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INSIGHTS

CFTC Fines and Imposes Permanent Ban on Trader Accused of Spoofing

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On July 26, 2017, the U.S. Commodity Futures Trading Commission ("CFTC") issued an order approving a settlement resolving allegations that Simon Posen of New York violated the CFTC's prohibition on spoofing by entering bids or offers with "the intent to cancel the bid or offer before execution."***[1]*** Posen's transactions occurred in gold, silver, and copper futures contracts (on the Commodity Exchange, Inc.) and crude oil futures contracts (on the New York Mercantile Exchange). Mr. Posen was not, at the time, employed by any corporate entity.

According to the order, Mr. Posen engaged in spoofing by placing one or more large orders (or a series of layered orders) totaling 60 or more lots, on either the buy or sell side of the market, with the intent to cancel the orders, and placing one or more smaller "iceberg orders" on the opposite side of the market; once the smaller orders were filled, Mr. Posen would cancel his orders on the other side of the market. The CFTC further alleged that Mr. Posen would immediately repeat this spoofing pattern in reverse to exit the position he had created and revert to being flat. Mr. Posen engaged in this pattern thousands of times between December 2011 to March 2015, according to the order. The order fines Mr. Posen $635,000, forces him to cease and desist from violating the Commodity Exchange Act's spoofing prohibition, permanently bans him from trading in any market regulated by the CFTC, and bans him from applying for registration or claiming registration exemption with the CFTC. Based on similar conduct, Mr. Posen was previously fined and suspended from CME in June 2015[2] and COMEX in November 2016.[3]

Although the trading strategy at issue is similar to those at issue in other spoofing cases, the order highlights the CFTC's continued focus on spoofing and other disruptive trading practices. In the press release accompanying the order, James McDonald, the Director of the CFTC's Division of Enforcement, emphasized the agency's commitment to vigorously pursuing those accused of engaging in disruptive trading practices, stating that "[i]llegal spoofing disrupts trading in the markets, undermines market integrity and can cause serious customer harm. Individuals like Posen who spoof in our markets will face severe consequences." The order serves as a reminder that those participating in CFTC-jurisdictional markets should exercise caution when establishing positions on opposite sides of a market and only submit transactions where there is a bona fide intent to trade.

[1] CFTC Orders New York Trader Simon Posen to Pay a $635,000 Civil Monetary Penalty and Permanently Bans Him from Trading in CFTC-Regulated Markets for Spoofing in the Gold, Silver, Copper, and Crude Oil Futures Markets, U.S. Commodity Futures Trading Commission, PR7594-17 (July 26, 2017).

[2] Notice of Disciplinary Action, NYMEX 13-9258-BC (June 18, 2015).

[3] Notice of Disciplinary Action, COMEX 14-0050-BC (November 23, 2016).