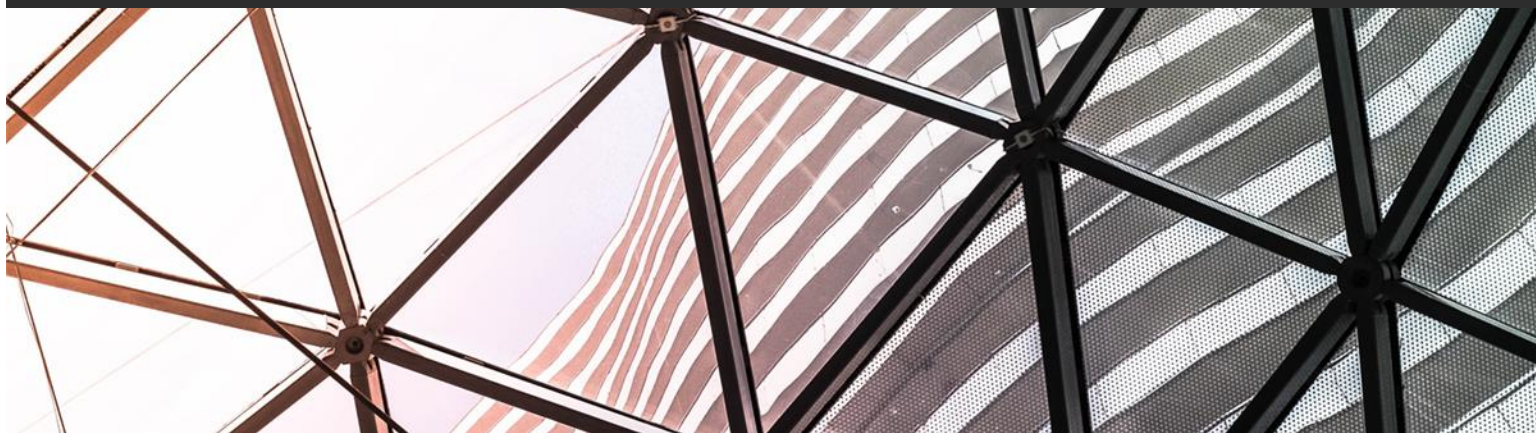


Alert | White Collar Defense & Special Investigations



May 2018

GT Secures Spoofing Acquittal in Flotron

On April 25, 2018, a team of attorneys from the [White Collar Defense & Special Investigations Practice](#) at Greenberg Traurig, LLP, obtained an acquittal for their client, Andre Flotron, in a criminal conspiracy trial in the District of Connecticut. The trial team was led by [Marc L. Mukasey](#), co-chair of the White Collar Defense & Special Investigations Practice, as well as Shareholders [Nathan J. Muyskens](#) and [Daniel P. Filor](#).

The case, *United States v. Flotron*, 3:17-cr-00220, was tried before The Honorable Jeffrey Alker Meyer. After a six-day trial, followed by four hours of deliberation, the jury found Flotron not guilty on the lone charge of conspiring to commit commodities fraud.

Flotron, a former precious metals trader at an investment bank, was charged with manipulating the prices of precious metals futures contracts through a practice known as “spoofing,” which involves the entry of orders onto an exchange – for the alleged purpose of artificially moving the market price of a particular commodity – and then quickly cancelling those orders before they are executed.

This was only the second criminal trial in the United States premised on allegations of spoofing in the financial markets, and the first acquittal. In addition, the *Flotron* trial was the first where the government had brought spoofing-related charges against a manual trader (i.e., a trader who manually enters his orders onto the exchange, as opposed to using a high-speed computerized algorithm). Flotron faced up to 25 years in prison if convicted.

The government's case was mostly based on data analysis of Flotron's trading records and the testimony of two cooperating witnesses – both former precious metals traders at the same investment bank – who claimed that spoofing was common practice at the investment bank and that Flotron participated in and was aware of the practice. One of the cooperators also claimed that Flotron trained him in the practice of spoofing when he joined the trading desk in 2008.

In response, the defense team presented evidence, including the testimony of its own expert witnesses, that the government was “cherry-picking” only a fraction of Flotron's trading activity to try to convince the jury that he was spoofing. Mukasey argued in summation that “numbers can be manipulated” and the government's case was nothing more than “prosecution by statistics.” The defense also noted that the government failed to present any documents showing that Flotron ever agreed to spoof and there was no evidence of any collaboration or cooperative action among the precious metals traders at the investment bank necessary to sustain a conspiracy charge. Finally, the defense argued that the testimony of the government's two key witnesses – both of whom had received non-prosecution agreements from the government in exchange for their cooperation – was untrustworthy and uncorroborated.

In addition to the conspiracy count, Flotron had earlier been charged with three counts of spoofing – which was specifically outlawed in July 2011 by a provision of the Dodd-Frank Act – and three separate counts of commodities fraud. Prior to trial, however, Judge Meyer granted a motion by the defense to dismiss those six counts, finding that they were brought in the wrong venue. The government had argued in favor of dismissing all seven counts, so that it could re-prosecute Flotron on all counts in a proper venue, the Northern District of Illinois. But the defense successfully argued that permitting the government to start from scratch in the Northern District of Illinois after six months of trial preparation, during which Flotron was subject to strict home confinement, would violate Flotron's speedy trial rights.

Flotron's acquittal may be viewed as a set-back for the government in its recent efforts to pursue criminal spoofing cases. Flotron was one of the first individuals charged in a wave of spoofing-related cases brought by the federal government against traders at several large banks.

The *Flotron* case also serves as a reminder to commodities and securities traders, as well as the institutions that employ them, of the fine and often hazy line between legitimate trading activity and allegedly manipulative market practices such as spoofing, which often hinge almost entirely on the subjective intent of the individual trader when placing the orders at issue. Those that trade in these markets should consider keeping an eye on the outcomes of future spoofing cases. In the meantime, traders in these markets may wish to review compliance policies and financial institutions may wish to audit whether their own traders are well acquainted with the rules governing spoofing and other allegedly manipulative trading practices. Doing so may help avoid having to defend against government investigation or prosecution into their trading practices.

In addition to Mukasey, Muyskens, and Filor, the trial team included Greenberg Traurig Shareholder Robert S. Frenchman, and Associates Daniel E. Clarkson, Sarah M. Mathews, Kedar S. Bhatia, and Kate E. Olivieri.

Special thanks to Douglas Chalke^y for his valuable contribution to the team.

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