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Significant Developments In Spoofing Cases: *Coscia*, *3Red* and *Sarao*

As we have noted in previous articles, “spoofing” – placing non-*bona fide* orders with the intent to cancel prior to execution – remains squarely in the cross-hairs of exchanges, regulatory agencies, and the United States Department of Justice. Significant developments have occurred in the past several weeks in three important spoofing cases that are currently pending – two criminal cases brought by the DOJ, and one CFTC enforcement proceeding, all filed in the United States District Court for the Northern District of Illinois. The following is a brief summary of those key developments.

U.S.A v. Michael Coscia, 14 CR 551 (Judge Harry D. Leinenweber)

In October 2014, the United States Attorney for the Northern District of Illinois charged Michael Coscia, a commodities trader, with six counts of commodity fraud and six counts of spoofing under the new Dodd-Frank “spoofing” statute, which criminalized such conduct. Coscia was found guilty on all counts on Nov. 3, 2015.

On April 6, 2016, Judge Leinenweber denied Coscia’s motion for an acquittal or new trial, and Coscia was scheduled to be sentenced July 13, 2016. Coscia thereafter moved to adjourn sentencing, arguing that he needed access to additional material related to the evidence at trial, in order to give the Court an accurate picture of the “nature and circumstances of Coscia’s conduct.” The U.S. Attorney opposed the motion, and Judge Leinenweber denied the motion on June 28. Coscia and the U.S. Attorney filed their respective sentencing memoranda on June 29 and July 6, respectively. The parties, not surprisingly, sought significantly different sentences (probation versus 70 to 87 months’ imprisonment). On July 13, Coscia was sentenced to three years in prison, with an additional three years of supervised release.

Coscia’s prosecution and eventual conviction came quickly on the heels of substantial settlements with both the CME Group (on whose exchanges the trading had taken place) and the CFTC (who had brought a civil enforcement proceeding). The *Coscia* case is the first conviction and sentencing under the anti-spoofing legislation enacted pursuant to Dodd-Frank, which criminalized what was previously considered disruptive market conduct generally subject to disciplinary or civil enforcement actions by exchanges and/or CFTC.

CFTC v. Oystacher, et al., 15 CV 9196 (Judge Amy J. St. Eve)

On Oct. 19, 2015, the CFTC filed a civil enforcement action against Igor Oystacher and his proprietary trading firm, 3Red Trading LLC, alleging over 5200 instances of spoofing, and charging the defendants with one count of spoofing and one count of employment of a manipulative or deceptive device. Pending final resolution of the claims, CFTC sought to enjoin Oystacher and 3Red from trading in five different markets.

From the outset, 3Red and Oystacher disputed these charges and challenged the injunction. They argued that CFTC's complaint was based on faulty analysis of an overly-narrow group of trades, and stated that market forces justified the high cancellation rates that Oystacher employed in his trading strategy at 3Red. They also disputed the contents of affidavits filed by other trading firms, which they characterized as self-serving, as well as CFTC's allegedly incorrect characterization of prior disciplinary actions at the CME, ICE Futures, and Eurex Germany Exchanges.

On July 12, 2016, Judge St. Eve entered a 99-page memorandum opinion and order (the Order) regarding CFTC's request for an injunctive order prohibiting further trading during the pendency of the enforcement action. In the Order, Judge St. Eve analyzed extensively the documentary and testimonial evidence presented at the eight-day long preliminary injunction hearing. Citing the importance of reviewing the "totality of the circumstances," the Court expressed concern over the repeated, but also noted the extensive policies and procedures that 3Red had implemented to monitor and prevent further improper trading activities of which Oystacher was accused.

Noting that CFTC "has not presented any evidence or argument" that Oystacher "is not complying with Defendants' self-implemented restrictions," Judge St. Eve found that a preliminary injunction was not warranted. *Id.* at 84. The Court also noted that the proximity of trial – six months – and the additional restrictions imposed by Judge St. Eve¹ would "render futures violations unlikely," such that the Court declined to impose a preliminary injunction. Trial is currently set to begin on Jan. 17, 2017.

U.S.A. v. Navinder Singh Sarao, 15 CR 75 (Judge Andrea R. Wood)

One other criminal spoofing case remains open. On Sept. 2, 2015, the United States Attorney for the Northern District of Illinois filed criminal charges against commodity trader Navinder Sarao, alleging commodities fraud and spoofing. Sarao was arrested in London and has vigorously contested extradition. On March 23, 2016, a U.K. judge rejected Sarao's extradition challenge and sent the matter to the U.K. Secretary of State to determine whether Sarao should be extradited. On May 14, 2016, the U.K. Secretary of State ordered Sarao's extradition to the United States. On May 26, 2016, Sarao appealed the decision to the U.K. High Court, and the appeal is currently pending. The United States criminal proceeding is stayed pending resolution of the extradition proceeding.

Looking Ahead

While the above-discussed cases are the highest-profile cases, numerous other spoofing cases exist both at the exchange level as well as in the District Courts, in enforcement proceedings filed by CFTC. Reliable information indicates that many more are under consideration – also at the exchange level and by CFTC, as well as by the United States Attorney. It remains to be seen whether any of the pending cases will evolve into criminal cases, and whether past successes will spur an increase in filings on both the civil and criminal sides.

What is a certainty is that federal regulatory agencies and exchanges have been steadily ramping up their scrutiny of traders and their firms over the past years. New laws enacted under Dodd-Frank have introduced the specter of criminal prosecution for alleged misconduct that many market participants had previously assumed to be within the exclusive

¹ Those other restrictions included orders: to maintain all compliance and surveillance systems in place; for 3Red to continue to monitor Oystacher's trading activities; limiting Oystacher's trading to the E-Mini S&P and Ten-Year Treasury Notes; and requiring 3Red to file a monthly affidavit of compliance with the Court regarding the foregoing.

province of exchanges and regulatory agencies. More than ever, a robust, state-of-the-art, dynamic compliance, risk management, and surveillance regime is vital not only to a company's financial success, but to the ongoing viability of the firm, its members, and associates.

For more information on cases concerning allegations of criminal fraud relating to commodity trading, please see our previous *GT Alert*, "[Coscia Gets 3 Years in Prison: The Criminalization of Trading Commodities?](#)"

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