect spoofing

Statements

"***[The bank]'s illegal conduct stemmed from a widespread culture of non-compliance.***"

– Commissioner Goldsmith Romero

FIA

Business Practices

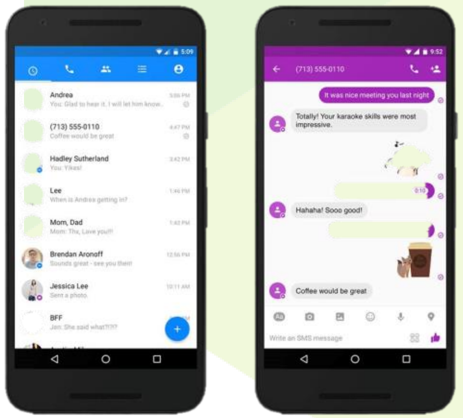
Off-Channel Communications Takeaways

- Since 2022, the CFTC has resolved enforcement actions for more than **$1 billion** for off-channel communications violations.

- The CFTC, SEC, and DOJ have signaled aggressive enforcement in this area. This is expected to continue, particularly for larger more heavily regulated entities.

- Enforcement is not without dissenting views.

PIPER | SANDLER – **$2 million** penalty



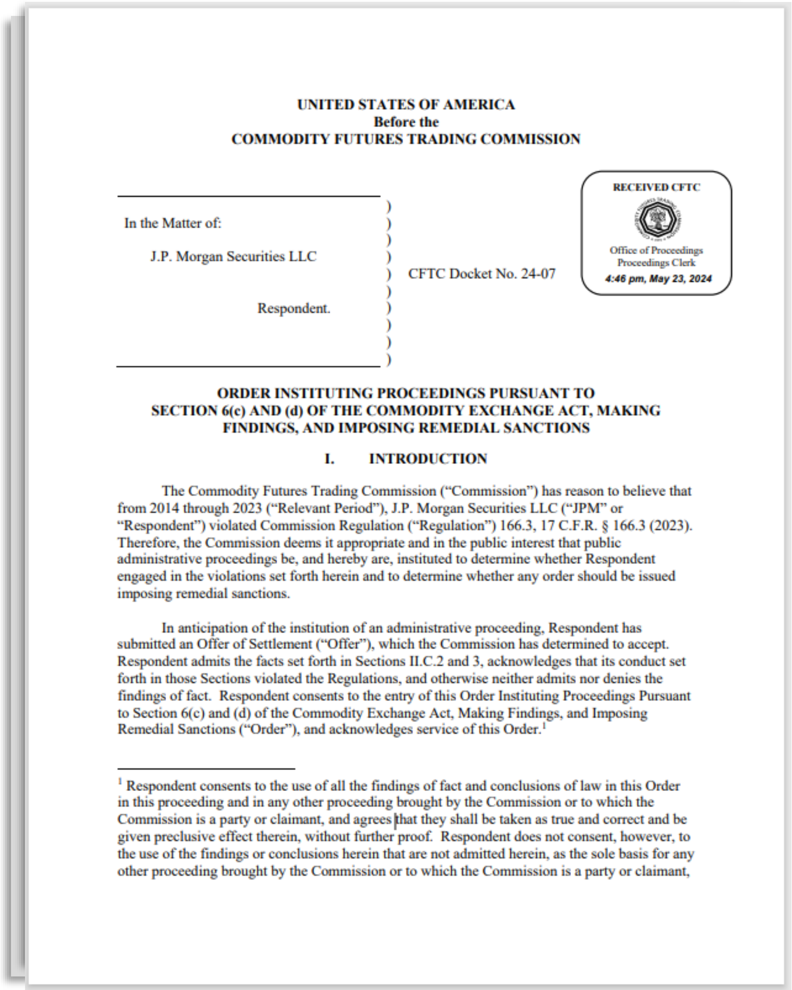
“I fear this particular case sends the message that everything is a business record, even if such a conclusion has no foundation in the Commodity Exchange Act (‘CEA’) or CFTC regulations.”

– Dissenting Statement of Commissioner Mersinger

Supervisory Failures

- Supervisory failures may be charged with other violations or stand-alone.
- Similar to off-channel communications, but occurs when trading data is not captured by surveillance systems.
  - Order messages and trading activity must be monitored by certain registrants, like Designated Contract Markets (DCMs).
- Compliance programs evaluated in a comprehensive manner.

Major Bank Supervisory Failure



UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

J.P. Morgan Securities LLC

Respondent.

CFTC Docket No. 24-07

RECEIVED CFTC
Office of Proceedings
Proceedings Clerk
4:46 pm, May 23, 2024

ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I. INTRODUCTION

The Commodity Futures Trading Commission ("Commission") has reason to believe that from 2014 through 2023 ("Relevant Period"), J.P. Morgan Securities LLC ("JPM" or "Respondent") violated Commission Regulation ("Regulation") 166.3, 17 C.F.R. § 166.3 (2023). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Respondent admits the facts set forth in Sections II.C.2 and 3, acknowledges that its conduct set forth in those Sections violated the Regulations, and otherwise neither admits nor denies the findings of fact. Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions ("Order"), and acknowledges service of this Order.[1]

[1] Respondent consents to the use of all the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of the findings or conclusions herein that are not admitted herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant,

Violations

- 17 C.F.R. § 166.3 – "catch all"
- In Sept. 2020, Bank entered settlement with DOJ for allegations of spoofing and attempted manipulation of precious metals markets. Bank accepted a **$920 million** criminal monetary penalty for incidents between 2008 and 2016.
  - In 2023, two former precious metal traders from Bank were sentenced to prison for fraud, manipulation, and spoofing.
- From 2014 to 2023, Bank failed to surveil order and trade data from particular venues, and data feeds not reconciled and tested for accuracy.

Settlement & Remediation

Order/**$200 million**

- Admission of supervisory failures
- Review of trading activities required within 120 days
- Independent compliance consultant mandated
- Remediation plan and quarterly progress reports

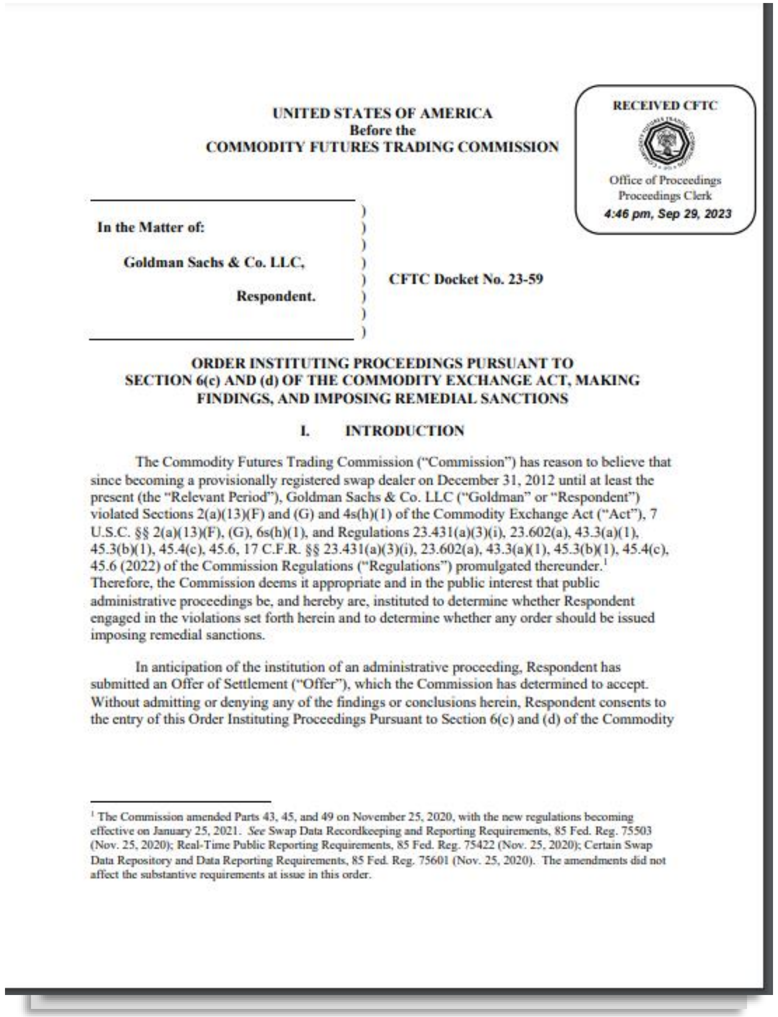
Swap Reporting Failures

- The Commission updated its swap data reporting rules in 2020. With the update, swap data and recordkeeping rules apply to Swap Data Repositories (SDRs), Derivatives Clearing Organizations (DCOs), Swap Execution Facilities (SEFs), Designated Contract Markets (DCMs), Swap Dealers (SDs), Major Swap Participants (MSPs), and swap counterparties that are not MSPs or SDs.

- Swap data reporting rules are designed to enhance the CFTC's ability to monitor systemic risk.

- The CFTC Division of Data (DOD) recommended the delay of enforcement actions against companies for their failure to comply with new Swap Reporting rules until December 5, 2022 (most rules) or December 4, 2023 (block and cap amendments).

Bank Sweep: Swap Reporting Failures


UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

RECEIVED CFTC
Office of Proceedings
Proceedings Clerk
4:46 pm, Sep 29, 2023

In the Matter of:

Goldman Sachs & Co. LLC,

Respondent.

CFTC Docket No. 23-59

ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I. INTRODUCTION

The Commodity Futures Trading Commission ("Commission") has reason to believe that since becoming a provisionally registered swap dealer on December 31, 2012 until at least the present (the "Relevant Period"), Goldman Sachs & Co. LLC ("Goldman" or "Respondent") violated Sections 2(a)(13)(F) and (G) and 4s(h)(1) of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 2(a)(13)(F), (G), 6s(h)(1), and Regulations 23.431(a)(3)(i), 23.602(a), 43.3(a)(1), 45.3(b)(1), 45.4(c), 45.6, 17 C.F.R. §§ 23.431(a)(3)(i), 23.602(a), 43.3(a)(1), 45.3(b)(1), 45.4(c), 45.6 (2022) of the Commission Regulations ("Regulations") promulgated thereunder.[1] Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity

[1] The Commission amended Parts 43, 45, and 49 on November 25, 2020, with the new regulations becoming effective on January 25, 2021. *See* Swap Data Recordkeeping and Reporting Requirements, 85 Fed. Reg. 75503 (Nov. 25, 2020); Real-Time Public Reporting Requirements, 85 Fed. Reg. 75422 (Nov. 25, 2020); Certain Swap Data Repository and Data Reporting Requirements, 85 Fed. Reg. 75601 (Nov. 25, 2020). The amendments did not affect the substantive requirements at issue in this order.

Violations

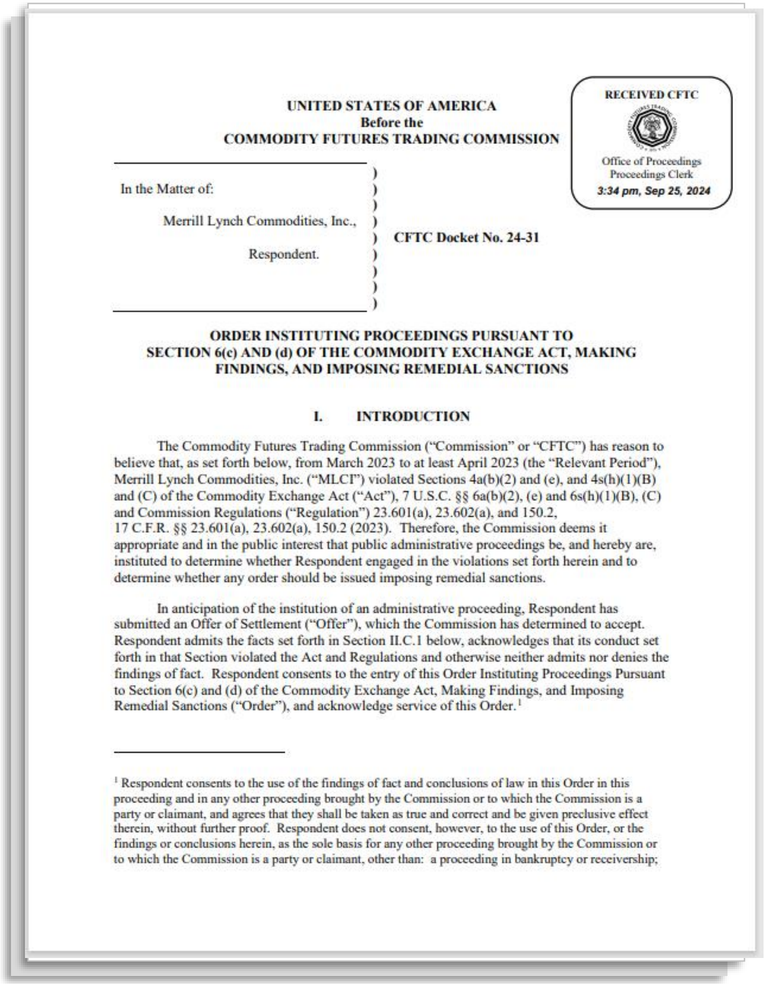
- Failure to accurately and timely report swap data to an SDR
- Failure to keep adequate records as a registrant
- Failure to diligently supervise

Settlement & Remediation

  - First Institution: **$30 million**
  - Second Institution: **$8 million**
  - Third Institution: **$15 million**
- Each of the banks had persistent swap reporting failures.
- When gaps in compliance were discovered, the banks did not remediate quickly.
- **First Institution** required to have a three-year monitor.

FIA

Commodities Firm: Position Limits



UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

RECEIVED CFTC
Office of Proceedings
Proceedings Clerk
3:34 pm, Sep 25, 2024

In the Matter of:

Merrill Lynch Commodities, Inc.,

Respondent.

CFTC Docket No. 24-31

ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I. INTRODUCTION

The Commodity Futures Trading Commission ("Commission" or "CFTC") has reason to believe that, as set forth below, from March 2023 to at least April 2023 (the "Relevant Period"), Merrill Lynch Commodities, Inc. ("MLCI") violated Sections 4a(b)(2) and (e), and 4s(h)(1)(B) and (C) of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 6a(b)(2), (e) and 6s(h)(1)(B), (C) and Commission Regulations ("Regulation") 23.601(a), 23.602(a), and 150.2, 17 C.F.R. §§ 23.601(a), 23.602(a), 150.2 (2023). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Respondent admits the facts set forth in Section II.C.1 below, acknowledges that its conduct set forth in that Section violated the Act and Regulations and otherwise neither admits nor denies the findings of fact. Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions ("Order"), and acknowledge service of this Order.[1]

[1] Respondent consents to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership;

Violations

- Holding contracts in excess of federal and ICE Futures position limits on speculative contracts referencing natural gas
- Position limit monitoring failures
- Swap dealer supervisory failures

Settlement & Remediation

Order/**$1.5 million**

- Admitted swap position limit facts, and acknowledged the conduct violated swap position limits
- "Neither admitted nor denied" supervisory failure findings
- Updated position limits surveillance and supervision process to monitor for potentially exempt positions
- Updated policies and procedures and added compliance training regarding federal and exchange position limits

Vitol: Aggregate Cross-Exchange Position Limits

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

Vitol, Inc. and Vitol SA,

Respondents.

CFTC Docket No. 24-14

RECEIVED CFTC
Office of Proceedings
Proceedings Clerk
10:36 am, Aug 14, 2024

ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

Vitol Position Limit Violations

Date	Product	Futures or Futures Equivalent Position	Spot Month Limit	Overage
5/17/2022	NYMEX WTI and IFED WTI Options	7484	6000	1484
5/18/2022	NYMEX WTI and IFED WTI Options	7091	5000	2091
6/15/2022	NYMEX WTI and IFED WTI Options	6074	6000	74
6/16/2022	NYMEX WTI and IFED WTI Options	6594	5000	1594
12/5/2022	CME Live Cattle Futures	771	600	171

Violation and Settlement

Order/$500,000

- Vitol held positions in CME Live Cattle Futures, physically settled West Texas Intermediate Crude, and futures equivalent positions, in aggregate over position limits.

Novel Enforcement

- First-time position limit violations across exchanges prosecuted
  - Futures positions aggregated across exchanges
  - For options, the CFTC converts the options position into an equivalent futures position
  - Showing scienter not required to prove violation

Consumer Protection

Consumer Protection

- Fraud
- Investment Schemes
- Frequent DOJ/CFTC
- Collaboration

Voluntary Carbon Credit Market Fraud

CQC Impact Investors LLC

CEO
Kenneth Newcombe

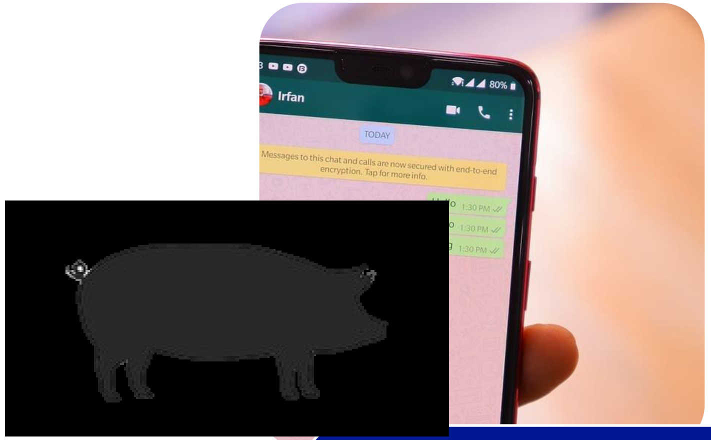
COO
Jason Steele

"managing the data"

False number of carbon credits for LED Projects and Cookstove Projects

"Pig Butchering" Scheme Prosecution

Default Judgment against Justby International Auctions and Cunwen Zhu

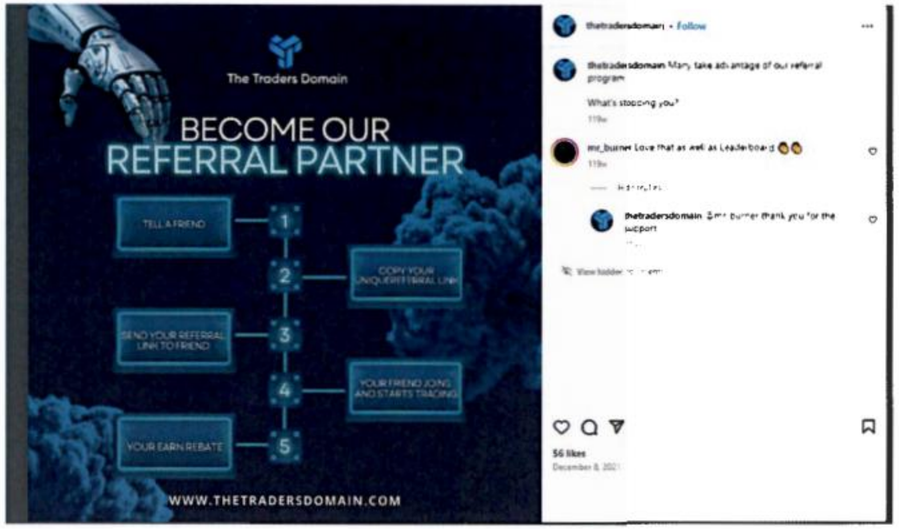


Gain Victim's Trust
- Random message
- Social media or text messages over weeks or months
- Friendship
- Romance

"Investment Opportunity"
- Forex
- Digital Asset Commodities
- Trading "on behalf" of victim
- Third-party websites used to make it appear to victims that they were profiting on a real trading platform

Cash Out Proceeds
- Transfers from Justby International Auctions to Cunwen Zhu personal accounts
- Further transfers to digital asset wallets controlled by Scheme Entities

$280M Ponzi Scheme Related to Gold-USD Pooled Assets



Background

- Ted Safranko and David Negus-Romvari, among others, operated Traders Domain FX LTD as an alleged Ponzi scheme, making payouts from new investments.
  - Traders Fund collected funds for retail leveraged or margined "XAU/USD" trading and offered rewards for recruiting investors.

Charges

- **Complex web of activities**: 10 individuals and 5 entities charged
- Fraud in connection with leveraged or margined retail commodity transactions
- Fraud and deceit by CPOs and associated persons
- Failure to register as a CPO or associated person
- Comingling of Commodity Pool funds

Digital Assets

Digital Assets

- Digital asset fraud
- Willful evasion of rules
- Failure to register, illegal offerings
- Supervisory, compliance, and KYC failures
- DeFi entities – no special treatment

FTX Fraud and Binance Compliance Evasion

FTX and Alameda Research Fraud: $12.7B Resolution

Binance Compliance Penalties: $2.7B, $150M, and $1.5M to the CFTC

Binance: $2.7B

- Binance actively solicited U.S. customers while claiming to block U.S. users from accessing Binance's derivatives platform.
- Binance instructed customers how to evade controls, "switch the account KYC."

CEO, Zhao: $150M

- Zhao directed replacing "US" with "UNKWN" in internal database.
- "We do need to let users know they can change their KYC on Binance.com and continue to use it. …We cannot be held accountable for it."

CCO, Lim: $1.5M

- Beginners Guide to VPNs, "you might want to use a VPN to unlock sites that are restricted."
- "No we cannot change their status to non us if they are us that's fraud but we can encourage them to be non kyc account or use vpn."

Looking Ahead

FIA