

CFTC on Aiding & Abetting

July 13, 2018

By: [Michael W. Brooks](#)

The Commodity Futures Trading Commission (CFTC) yesterday announced a [settlement](#) with Lansing Trading Group, LLC that resolves allegations of attempted market manipulation and, separately, aiding and abetting attempted market manipulation. Although this settlement involved wheat and corn, its takeaways are worth noting to traders of any commodity. Lansing agreed to pay a civil penalty of \$3.4 million, plus a CME Group fine of \$3.15 million, and also agreed to implement new compliance measures. The CFTC and CME Group coordinated their investigations and contemporaneously issued separate but substantial penalties.

Attempted Manipulation

Lansing allegedly attempted to manipulate wheat prices in March 2015 by purchasing and cancelling wheat certificates for delivery in an attempt to influence the price of wheat futures and options contracts. The manipulative scheme included (1) learning that another market participant was preparing to register and tender for delivery a large number of shipping certificates for lower quality wheat, which likely would lower futures prices; (2) establishing a long position and building on that position when prices in fact fell; (3) purchasing the lower quality wheat certificates; and (4) cancelling those certificates for delivery in an attempt to influence the price and benefit its related position. A Lansing trader also allegedly communicated to a market newsletter author Lansing's intent to cancel and load-out the wheat certificates with the goal of disseminating that information "to make sure the market got lopsided." The CFTC characterized the cancellation of the wheat certificates as a "false or misleading signal to the market for demand of the [wheat]."

The Commission repeated its position that otherwise lawful conduct can become unlawful based solely on an unlawful intent:

"As a wheat merchant, Lansing's course of business includes the purchases, cancellations, and load-out of wheat for delivery. Irrespective of whether the cancellation [at issue here] was a legal, open-market transaction, Lansing nonetheless engaged in attempted manipulation because it had the improper intent to move the prices of futures and options contracts being traded on the CBOT in Lansing's favor through this conduct."

This case has interesting parallels to *CFTC v. Kraft*, which is pending in the U.S. District Court for the Northern District of Illinois. In both cases, the CFTC is alleging the act of taking delivery of a commodity as a false or misleading signal to the market. Although the settlement describes the intent to influence price, it does not address whether Lansing may have had a legitimate

commercial use for the wheat to which it took delivery.

Aiding and Abetting

In a separate incident, a Lansing trader was allegedly approached by a broker and told that a counterparty would like to transact a spread trade at a differential of \$0.01 but wanted to price each leg of the spread at \$0.02 below the then-prevailing market price (i.e., Point A market price was +11 and Point B market price was +10, but the deal was executed at +9 and +8). This made the Lansing trader indifferent to price but allowed the Counterparty to report a lower price to the market at Point B.

Citing to its own order, the CFTC described the following elements of aiding and abetting:

1. the Commodity Exchange Act (CEA) was violated;
2. the defendant knew of the wrongdoing underlying the violation; and
3. the defendant intentionally assisted the principal wrongdoers.

Federal courts have established a similar standard for aiding and abetting pursuant to the CEA. The Third and Seventh Circuits have articulated the elements as (1) “knowledge of the principal’s intent to commit a violation of the Act;” (2) “intent to further that violation;” and (3) “some act in furtherance of the principal’s objective.” See *Nicholas v. Saul Stone & Co.*, 224 F.3d 179, 189 (3rd Cir. 2000); *Damato v. Hermanson*, 153 F.3d 464, 473 (7th Cir. 1998). Similarly, the Second Circuit requires “substantial assistance,” which means “the defendant associated himself with a violation of the Act, participated in it as something that he wished to bring about, and sought by his actions to make the violation succeed.” *In re Amaranth Nat. Gas Comm. Lit.*, 730 F.3d 170, 181-83 (2nd Cir. 2013) (discussing standards in the Second, Third and Seventh Circuits) citing *U.S. v. Peoni*, 100 F.2d 401, 212 (2nd Cir. 1938).

The following exchange shows the broker asking for the favor, the Lansing trader understanding the purpose of the trade, and Lansing agreeing based on an indifference to the prices of the legs:

Broker: “so the goal of this whole project for [Grain Company] is, just so you know, and I know that you already know, is they want to drive Columbus basis down. They want to be more liquid, they want basis to come down, you know, good for all the – all the end users around the world. Even though you’re a reseller and you don’t really give a sh-t either way sometimes.

Lansing Trader: [laughs]

Broker: Sometimes you want it to go the other way, so –.

Lansing Trader: Well, I like [the trader from Grain Company] and I like [Grain Company] so I don’t want to work against them, that’s for sure.

Broker: and ... he speaks most highly of you guys . . . because you’re willing to do stuff like this. So he says he’ll do it at a penny if we can tell the market that we used 9 over Evansville and 8 over Columbus.

Lansing Trader: Interesting.

Broker: And that just goes back to he wants the market lower that's all that that is.

Lansing Trader: So we can write it up as 11 and 10 but we just tell everyone it was 9 and 8.

Broker: He wants to write it up 9 and 8. Still a penny, just different numbers.

Lansing Trader: Hold on one second, let me chat at [coworker] ... shoulder shrug, f--k it, let's do it.

Broker: Yeah ... you guys don't care 'cause it's a penny. And what we'll do . . . [Grain Company] wants the word out there that these numbers are trading. But as much as he wants to do that, I would actually tell people it traded on a spread ... that is not – there's not really actually accurate numbers though ...

It is worth noting for traders that Lansing appears not to have benefited from the scheme but only engaged in it as a favor. A discussion of this case also is likely to lead to a great conversation around appropriate communications and where a counterparty's purpose becomes relevant to transacting.