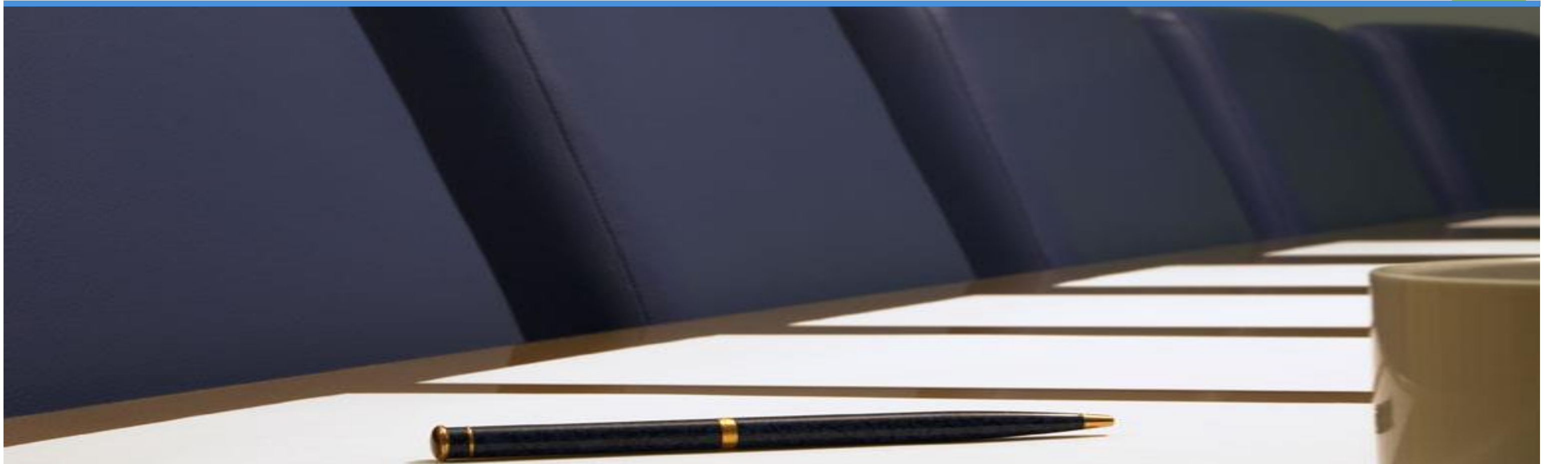

Litigation/Investment Regulation | Alert

November 2016

The US Attorney, CFTC, and Navinder Sarao

We have previously provided updates[1] on the Navinder Singh Sarao case, pending in the U.S. District Court for the Northern District of Illinois. After being charged in February 2015 with fraud and spoofing related to the 2010 Flash Crash, Sarao, then resident in the United Kingdom, fought a yearlong, multiple-appeal battle against extradition, before he was extradited to the United States. On Nov. 9, 2016, Sarao appeared in the District Court to plead guilty to one count of spoofing and one count of wire fraud.

In the plea agreement, Sarao admitted to participating in a scheme to defraud participants in the E-mini S&P 500 market using the CME Globex electronic trading platform. He did so by placing large orders on one side of the market to give the false impression of interest, to the benefit of his smaller orders resting on the other side of the market. This conduct – "spoofing" – enabled Sarao to profit by taking advantage of the price swing resulting from his "spoofed" orders, and the subsequent return of the price to its previous levels.

In connection with that plea, Sarao consented to a forfeiture of assets amounting to nearly $13 million. The sentencing guidelines for the crimes to which he pleaded guilty also carry with them a maximum sentence of thirty years' imprisonment. Information regarding Sarao's sentencing will be available in the near future.

***Civil Proceeding: Commodity Futures Trading Commission v. Sarao*[2]**

The above-referenced criminal proceeding was soon followed by a civil enforcement action filed by the United States Commodity Futures Trading Commission (CFTC) against Sarao in the same Court. In that case, CFTC charged Sarao and his company with market manipulation and spoofing under the Commodity Exchange Act. On Nov. 9, 2016, CFTC and Sarao

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[1] GT Alert, "Coscia Gets 3 Years in Prison: The Criminalization of Trading Commodities?" July 18, 2016; GT Alert, "Significant Developments In Spoofing Cases: Coscia, 3Red and Sarao" Aug. 10, 2016.

[2] *U.S. Commodity Futures Trading Comm'n v. Nav Sarao Futures Limited PLC, et al.,* Civ. No. 1:15-cv-03398 (N. D. Ill. April 17, 2015).

jointly filed a proposed consent order to settle the enforcement proceeding (Consent Order). In the Consent Order, Sarao consents to certain findings of fact and conclusions of law, including findings that:

> Sarao manipulated the E-mini S&P futures market on at least twelve separate days between April 27, 2010 and March 10, 2014;
> Sarao attempted to manipulate the E-mini S&P futures market thousands of times between April 2010 and April 2015;
> Sarao placed thousands of bids and offers that he intended to cancel prior to execution between July 16, 2011 and April 17, 2015; and
> Sarao employed or attempted to employ a manipulative device, scheme, or artifice to defraud in connection with his spoofing orders between August 15, 2011 and April 17, 2015.

If entered by the court, the Consent Order will impose a permanent injunction on Sarao, which will prohibit Sarao from trading, soliciting funds or orders, and registering with the CFTC in any capacity, among other terms. Additionally, the Consent Order will require disgorgement of approximately $12.9 million, plus post-judgment interest. Lastly, the Consent Order will require Sarao to pay a civil monetary penalty in the amount of $25.7 million, plus post-judgment interest.

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