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Investment Management Regulatory University

WEBINAR SERIES

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Misconduct by Money Managers and DOJ's Response: An Overview



Agenda

- 1 New Case Highlights

- 2 Cases Resolved

- 3 New Issues on the Horizon

4. Impact of COVID-19 on DOJ's Response

5. Key Takeaways



New Case Highlights

- Investment Fraud
 - *United States v. LaGuardia* (SDNY) (December 2019)
 - *United States v. Hu* (SDNY) (July 2020)
 - *United States v. Ross* (CDCA) (August 2020)
- Insider Trading
 - Global insider trading ring (SDNY) (October 2019)



Cases Resolved and Outcomes

- Cases resolved:
 - *United States v. Kyriacou* (EDNY) (November 2019)
 - *United States v. Elm* (SDNY) (May 2020)
- Sentencings:
 - *United States v. Geraci* (SDNY) (January 2020)
 - *United States v. Hafen* (SDNY) (February 2020)
 - *United States v. Genovese* (SDNY) (February 2020)



New Matters on the Horizon

- Platinum Partners Appeal – *United States v. Nordlicht* (EDNY 2019)
 - Motion for a new trial granted
 - Government appeal filed in January 2020
 - Decision widely anticipated



Impact of COVID-19

- Brief speed bump
- Prosecutions resumed
- Criminal prosecutions related to:
 - pandemic-related fraud
 - market volatility



Key Takeaways

- Traditional Schemes
- International Scope
- COVID has not slowed DOJ's pace
- More to come in the wake of COVID's impact on the economy



Agenda

- 1 Derivatives Law Overview

- 2 CFTC and SRO Enforcement

- 3 Key Trends and Alerts

Regulatory Enforcement – CFTC

CFTC Chairman's Testimony to Congress:

"During my watch, the CFTC has been resolute in holding market participants to the highest standards of behavior. In fact, by any measure, enforcement has been among the most vigorous in the history of the CFTC, including:

- more enforcement actions,
- more penalties,
- more large-scale matters,
- more accountability,
- more partnering with criminal law enforcement at home and abroad, and
- more whistleblower awards than in prior years."



Enforcement – CFTC

- The CFTC administers the CEA and has wide-ranging civil enforcement powers.
- The CFTC's Enforcement Capabilities Continue to Increase
 - Civil and administrative authority, not criminal.
 - May bring actions in federal court or administratively. Most actions are filed in the federal courts.
 - Division of Enforcement (DOE) consists of about 160 individuals.
 - Main office is in Washington, D.C., with branches in New York, Chicago and Kansas City.
 - For 2019, the CFTC imposed fines in excess of **\$1.3 billion, up 39% from last year.**

Fiscal Year	Total Monetary Relief Ordered
FY19	\$1,321,046,710
FY18	\$947,278,038
FY17	\$412,816,307
FY16	\$1,292,310,528
FY15	\$3,202,940,849
FY14	\$3,272,978,947
FY13	\$1,772,109,976
FY12	\$931,942,825
FY11	\$498,527,486
FY10	\$201,563,915
FY09	\$275,674,718



Enforcement – SROs

CME Group / ICE Futures US: Their Market Regulation Departments are authorized to conduct surveillance and bring administrative actions.

- The CME Group Market Regulation Dept. is staffed with about 80 individuals.
- CME Group and ICE have brought hundreds of actions over the past five years.
- Areas of focus include: (i) spoofing/manipulation, (ii) EFRPs, (iii) block trades, (iv) wash trades, (v) position limits, and (vi) supervision.

NFA: As the SRO for CFTC registrants, NFA is authorized to bring administrative actions against its members.

- Areas of focus include: (i) promotional materials, (ii) performance results, (iii) customer disclosures, (iv) swap dealer conduct, (v) cybersecurity, and (vi) supervision.

Enforcement – DOJ



The DOJ, via main Justice or a U.S. Attorney's office, has the power to prosecute criminal conduct.

- Most active offices: Main Justice (DC) and N.D. IL
- In October, DOJ's Fraud Section created a commodities subsection and announced an increased commitment to such prosecutions.
- Common charges include: spoofing, conspiracy to spoof, manipulation, commodities fraud and wire fraud.
- Limitations period can extend to 10 years with wire fraud affecting a financial institution charge.
- Two upcoming trial scheduled against Chanu and Vorley (October) and Bases and Pacilio (late 2020/early 2021).

Key Enforcement Trends/Alerts

1. Use of Authority to Prosecute Manipulation and Disruptive Trading Practices
2. Block Trades (OTC Futures)
3. Individual Accountability
4. Swaps/Swap Dealer Conduct
5. Spot Market Enforcement
6. Role of Self-Reporting and Cooperation
7. "Piling-On"
8. Coordination with other federal agencies and SROs



Key Enforcement Trends/Alerts

9. Cross-border Enforcement
10. Criminal Referrals to DOJ
11. Whistleblower Actions
12. Strict Liability for Employee Actions
13. New Surveillance Tools
14. Election Outcome - Potential Changes in Enforcement Priorities





Agenda

- 1 Private Fund Manager Marketing Cases

- 2 The Challenges of Remote Work

- 3 Stimulus Fraud

- 4 Regulation BI

- 5 The Ever Present: Insider Trading/MNPI

- 6 Kokesh and Lui: USSP Disgorgement

- 7 Libor Switch: Enforcement Interest

Private Fund Manager Marketing Cases

- Performance advertising
- Use of Solicitors
- Conflicts
- Fees and expenses



"Legal says we could get by with the term 'super' but adding 'duper' might be pushing it."

The Challenges of Remote Work

- FINRA Regulatory Notice 20-16 (May 28, 2020)
 - Reminders:
 - Business Continuity Plan (BCP)
 - Additional Support and Communication to Staff
 - Clear Guidance
 - Technology and Cybersecurity
 - Confidentiality
 - Supervision
 - Additional Testing
 - Additional Support and Communication to Supervisors: Increased meetings, open chat rooms
 - Over-escalation
 - Compliance checklists with affirmation buttons
 - Emerging Risks: Analysis
 - Frequent Feedback
 - Trading Supervision
 - Prescreen and supervision process: Compliance attestation
 - Management approves trades
 - Partners
 - Increased testing and monitoring
 - Supervision of Customer/Client Communication
 - Email review
 - Key word surveillance
 - Chat restrictions
 - What to do?



Stimulus Fraud

- Over 1,400 financial advisory firms received Paycheck Protection Program (PPP) loans of at least \$150,000
 - SEC: Registered IAs must disclose the loans in filings:
 - “if the circumstances leading you to seek a PPP loan or other type of financial assistance constitute material facts relating to your advisory relationship with clients.”
- Government Scrutiny: Intense
 - All recipients over \$2 million will be audited
 - SEC suggested that financial firms will be more closely scrutinized
- Three separate independent oversight bodies created
 - SIGPR
 - The Pandemic Response Accountability Committee
 - The Congressional Oversight Commission
 - All teaming with the SEC
- Already several cases: Criminal, Civil, State, EVERYTHING
 - All agencies have pledged rigorous oversight and prosecution

Other Developments

- Insider trading, MNPI, and Regulation FD
- Regulation BI
- SEC whistleblower program
- *Kokesh v. SEC* and *Liu v. SEC*





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