YEAR IN REVIEW:
IN-DEPTH ANALYSIS OF CFTC DIVISION OF ENFORCEMENT FY 2018

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2018

Fiscal Year 2018 ("FY 2018") was a busy and productive year for the Division of Enforcement ("Division") of the Commodity Futures Trading Commission ("CFTC"). FY 2018 featured the Division's third highest number of enforcement cases brought, fourth highest amount of total civil monetary penalties imposed, and the highest number of cases charging manipulative conduct since FY 2010. The Division ramped up its battle against spoofing and, in doing so, partnered in a record number of parallel criminal cases with the U.S. Department of Justice ("DOJ"), leading to the agencies' joint announcement this past January of a "Spoofing Takedown." It continued its campaign to root out benchmark rigging and other kinds of false reporting manipulations. Individual accountability was also a focus of the Division in FY 2018. The Division's consent orders emphasized the tangible value in terms of reductions in penalties for self-reporting violative conduct, as well as for fulsome cooperation and remediation. The Division's Whistleblower Program also had a record year with the highest number and total amount of Whistleblower awards issued.

Of course, numbers do not tell the whole story, as the Division's Director, James M. McDonald, conceded in his speech unveiling the Annual Report of the Division of Enforcement for 2018 ("Annual Report") at the NYU School of Law Program on Corporate Compliance and Enforcement on November 14, 2018.[2] Behind the high number of manipulation cases brought, for instance, are three separate settlements involving the same attempt to manipulate wheat futures and options.[3] More understandably, the spoofing cases announced in January as part of the "Spoofing Takedown" with the DOJ involved settlements with three banks but separate, litigated cases against several of the individual traders at the banks and others who did not settle. In terms of the total amount of civil monetary penalties imposed, $752.3 million of the total of $897 million, or nearly 84%, was generated from the six benchmark rigging settlements. These settlements, no doubt, represent the culmination of work from earlier fiscal years. Nonetheless, as McDonald said in his remarks at NYU, "a

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[2] Press Release, *Remarks of James M. McDonald Regarding Enforcement Trends at the CFTC*, (CFTC Nov. 14, 2018), available at: https://cftc.gov/PressRoom/SpeechesTestimony/opamcdonald1. The Division's Annual Report is available at: https://www.cftc.gov/sites/default/files/2018-11/ENFAnnualReport111418_0.pdf.

[3] *In re Grady*, CFTC No. 18-41, 2018 WL 4697026 (Sept. 26, 2018); *In re Flavin*, CFTC No. 18-40, 2018 WL 4697024 (Sept. 26, 2018); *In re Lansing Trade Grp., LLC*, CFTC No. 18-16, 2018 WL 3426253 (Jul. 12, 2018);

strong enforcement program is about more than just numbers. It is about preserving market integrity, protecting customers and deterring potential bad actors from engaging in misconduct in the first place."[4] This article provides an in-depth and comprehensive analysis of the Division's FY 2018 campaign.

CFTC DIVISION OF ENFORCEMENT – 2018

- 3rd highest number of enforcement cases
- 4th highest amount of total civil monetary penalties
- Highest number of cases charging manipulative conduct since 2010

I. FY 2018 SPOOFING ACTIONS

The Division's Annual Report catalogued 26 enforcement actions involving manipulative conduct, false reporting and spoofing, by far the most number of cases brought in any category. Weighing in with a total of 15 cases, spoofing cases represented the majority of the cases brought in the manipulation category.[5]

Respondents or defendants in the spoofing cases ranged from banks, to individual traders employed by banks, to proprietary trading firms and commodity trading advisors, to individual traders employed by proprietary trading firms and commodity trading advisors, to individuals trading for their own account, to a software services firm and its owner. There were 10 "speaking order" settlements and five litigated cases brought in federal court.

A. *Fines and Penalties*

The civil monetary penalties ("CMPs") imposed on the four banks ranged from a low of $800,000 to a high of $30 million. The Bank of Nova Scotia scored the lowest fine at $800,000, with HSBC also coming in on the low side at $1.6 million, while UBS came in the middle with a $15 million CMP and Deutsche Bank ("Deutsche") landed the highest fine at $30 million. Out of the four banks, the speaking orders recognized each of the bank's cooperation as qualifying the bank for a civil monetary penalty reduction. Only one bank, Deutsche, was charged with failure to supervise. This perhaps explains Deutsche's considerably higher CMP than the other three.

The settling trading firm, Arab Global Commodities, received a fine of $300,000, and was recognized for its cooperation with the CFTC's investigation. Victory was fined $1.8 million and Geneva was fined $1.5 million. For the two individuals who settled, Anjul J. Singhal had a $150,000 CMP imposed along with a four-month trading ban, and Michael D. Franko received a $500,000 fine with a six-month trading ban.

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[4] Press Release, *Remarks of James M. McDonald Regarding Enforcement Trends at the CFTC*, (CFTC Nov. 14, 2018), available at: https://cftc.gov/PressRoom/SpeechesTestimony/opamcdonald1.

[5] Consent Orders: *In re The Bank of Nova Scotia*, CFTC Dkt. No. 18-50 (Sep. 28, 2018); *In re Mizuho Bank, Ltd.*, CFTC Dkt. No. 18-38 (Sep. 21, 2018); *In re Geneva Trading USA, LLC*, CFTC Dkt. No. 18-37 (Sep. 20, 2018); *In re Victory Asset, Inc.*, CFTC Dkt. No. 18-36 (Sep. 19, 2018); *In re Franko*, CFTC Dkt. No. 18-35 (Sep. 19, 2018); *In re Singhal*, CFTC Dkt. No. 18-11 (Apr. 9, 2018); *In re HSBC Secs. (USA) Inc.*, CFTC Dkt. No. 18-08 (Jan. 29, 2018); *In re UBS AG*, CFTC Dkt. No. 18-07 (Jan. 29, 2018); *In re Deutsche Bank AG*, CFTC Dkt. No. 18-06 (Jan. 29, 2018); *In re Arab Global Commodities DMCC*, CFTC Dkt. No. 18-01 (Oct. 10, 2017).

Litigated Cases: *CFTC v. Thakkar*, Case No. 1:18-cv-00619 (N.D. Ill. filed Jan. 28, 2018); *CFTC v. Zhao*, Case No. 1:18-cv-00620 (N.D. Ill. filed Jan. 28, 2018); *CFTC v. Mohan*, No. Case 4:18-cv-00260 (S.D. Tex. filed Jan. 28, 2018); *CFTC v. Vorley*, Case No. 1:18-cv-00603 (N.D. Ill. filed Jan. 26, 2018); *CFTC v. Flotron*, Case No. 3:18-cv-00158 (D. Conn. filed Jan. 26, 2018).

B. *The Contracts Allegedly Spoofed*

The contracts allegedly spoofed in the FY 2018 cases are summarized in the following table:

EXCHANGE	FUTURES CONTRACTS	CASES
CME	e-mini S&P 500	Zhao; Thakkar & Edge
	e-mini NASDAQ 100	Mohan
	Eurodollar	Mizuho
	Live Cattle	Geneva Trading
	Feeder Cattle	Geneva Trading
	Lean Hogs	Geneva Trading
CBOT	Dow e-mini	Mohan
	U.S. Treasury	Mizuho
	Wheat	Geneva Trading; Singhal
	Kansas City Hard Red Winter Wheat	Geneva Trading
	Soybean	Geneva Trading
	Soybean Meal	Geneva Trading
NYMEX	WTI Crude Oil	Geneva Trading; Franko; Victory
	RBOB Gasoline	Geneva Trading
	Heating Oil	Geneva Trading
COMEX	Gold	Flotron; Vorley & Chanu; Deutsche; HSBC; UBS; Franko; Victory; Nova Scotia
	Silver	Flotron; Vorley & Chanu; Deutshe; HSBC; UBS; Nova Scotia
	Platinum	Vorley & Chanu[6]
	Palladium	Vorley & Chanu
	Copper	Arab Global; Franko; Victory
LME	Copper	Franko; Victory

[6] Vorley and Chanu were charged with spoofing platinum futures only in the DOJ's parallel criminal case, not in the CFTC enforcement action.

All but one of these contracts use a price/time matching algorithm. In other words, the oldest resting order at the best price is matched first -- first-in, first-out at each price level.[7] Only one case alleged spoofing of a contract that uses a different matching algorithm. The *Mizuho* order describes the bank's trader there flashing large orders on one side of the market in both Treasuries and Eurodollars – the latter contract uses a priority pro rata matching algorithm.[8] In the history of CFTC spoofing cases, only one other case involved the alleged spoofing of a contract matched on a priority pro rata basis.[9] Look for an article to be published soon here on Commodity Corner discussing the potential issues in spoofing a priority pro rata matched contract versus a price-time matched contract.

C. *Method of Spoofing*

In terms of how the defendants executed their spoofing schemes, except for Thakkar (who did not trade but wrote some code for "Trader A" who had cooperated with the CFTC), the allegations are that the defendants entered their genuine and spoofing orders mostly manually,[10] although it is not clear from the complaints if any of them used a wash blocker function to auto-cancel existing spoof orders.[11] The complaints allege that Bases, Chanu, Mohan, Pacilio, and Vorley used iceberg orders for their genuine orders.

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[7] Some of these contracts may give some priority to orders placed by exchange-designated "lead market makers."

[8] CME describes the priority pro rata algorithm used to match Eurodollar futures orders as follows: A "top order" (which is an order that betters the market) will always be filled first in its entirety regardless of its size). After the top order is filled:

> the Pro Rata Allocation algorithm is applied to the remainder of the resting orders at the applicable price levels until the incoming order is filled. The Pro Rata algorithm allocates fills based upon each resting order's percentage representation of total volume at a given price level. For example, an order that makes up 30% of the total volume resting at a price will receive approximately 30% of all executions that occur at that price. Approximate fill percentages may occur because allocated decimal quantities are always rounded down (i.e. a 10-lot order that receives an allocation of 7.89-lots will be rounded down to 7-lots). The Pro Rata algorithm will only allocate to resting orders that will receive 2 or more contracts.

Supported Matching Algorithms, CME Website, available at: https://www.cmegroup.com/confluence/display/EPICSANDBOX/Supported+Matching+Algorithms#SupportedMatchingAlgorithms-Pro-RataAllocationforEurodollarFutures.

[9] *See In re Bank of Tokyo-Mitsubishi UFJ, Ltd.*, CFTC Dkt. No. 17-21 (Aug. 7, 2017).

[10] Given the roundtrip time between Australia and Aurora, Illinois, it is not entirely clear that all of Zhao's orders were entered manually. The FBI agent's affidavit in support of the criminal complaint states that Zhao's spoof orders were cancelled under a second of being placed. *See United States v. Zhao*, Case No. 18-cr-00024 (N.D Ill.). It is not clear if Mohan implemented a "Smart Stuffing Function" described in a document he produced to the CFTC.

[11] In *CFTC v. Igor B. Oystacher and Red 3 Trading LLC*, CFTC Dkt. No. 15-cv-09196 (N.D. Ill.), Oystacher apparently took advantage of wash blocking functionality offered by the Chicago Mercantile Exchange to cancel existing spoof orders by sending new orders that could have otherwise traded against Oystacher's resting orders.

D. *The Government's Evidence*

Across the FY 2018 spoofing cases, the CFTC has so far revealed a range of types of evidence that it appears ready to use against the defendants.[12] In each case, it appears that a significant foundation for the government's case is statistical analysis of the electronic order book records.

In the CFTC's complaint against Zhao, for instance, there is no mention of any evidence other than the patterns in the entry and cancellation of Zhao's orders. The FBI agent's affidavit in support of the DOJ's criminal complaint likewise describes only statistical analysis and the agent's consultation with an expert who noted that Zhao's alleged spoof orders were canceled on average within 0.676 seconds of the fill of the last lot of the genuine order and the spoof orders had an average fill ratio of 0.03 percent.[13]

In other cases, however, the government appears to have a wealth of documentary evidence to supplement the government's data analysis. The CFTC's complaints against Vorley and Chanu, as well as the speaking orders settling the cases with Deutsche and UBS, describe extensive electronic chat dialogues between traders in the same firm and traders at other firms chatting about the spoofing they were doing in pretty much real time. The traders do not appear to have been terribly discrete in their chat messages. They contain the words "spoof," "spoofing," and "manipulate." In Mohan's case, he produced a document to the CFTC during its investigation describing a "Smart Stuffing Function" which discussed "bluffing orders" and functionality to move the bluffing orders to the back of the queue every ten seconds. Finally, in Flotron's criminal trial, the government offered the testimony of two cooperating witnesses in addition to its extensive data analysis.[14]

E. *The Laws and Regulations Allegedly Violated*

Except for *Thakkar*, the CFTC's enforcement actions against the individuals all allege violations of Sections 4c(a)(5)(C) and 6(c)(1) of the Commodity Exchange Act ("CEA") and CFTC Regulation ("Regulation") 180.1(a)(1) and (3). In *Thakkar*, the CFTC alleges that Thakkar aided and abetted violations of these provisions.

Section 4c(a)(5) provides:

> **Disruptive practices.--**It shall be unlawful for any person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that—
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> (A) violates bids or offers;
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> (B) demonstrates intentional or reckless disregard for the orderly execution of transactions during the closing period; or

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[12] Of course, because the cases, except for Flotron's criminal prosecution, are at fairly preliminary stages, there may be more evidence in the government's possession and ready to be arrayed against the defendants.

[13] *See United States v. Zhao*, Case No. 18-cr-00024 (N.D. Ill.), Affidavit in Support of Criminal Complaint at 12-13.

[14] *Ex-UBS Metals Trader Beats Spoofing Conspiracy Charge*, (Bloomberg Apr. 25, 2018), available at: https://www.bloomberg.com/news/articles/2018-04-25/ex-ubs-metals-trader-flotron-beats-spoofing-conspiracy-charge.

> (C) is, is of the character of, or is commonly known to the trade as, 'spoofing' (bidding or offering with the intent to cancel the bid or offer before execution).[15]
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> Section 6(c)(1) provides:
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> **Prohibition against manipulation.--**It shall be unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after [July 21, 2010], provided no rule or regulation promulgated by the Commission shall require any person to disclose to another person nonpublic information that may be material to the market price, rate, or level of the commodity transaction, except as necessary to make any statement made to the other person in or in connection with the transaction not misleading in any material respect.[16]
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> Finally, Regulation 180.1(a)(1) and (3) provides:
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> (a) It shall be unlawful for any person, directly or indirectly, in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly:
>
> (1) Use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud;
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> . . . ;
>
> (3) Engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person; . . . .[17]

Both Sections 4c(a)(5) and 6(c)(1) were added to the CEA by the Dodd-Frank Act and so were not effective until August 15, 2010. Moreover, Section 6(c)(1) only prohibits use of a manipulative device if it is in contravention of a CFTC regulation. Regulation 180.1 was not effective until August 15, 2011.[18]

The CFTC's actions against Mohan, Thakkar, and Zhao all allege misconduct commencing after the effective dates of Section 4c(a)(5) and Regulation 180.1. The CFTC actions against Vorley, Chanu, and Flotron, on the other hand, allege misconduct occurring well before the effective dates of Section 4c(a)(5) and Regulation 180.1. In Vorley's and Chanu's case, the CFTC claims that misconduct started in May 2008 and, in Flotron's case, August 2008. It is not clear why the CFTC

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[15] 7 U.S.C. § 6c(a)(5).

[16] 7 U.S.C. § 9(1).

[17] 17 C.F.R. § 180.1(a).

[18] *See Prohibition on the Employment, or Attempted Employment, of Manipulative and Deceptive Devices and Prohibition on Price Manipulation*, 76 Fed. Reg. 41398 (CFTC July 14, 2011).

chose not to charge the pre-Dodd Frank anti-manipulation provision, Section 9(a)(2),[19] in the *Vorley*, *Chanu*, and *Flotron* cases. In the *Deutsche Bank* and *UBS* speaking orders, both of which involved misconduct occurring before August 15, 2010, the CFTC charged violations of Section 9(a)(2) for manipulative conduct occurring prior to August 15, 2010.[20]

F. *New and Novel*

Cases settled towards the end of FY 2018 announced two novel developments in the spoofing theories of the CFTC. The first involves alleging that orders placed on a foreign market which were immediately cancelled after the fill of an order on a U.S. exchange (and vice versa) constitute violations of the CEA and CFTC Regulations. The second involves allegations that a trader's mere flashing of large orders – posting and then quickly cancelling orders – without placing a genuine order on the opposite side of the market violates the CEA's anti-disruptive trading provisions.

1. Cross-Market Spoofing

The September 2018 settlements *In re Michael D. Franko*[21] and *In re Victory Asset, Inc.*[22] involved charges that Victory's trader, Michael Franko, sought to take advantage of the correlation between prices of the COMEX copper and London Metals Exchange ("LME") copper futures contracts.[23] The CFTC asserts that Franko placed large bluffing orders for LME copper contracts to have genuine orders placed for COMEX copper contracts filled at more favorable prices and vice versa ("Cross-Market Spoofing"). The CFTC also alleges that Franko placed bluffing orders on the same U.S. exchanges as his genuine orders rested ("Domestic Spoofing").

Unlike in its "spoofing takedown" enforcement actions brought in January 2018, the CFTC charged that Franko's Domestic Spoofing violated only Section 4c(a)(5), and not Section 6(c)(1). In contrast, the CFTC charged that Franko's Cross-Market Spoofing violated only Section 6(c)(1) and Regulation 180.1, but not Section 4c(a)(5). The speaking order does not explicitly provide why the CFTC did not charge both violations for both his Domestic and Cross-Market Spoofing.

The lack of a Section 4c(a)(5) charge for Franko's Cross-Market Spoofing makes sense for some of Franko's alleged conduct. Section 4c(a)(5), after all, only prohibits "spoofing (bidding or offering with the intent to cancel the bid or offer before execution)" "*on or subject to the rules of a registered entity*." Accordingly, in the situations where Franko's genuine orders were placed on COMEX and his bluffing orders were placed on the LME, his bid or offer placed with the intent to cancel before execution were not placed "subject to the rules of a registered entity"[24] subject to the CFTC's jurisdiction. But the Franko and Victory speaking orders also describe scenarios where

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[19] 7 U.S.C. § 13.

[20] *In re Deutsche Bank* at 8; *In re UBS* at 6.

[21] CFTC Dkt. No. 18-35 (Sep. 19, 2018).

[22] CFTC Dkt. No. 18-36 (Sep. 19, 2018).

[23] *See Franko* at p. 3.

[24] The CEA's definition of the term "registered entity" does not include foreign boards of trade. 7 U.S.C. § 1a(40).

Franko's genuine order rested on the LME and his bluffing orders were placed on COMEX. This scenario involved his placing bids or offers with the intent to cancel prior to execution subject to the rules of a registered entity.

The Section 6(c)(1) charge for Franko's Cross-Market Spoofing makes sense for the scenarios where he placed his bluffing orders on the LME with his genuine orders on COMEX. Section 6(c)(1) does not require the "manipulative or deceptive device or contrivance" to be conduct on a registered entity. It just has to be used in connection with the sale of a contract for "future delivery on or subject to the rules of any registered entity." Although the speaking orders charge that the reverse scenarios, where his genuine order rested on the LME and his bluffing orders were placed on COMEX also violated Section 6(c)(1), that conduct would likely not be viewed as a violation of Section 6(c)(1) because the COMEX bluffing orders did not affect domestic market activity. In that scenario, the "manipulative or deceptive device or contrivance" of his bluffing orders on COMEX were not used in connection with the sale of a contract for future delivery "on or subject to the rules of any registered entity."

In any event, it seems that the CFTC, if it were to have to litigate a Cross-Market Spoofing charge, would need to establish that the foreign contract was sufficiently economically correlated to a domestic contract to establish that a bluffing order for the foreign contract constitutes a "manipulative or deceptive device or contrivance" used in connection with the sale of the domestic contract.

2. "Attempted Spoofing"

In *In re Mizuho Bank, Ltd.*,[25] the CFTC alleges that a Singapore-based Mizuho interest rates trader violated Section 4c(a)(5) merely by placing large orders and then cancelling them within seconds.[26] The speaking order does not claim that the trader or any colleagues or other confederates had placed, let alone executed, genuine orders that benefitted from the flashed large orders. The only additional CFTC allegation is that the trader "placed these spoof orders to test market reaction to [the trader's] trading in anticipation of having to hedge Mizuho swaps positions with futures at a later date."[27]

To the extent that market participants thought that spoofing required something more than merely entering an order with the intent to cancel it prior to execution, that thinking was rejected by the Seventh Circuit's affirmance of the criminal spoofing conviction in *Coscia*. There the Seventh Circuit panel wrote "a conviction for spoofing requires that the prosecution prove beyond a reasonable doubt that [the defendant] knowingly entered bids or offers with the present intent to cancel the bid or offer prior to execution"[28] – nothing more and nothing less.

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[25] *See* CFTC Dkt. No. 18-38 (Sep. 21, 2018).

[26] The orders were placed in Treasury futures trading on the CBOT and Eurodollar futures trading on the CME.

[27] *Mizuho* at p. 2.

[28] *United States v. Coscia*, 866 F.3d 782, 795 (7th Cir. 2017), *cert. denied*, 138 S. Ct. 1989 (2018).

The CFTC's *Mizuho* speaking order appears to be logical application of the *Coscia* court's articulation of the elements of Section 4c(a)(5). But all of the CFTC's previous spoofing actions – civil and criminal – have alleged that the conduct involved both bluffing orders and genuine orders. It is not clear that the Mizuho trader meant to mislead the market with the orders, nor does the CFTC allege that any market participants were damaged in some way.

II. THE OTHER NON-SPOOFING MANIPULATION AND FALSE REPORTING CASES

The other eleven cases in the manipulation, false reporting and spoofing category represent the continued, years-long crackdown on benchmark rigging, and more familiar market manipulation schemes, albeit one with a significant, new and novel twist.[29]

A. Benchmark Rigging

Six of these cases represent the fruits of the continued CFTC campaign to root out benchmark rigging misconduct:

RESPONDENT	BENCHMARK	CIVIL MONETARY PENALTY
Bank of America	ISDAFIX	$2.3 Million
ICAP	ISDAFIX	$50 million (aiding & abetting)
BNP Paribas	ISDAFIX	$90 million
JP Morgan	ISDAFIX	$65 million
Société Generale	LIBOR	$475 million
Deutsche Bank	ISDFIX	$70 million

B. Old School Cash versus Futures Market Manipulations

In *In re Statoil ASA*, the CFTC alleged that Statoil was liable for attempted manipulation of the Argus Far East Index ("FEI"), an index of propane prices in Asia. Specifically, the CFTC alleged that Statoil bought physical propane to benefit its positions in NYMEX over-the-counter swaps that settle to the FEI. Interestingly, even though some internal communications indicated that the Statoil traders thought that they were going to buy more physical propane than what Statoil needed to meet its delivery obligations in the Far East, in the end Statoil did not. The CFTC's speaking order concluded that the mere fact that the traders bought physical propane cargoes with the intent of increasing the FEI to benefit their NYMEX swap positions satisfied the requirements to establish an intent to manipulate even though they did not apparently, in the end, engage in non-economic

[29] *In re Davis Ramsey*, CFTC Dkt. No. 18-49 (Sep. 27, 2018); *In re Grady*, CFTC Dkt. No. 18-41 (Sep. 26, 2018); *In re Flavin*, CFTC Dkt. No. 18-40 (Sep. 26, 2018); *In re Bank of Am., N.A.*, CFTC Dkt. No. 18-34 (Sep. 19, 2018); *In re ICAP Capital Markets LLC, n/k/a Intercapital Capital Markets LLC*, CFTC Dkt. No. 18-33 (Sep. 18, 2018); *In re BNP Paribas Secs. Corp.*, CFTC Dkt. No. 18-19 (Aug. 29, 2018); *In re Lansing Trade Grp., LLC*, CFTC Dkt. No. 18-16 (Jul. 12, 2018); *In re JPMorgan Chase Bank, N.A.*, CFTC Dkt. No. 18-15 (Jun. 18, 2018); *In re Société Generale S.A.*, CFTC Dkt. No. 18-14 (June 4, 2018); *In re Deutsche Bank Secs. Inc.*, CFTC Dkt. No. 18-09 (Feb. 1, 2018); *In re Statoil ASA*, CFTC Dkt. No. 18-04 (Nov. 14, 2017).

trading (e.g., buying more propane in the cash market than Statoil needed for meet its delivery obligations to its customers in Asia). Statoil was charged with violating Section 9(a)(2) of the CEA.

In re Lansing Trade Group, *In re Grady,* and *In re Flavin* all involved the same attempt to manipulate CBOT wheat futures and options. Grady and Flavin were employees of Lansing, a commodity merchandiser specializing in grains and feed products. Learning of a market participant's intent to purchase a large number of wheat certificates, Lansing added to its wheat futures spread and call positions, purchased wheat certificates and cancelled those certificates for load out to give the market a false signal of increased demand for wheat. Lansing, Grady and Flavin were all charged with violating Section 6(c)(1) and Regulation 180.1, as well as Sections 6(c)(3) and 9(a)(2) and Regulations 180.1 and 180.2 for their conduct in connection with the wheat manipulation.

The *Lansing* case also involved a charge not leveled against Grady and Flavin: aiding and abetting the manipulation of the cash price of yellow corn to be delivered in Columbus, Ohio by entering into a transaction at a below market price to benefit a grain company. For this, Lansing was charged with violating Section 13(a) by aiding and abetting others' violations of Sections 6(c)(1), 6(c)(3) and 9(a)(2) along with Regulations 180.1.and 180.2.

C. *New and Novel – Cross-Derivatives Markets Manipulation*

In *In re Ramsey*, the respondent took advantage of an age-old arrow in the quiver of market manipulators – "banging the close" – but innovatively applied it to affect the profitability of positions held on a different derivatives exchange. Specifically, Ramsey bought positions in binary options contracts traded on the North American Derivatives Exchange ("NADEX") whose expiration price was determined on the mid-day price of the CME e-mini S&P futures, CME e-mini NASDAQ futures, COMEX gold, or COMEX silver futures contracts. By trading in the underlying CME or COMEX futures in the seconds leading up to a particular NADEX option's expiration, Ramsey was able make the binary option pay off rather than expiring worthless or in other cases keep an in-the-money option from expiring worthless. His trading in the underlying futures sometimes involved the use of stop orders with triggers above the option strike price to ensure if his order traded it would trade at a price to make the option expire in-the-money. For this conduct, Ramsey was charged with violating Sections 6(c)(1), 6(c)(3) and 9(a)(2), along with Regulations 180.1 and 180.2. He was fined $325,000 and given a five-year trading ban.

III. INDIVIDUAL ACCOUNTABILITY

Among the Division's priorities in FY 2018 was individual accountability. The Division's Annual Report noted that over two-thirds of the actions filed or settled in FY 2018 involved charges against one or more individuals. Specifically, it noted that it charged both "primary wrongdoers" as well as "those who have facilitated that misconduct as aiders and abettors." The Division stated that it "worked to go up the chain" to charge individuals in managerial or supervisory roles, by utilizing

supervisory and control person liability.[30] The Annual Report cites a number of the Division's cases filed in FY 2018 in holding individuals accountable.

As an example of charging aiders and abettors, the Annual Report cited *CFTC v. Thakkar*, Case No. 18-CV-00619 (N.D. Ill.). In this case, the CFTC alleged that Thakkar had experience programming custom software applications for the trading industry. In 2011, a trader who cooperated with the CFTC in the course of its investigation, contacted Thakkar and asked him to design and develop a custom trading software application that would help the trader "spoof" (bid or offer with the intent to cancel before execution) and inject false information into the market regarding supply and demand for the E-mini S&P. The CFTC alleged that Thakkar, along with his firm Edge Technologies ("Edge") and programmers working at his direction, worked closely with the trader to meet his desired specifications. Using the software, the *Thakkar* complaint alleged that the trader repeatedly engaged in thousands of manipulative or deceptive acts and practices by spoofing. The CFTC alleged that because Thakkar and Edge aided and abetted the trader by designing and developing a certain function that enabled spoofing, they were responsible for that trader's spoofing and manipulative or deceptive acts and practices.

The report also references *In re Leibowitz*, CFTC Dkt. No. 18-52 (Sep. 28, 2018), as an example of its charging individuals through supervisory and control person liability. In settling this matter, the CFTC noted in a press release that Leibowitz was the Chairman of the Board of TFS-ICAP LLC and TFS-ICAP Ltd.[31] The order alleged that he failed to diligently supervise the handling by brokers on the emerging markets desks at TFS-ICAP of foreign exchange options ("FX Options") trades because he did not implement policies and procedures to prevent brokers and seniors managers from engaging in practices known as "flying" and "printing" where brokers would communicate to clients fake bids and offers and fake trades intended to create an illusion of greater liquidity and induce clients to trade via TFS-ICAP. The action resulted in a $250,000 civil monetary penalty. Notably, the consent order does not allege that Leibowitz knew of the practice; rather, it states that "senior managers at TFS-ICAP were aware of-and in some instances condoned and actively encouraged the practices of-flying and printing" that Leibowitz, as Chairman, had supervisory responsibilities for TFS-ICAP, and "was a registered associated person and listed principal of TFS-ICAP."

IV. SELF-REPORTING, COOPERATION, AND REMEDIATION

In order to carry the Division's priority of ensuring individual and corporate accountability, the Division has relied upon its cooperation and self-reporting program in FY 2018. In September 2017, the Division issued an updated advisory on self-reporting and cooperation, [32] which was designed to provide additional information and greater transparency regarding voluntary

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[30] Annual Report at 11.

[31] Press Release, *CFTC Charges Chairman of Board of Interdealer Broker with Supervisory Failures,* (CFTC Sep. 28, 2018), available at: https://www.cftc.gov/PressRoom/PressReleases/7815-18.

[32] *See* Enforcement Advisory: Updated Advisory on Self Reporting and Full Cooperation, available at: https://www.cftc.gov/sites/default/files/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfadvisoryselfreporting0917.pdf.

disclosures and the "substantial" credit companies about what individuals could except to receive if they voluntarily disclose misconduct and fully cooperate with the Division's investigation. The Annual Report noted that the cooperation and self-reporting program was a tool that originated in organized crime and gang prosecutions that was employed in white collar prosecutions.

The administrative settlements announced by the Division in FY 2018 recognized reductions in the amounts of civil monetary penalties attributable to self-reporting, substantial or significant cooperation, and remediation efforts by companies and individuals. Notably, the amount of the cooperation credit was not quantified, thereby continuing to make it difficult to assess the benefits (as well as the costs) of self-reporting and cooperation. Indeed, in some instances, cooperation was recognized but did not explicitly result in a reduction in penalty amount.

A. *Self-Reporting*

This past fiscal year, the Division recognized self-reporting, cooperation, and remediation with a stated significant reduction in the amount of civil monetary penalty in two spoofing matters. The consent orders entered in the spoofing cases of *In re The Bank of Nova Scotia*, CFTC Dkt. No. 18-50 (Sept. 28, 2018), and *In re UBS AG*, CFTC Dkt. No. 18-07 (Jan. 29, 2018), noted that the banks self-reported the violative trading activity to the Division, as well as "substantially" cooperated with the Division's investigation. That substantial cooperation included conducting internal investigations, voluntarily producing documents and providing information and analysis at the Division's request. Both cases involved implementing enhancements to detect and deter similar conduct relating to spoofing, such as updating trade surveillance systems. The self-reporting, cooperation, and remediation reduced the civil monetary penalty to the amount of $800,000 against the Bank of Nova Scotia and $15 million against UBS.

B. *Substantial Cooperation Resulting in a Reduction of Penalty Amount*

"Substantial" cooperation and remediation also resulted in a reduction in the amount of the civil monetary penalty by the Division in a wide range of cases, even in the absence of self-reporting. The consent orders in each of these matters provide some insight into the type of cooperation and remediation that warranted a reduction in penalty.

For example, in the spoofing arena, "substantial" cooperation that assisted the Division in its investigation, as well as remedial efforts, were recognized with a reduction of civil monetary penalty. *See In re Deutsche Bank AG and Deutsche Bank Securities Inc.*, CFTC Dkt. No. 18-06 (Jan. 29, 2018); *In re HSBC Securities (USA)*, CFTC Dkt. No. 18-08 (Jan. 29, 2018); *In re Mizuho Bank, Ltd.*, CFTC Dkt. No. 18-38 (Sep. 21, 2018). The orders in these cases detailed the cooperation efforts by these financial institutions, which included proactively commencing an internal investigation or review to identify and analyze the spoofing misconduct, promptly reporting the misconduct to Division staff, expeditiously and completely responding to the Division's requests for information, identifying specific relevant information to the Division, providing and assisting Division staff with trading analysis, and taking appropriate personnel measures. Remedial efforts included overhauling systems and controls, implementing a variety of enhancements to detect and prevent similar misconduct, revising policies, updating training, and updating and implementing electronic monitoring and surveillance systems to detect and deter spoofing. The consent orders noted a

reduction in penalty as a result of these efforts: $30 million assessed against Deutsche Bank, $1.6 million against HSBC, and $250,000 against Mizuho.

"Significant" cooperation along with significant remedial action, was also recognized with reduced penalties in the ISDAFIX benchmark manipulation cases brought by the Division in FY 2018. *See In re JPMorgan Chase Bank, N.A.*, CFTC Dkt. No. 18-15 (June 18, 2018) ($65 million); *In re BNP Paribas Securities Corp.*, CFTC Dkt. No. 18-19 (Aug. 29, 2018) ($90 million); *In re Bank of America, N.A.*, CFTC Dkt. No. 18-34 (Sep. 19, 2018) ($30 million); *In re ICAP Capital Markets LLC n/k/a Intercapital Markets LLC,* CFTC Dkt. No. 18-33 (Sep. 18, 2018) ($50 million); *In re Deutsche Bank Securities Inc.*, CFTC Dkt. No. 18-09 (Feb. 1, 2018) ($70 million). In these cases, "significant" cooperation consisted of promptly providing and identifying compelling evidence and information to the Division. In addition, these entities commenced significant remedial action to strengthen the internal controls and policies relating to all benchmarks including ISDAFIX.

Reductions in penalty were also given in connection with matters involving registration, supervision, reporting, and recordkeeping violations. For example, *In re Mobius Risk Group LLC*, CFTC Dkt. No. 18-28 (Sep. 14, 2018), an independent energy risk advisory firm was assessed a civil monetary penalty in the amount of $75,000 for failing to register as a commodity trading advisor. Although the order does not detail what cooperation Mobius provided, the CFTC recognized its "substantial cooperation" with the Division's investigation which was recognized in the form of a substantially reduced civil monetary penalty.

Likewise, in *In re AMP Global Clearing LLC,* CFTC Dkt. No. 18-10 (Feb. 12, 2018), a futures commission merchant failed to diligently supervise its IT provider's implementation of certain provisions in Respondent's written information systems security program. AMP was ordered to pay a $100,000 civil monetary penalty, which reflected its "substantial cooperation" during the Division's investigation. This included providing important information and analysis to the Division that helped the Division to efficiently and effectively undertake this investigation.

In *In re NatWest Markets Plc, formerly The Royal Bank of Scotland plc*, CFTC Dkt. No. 18-32 (Sep. 14, 2018). NatWest, a provisionally registered swap dealer, failed to comply with its swap dealer reporting obligations as a swap dealer by misreporting and failing to timely report thousands of transactions to a swap dealer repository. During the Division's investigation into swaps data reporting, NatWest discovered additional deficiencies and reported those deficiencies to the Division after the initial investigation was closed. NatWest subsequently provided staff additional details concerning these deficiencies and quantified the scope of each issue by identifying asset class, date range, and number of swaps implicated. NatWest sent staff quarterly updates identifying additional deficiencies and updates on remediation efforts. The CFTC recognized NatWest's cooperation and remediation in the form of a significantly reduced civil monetary penalty in the amount of $750,000.

In *In re Morgan Stanley and Co. Incorporated*, CFTC Dkt. No. 18-02 (Nov. 2, 2017), Morgan Stanley omitted futures and options data from Part 17 Large Trader reports to the CFTC for a ten-year period, which affected thousands of lines of information. After inconsistencies in its large trader reports were flagged by Commission staff, Morgan Stanley self-reported two software issues affecting the accuracy of its reporting of CME and MGEX positions to CME, fixed both issues and

enhanced its systems with additional controls to prevent future errors. Morgan Stanley subsequently identified a third software glitch after Commission staff identified anomalies in its data submissions and promptly addressed the issue. Morgan Stanley identified and self-reported a fourth issue involving incorrect coding and addressed the issue. The order noted that after Morgan Stanley became aware of the reporting deficiencies, it proactively provided substantial and detailed information regarding the scope and duration of the deficiencies. Morgan Stanley remediated the deficiencies and proactively implemented processes to ensure similar problems will not occur. The order noted that the civil monetary penalty was significantly reduced on account of this cooperation to $350,000.

C. *Early Resolution*

Early resolution was also recognized as warranting a reduction in a civil monetary penalty in *In re Geneva Trading USA, LLC*, CFTC Dkt. No. 18-37 (Sep. 20, 2018). Three traders from a Chicago proprietary firm were charged with spoofing. The order stated that Geneva cooperated throughout the course of the Division's investigation and proactively worked to remediate and enhance its compliance systems and policies related to manipulative trading and spoofing, including reviewing its policies, updated its training, implementing internal trading surveillance and compliance systems and retained a full-time chief compliance officer. The order recognized Geneva's early resolution of this matter in the form of a reduced civil monetary penalty in the amount of $1.5 million.

D. *Individual Cooperation Agreements*

The Division also signed individuals to cooperation agreements which also led to significantly reduced penalties. *See, e.g.*, *In re Brookshire*, CFTC Dkt. No. 18-45 (Sep. 27, 2018). Brookshire solicited prospective customers to open and fund off-exchange binary options trading accounts through websites operated by unregistered third-party binary options brokers. Brookshire "substantially assisted" the Division in its investigation and ongoing litigation involving binary options affiliate marketing fraud by informing the Division about certain marketing campaigns and supplied data for campaigns that the Division would not have otherwise obtained. Brookshire also participated in proffers where he candidly provided useful information related to binary options solicitation fraud and spent hundreds of hours identifying relevant documents and information. Brookshire entered into a cooperation agreement with the Division and the consent order noted that Brookshire's "early, consistent, and substantial cooperation is recognized in terms of substantially reduced sanctions," including the Commission's determination not to impose a significant civil monetary penalty as would otherwise be warranted for this conduct. Brookshire, however, was still permanently barred from registration and trading any account involving commodity interests and ordered to pay disgorgement in the amount of $481,099.90.

In *In re Kamaldeep Gandhi*, CFTC Dkt. No. 19-01 (Oct. 11, 2018), the CFTC entered an order against Gandhi for spoofing on thousands of occasions while employed as a trader at two separate proprietary trading firms. The order recognized Gandhi's entry into a formal cooperation agreement, whereby Gandhi consented to additional proceedings to determine what, if any, monetary sanctions may be assessed against him.

E. *Recognized Cooperation but No Stated Reduction*

In some instances, the Division recognized cooperation by the respondents but did not explicitly state whether such cooperation resulted in a reduced civil monetary penalty.

In *In re ABN AMRO Clearing Chicago LLC*, CFTC Dkt. No. 18-31 (Sep. 14, 2018), ABN was fined a civil monetary penalty in the amount of $160,000 for failing to maintain electronic audit trail data for a total of 65 clients from January 24, 2014 through August 28, 2015, and for failing to supervise its employees and agents to ensure that ABN kept and produced the audit trail data. The Division issued a Section 4g request for the audit trail data for a client that the Division was investigating and discovered significant gaps and missing transactions in the data that ABN produced. Following the Division's notice, ABN initially attempted to restore audit trail data for the transactions identified by the Division but later advised Division staff of its inadvertent failures to produce relevant information. ABN then undertook an internal investigation to determine the scope and extent of the audit file problem for all of its clients for a five-year period. ABN employed multiple personnel to address the audit file problem, some of whom worked on the matter on a full-time basis. ABN's actions included interviewing TT to determine the source of the gaps in the data and building software tools internally and with vendors to advance its investigation. ABN also voluntarily informed the Division of its progress and responded to the Division's inquiries regarding the scope and breadth of its review. ABN remedied the problem and tests its archival systems for their effectiveness including installing monitoring alerts to alert data collection and/or preservation errors. While detailing ABN's cooperation and remediation efforts, the order does not state that the civil monetary penalty was reduced as a result.

Cooperation credit was also not readily apparent in *In re Société Generale S.A.*, CFTC Dkt. No. 18-14 (June 4, 2018). Despite recognizing "significant cooperation," which included identifying and disclosing additional specific misconduct in responding to the Division's request for documents and information in, the bank was ordered to pay $475 million civil monetary penalty to resolve charges of manipulation, attempted manipulation, and false reporting of LIBOR and Euribor from 2006 through mid-2012. Certain conduct occurred after Société Generale was notified of the investigation. In a related action by DOJ, Société Generale entered into a deferred prosecution agreement for violations of the CEA for the same underlying misconduct and accepted a penalty of $275 million.

In *In re Michael Leibowitz*, CFTC Dkt. No. 18-52 (Sep. 28, 2018), as discussed above, the CFTC fined the Chairman of the Board of TFS-ICAP, LLC and TFS-ICAP Ltd., a civil monetary penalty of $250,000, for supervisory violations. While acknowledging Leibowitz's cooperation, the consent order did not explicitly state whether such cooperation was a factor in determining the penalty amount.

V. REGULATORY COORDINATION

One of the priorities listed in the Division's Annual Report was to increase coordination with other regulators and criminal authorities, both domestic and international. In a recent speech, in noting the expanded effort to charge cases in parallel with our criminal law enforcement counterparts, the Division's Director stated that "[a] robust combination of criminal and regulatory

enforcement in our markets is critical to achieving optimal deterrence."[33] Companies and individuals should be cognizant of the reach and coordination between the CFTC and these other regulatory organizations as apparent from the number of joint filings and coordinated efforts in FY 2018. The increased coordination was exemplified in a series of coordinated filings by the CFTC and DOJ involving spoofing in January 2018. The long-standing cooperative effort with federal, state, and international regulators, as well as with the National Futures Association ("NFA") and the exchanges also continued during FY 2018.

A. *CFTC/DOJ Spoofing Takedown*

On January 29, 2018, the CFTC and DOJ announced a raft of cases charging three banks and eight individuals with spoofing in violation of the CEA and various criminal statutes.[34] The CFTC released speaking orders settling the actions against the banks in which HSBC, UBS, and Deutsche Bank agreed to pay civil penalties of $1.6 million, $15 million, and $30 million, respectively. Describing the criminal prosecutions as part of a "spoofing takedown," Acting Assistant Attorney General John P. Cronan stated:

> In six cases across three federal districts, we have charged eight individuals in connection with their alleged roles in manipulating futures markets for precious metals, as well as futures markets for S&P 500, Dow Jones Industrial Average, and NASDAQ E-mini futures contracts.
>
> The alleged conduct in these cases once again reflects a disturbing and reckless trend of individuals and companies seeking to put illicit gains and profits above honest and law-abiding conduct – and by doing so, harming innocent investors and putting the very integrity of our financial markets at risk.
>
> Today's announcement marks the latest chapter of the Criminal Division's ongoing – and unwavering – commitment to protecting the integrity of our financial markets.[35]

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[33] Press Release, *Speech of Enforcement Director James M. McDonald Regarding Enforcement trends at the CFTC, NYU School of Law: Program on Corporate Compliance & Enforcement*, (CFTC Nov. 14, 2018), available at: https://www.cftc.gov/PressRoom/SpeechesTestimony/opamcdonald1.

[34] Banks: *In re UBS AG*, CFTC Dkt. No. 18-07 2 (CFTC Jan. 29. 2018); *In re Deutsche Bank AG and Deutsche Bank Securities Inc.*, CFTC Dkt. No. 18-06 (Jan. 29, 2018); *In re HSBC Securities (USA)*, CFTC Dkt. No. 18-08 (Jan. 29, 2018).

Individuals: *CFTC v. Thakkar*, Case No. 1:18-cv-00619 (N.D. Ill. filed Jan. 28, 2018) and *United States v. Thakkar,* No. 1:18-cr-00036 (N.D. Ill. filed Jan. 19, 2018); *CFTC v. Zhao*, Case No. 1:18-cv-00620 (N.D. Ill. filed Jan. 28, 2018) and *United States v. Zhao*, Case No. 18-cr-00024 (N.D Ill.); *CFTC v. Mohan*, No. Case 4:18-cv-00260 (S.D. Tex. filed Jan. 28, 2018) and *See United States v. Mohan*, No. 4:18-mj-00080 (S.D. Tex. filed Jan. 26, 2018).; *CFTC v. Vorley*, Case No. 1:18-cv-00603 (N.D. Ill. filed Jan. 26, 2018) *United States v. Vorley*, *et al.,* No. 1:18-cr-00035 (N.D. Ill. filed Jan. 19, 2018); *CFTC v. Flotron*, Case No. 3:18-cv-00158 (D. Conn. filed Jan. 26, 2018) and *United States v. Flotron*, No. 3:17-cr-00220 (D. Conn. Apr. 25, 2018).

[35] Press Release, *Acting Assistant Attorney General John P. Cronan Announces Futures Markets Spoofing Takedown*, (DOJ Jan. 29, 2018) ("DOJ Press Release") available at: https://www.justice.gov/opa/speech/acting-assistant-attorney-general-john-p-cronan-announces-futures-markets-spoofing.

The Division's Director said:

> Spoofing is a particularly pernicious example of bad actors seeking to manipulate the market through the abuse of technology. The technological developments that enabled electronic and algorithmic trading have created new opportunities in our markets. At the CFTC, we are committed to facilitating these market-enhancing developments. But at the same time, we recognize that these new developments also present new opportunities for bad actors. We are equally committed to identifying and punishing these bad actors. The CFTC's enforcement program is built around the twin goals of holding wrongdoers accountable and deterring future misconduct. We believe these goals are best achieved when we hold accountable not just companies, but also the individuals involved.[36]

The spoofing takedown was also notable in the assistance given by CME, the United Kingdom's Financial Conduct Authority ("FCA"), in addition to the DOJ.

B. *Parallel Filings in Fraud Cases*

The CFTC's coordination efforts as also readily apparent in a number of fraud cases taken in parallel with criminal counterparts. For example, the CFTC entered a consent order against Joseph Kim requiring Kim to pay $1,146,000 in restitution for misappropriating approximately 980 Litecoins and 339 Bitcoins from his employer to cover personal trading losses in his own personal virtual currency trading accounts. *See In re Joseph Kim*, CFTC Dkt. No. 19-02 (Oct. 29, 2018). On May 21, 2018, Kim pled guilty to one count of wire fraud in connection with misappropriation and fraudulent solicitation. *See United States v. Kim*, 18-CR-107 (N.D. Ill.).

On October 3, 2018, the CFTC filed a complaint alleged fraud and misappropriation in connection with gold and silver contracts against Aaron Michael Scott and his company BMC Worldwide, Inc., d/b/a Blue Moon Coins. *See CFTC v. Aaron Michael Scott*, Case No. 3:18-cv-05802 (W.D. Wash.). On September 27, 2018, a federal grand jury indicted Scott for wire fraud and mail fraud. *See United States v. Scott*, Case No. 3:18-cr-05500 (W.D. Wash.). The CFTC also brought a civil enforcement action against Charles McAllister for fraud and misappropriation in connection with contracts of sale of precious metals through his company BullionDirect, Inc. *See CFTC v. McAllister*, Case No. 1:18-cv-00346 (W.D. Tex.). The U.S. Attorney's Office for the Western District of Texas previously filed a related criminal action charging McAllister with two accounts of wire fraud and one count of money laundering. *See United States v. McAllister*, Case No. 1:18-cr-00016 (W.D. Tex.).

Parallel actions were also filed by the CFTC and DOJ in connection with commodity pool fraud. *See, e.g., CFTC v. Landgarten*, Case No. 2:18-cv-03824 (E.D.N.Y.) (alleging commodity pool fraud, providing pool participants with false account statements, and commingling pool funds with non-pool funds); *United States v. Landgarten*, Case No. 1:18-cr-00328 (E.D.N.Y.) (charging commodity fraud, wire fraud, and obstructing CFTC investigation); *CFTC v. The Kane Capital Investment Group*, Case No. 1:18-cv-00422 (E.D. Va.) (alleging commodity pool Ponzi scheme against

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[36] Press Release, *CFTC Files Eight Anti-Spoofing Enforcement Actions against Three Banks (Deutsche Bank, HSBC & UBS) & Six Individuals*, (CFTC Jan. 29, 2018) available at: https://cftc.gov/PressRoom/PressReleases/pr7681-18.

commodity pool and its principal and failing to register as commodity pool operator); *United States v. Singh Chahal*, 1:18-cr-00152 (E.D. Va.) (charging wire fraud, securities and commodities fraud).

The CFTC also filed several actions in conjunction with the SEC. *See e.g., CFTC v. The Kane Capital Investment Group*, Case No. 1:18-cv-00422 (E.D. Va.) (alleging commodity pool Ponzi scheme against commodity pool and its principal and failing to register as commodity pool operator); *SEC v. Chahal*, Case No. 1:18-v-00426 (E.D. Va.) (alleging securities fraud); *CFTC v. 1pool Ltd.*, Case No. 1:18-cv-02244 (D.D.C.) (alleging unlawful retail commodity transactions, failing to register as a futures commission merchant and supervisory violations against 1pool Ltd. and its CEO and owner Patrick Brunner of Austria); *SEC v. 1pool Ltd.*, Case No. 1:18-cv-02244 (D.D.C.); *CFTC v. Atkinson*, Case No. 1:18-cv-23992 (S.D. Fla.) (alleging binary options fraud); *SEC v. Atkinson*, Case No. 1:18-cv-23993 (S.D. Fla.); *CFTC v. Montano*, Case No. 6:18-cv-1607 (M.D. Fla.); *SEC v. Montano*, Case No. 6:18-cv-01606 (M.D. Fla.).

C. *Assistance from Other Governmental Regulators*

The CFTC also continued to receive assistance from federal, state, and international governmental regulators during FY 2018. In addition to the CFTC/DOJ spoofing takedown discussed above, DOJ's continued assistance was recognized in the benchmark manipulation cases brought by the CFTC. *See, e.g., In re Société Generale S.A.*, CFTC Dkt. No. 18-14 (June 4, 2018) (settling charges for attempted manipulation of and for false reporting in connection with Libor, Euribor, and Yen Libor); *In re Deutsche Bank Securities Inc.*, CFTC Dkt. No. 18-09 (Feb. 1, 2018) (attempted manipulation of U.S. Dollar ISDAFIX benchmark swap rates).

DOJ also assisted in fraud cases filed by the CFTC. *See, e.g., CFTC v. 1pool Ltd.*, Case No. 1:18-cv-02244 (D.D.C.); *CFTC v. Blake Harrison Kantor*, Case No. 2:18-cv-02247 (E.D.N.Y.) (complaint against multiple individuals and companies with operating fraudulent scheme involving binary options and a virtual currency known as ATM Coin); *CFTC v. Atkinson*, Case No. 1:18-cv-23992 (S.D. Fla.) (alleging binary options fraud); *SEC v. Atkinson*, Case No. 1:18-cv-23993 (S.D. Fla.); *CFTC v. Montano*, Case No. 6:18-cv-1607 (M.D. Fla.); *SEC v. Montano*, Case No. 6:18-cv-01606 (M.D. Fla.). In addition to filing coordinated actions with the CFTC, the SEC also aided the CFTC in connection with *In re AMP Global Clearing LLC*, CFTC Dkt. No. 18-10 (Feb. 12, 2018) (finding futures commission merchant failed to diligently supervise implementation of critical provisions its information systems security program). The IRS also aided the CFTC in its efforts in connection with fraud cases brought by the CFTC. *See, e.g., CFTC v. Blake Harrison Kantor*, Case No. 2:18-cv-02247 (E.D.N.Y.); *CFTC v. McAllister*, Case No. 1:18-cv-00346 (W.D. Tex.).

State, as well as international regulators, continued to assist the CFTC in its investigations during FY 2018 *See, e.g., CFTC v. Amada*, Case No. 1:18-cv-07895 (S.D.N.Y.) (charging forex trader and his firm for solicitation fraud and registration violations with criminal indictment brought by New York State Attorney General's Office and assistance with UK's FCA); *CFTC v. TFS-ICAP*, Case No. 1:18-cv-08914 (S.D.N.Y.) (charging interdealer broker with deceiving and attempting to deceive clients by communicating fake bids and offers and fake trades in the foreign exchange options market and assisted by the New York State Attorney General's Office and UK's FCA); *CFTC v. The Kane Capital Investment Group*, Case No. 1:18-cv-00422 (E.D. Va.) (alleging commodity pool fraud and assisted by Virginia State Corporation Commission). The long-standing coordination efforts

with state regulators was further bolstered with the announcement of an agreement for greater information sharing between the CFTC and the North American Securities Administrators Association ("NASAA") in May 2018.[37]

As noted above, the UK's FCA assisted the CFTC in conjunction with the coordinated CFTC/DOJ spoofing takedown in January 2018. Other international regulators, such as France's Autorité des Marchés Financiers ("AMF") and the St. Vincent and Grenadines Financial Services Authority, also provided assistance in other spoofing cases, as well as cases involving manipulation and fraud brought by the CFTC. *See, e.g., In re ICAP Capital Markets LLC n/k/a Intercapital Markets LLC,* CFTC Dkt. No. 18-33 (Sep. 18, 2018) (UK FCA); *In re Statoil ASA*, CFTC Dkt. No. 18-04 (Nov. 14, 2017) (UK FCA); *In re Société Generale S.A.*, CFTC Dkt. No. 18-14 (June 4, 2018) (UK FCA and French AMF); *In re Deutsche Bank Securities Inc.*, CFTC Dkt. No. 18-09 (Feb. 1, 2018) (UK FCA); *In re Cargill, Inc.*, CFTC Dkt. No. 18-03 (Nov. 6, 2017) (French AMF); *In re Anuj C. Singhal*, CFTC Dkt. No. 18-11 (Apr. 9, 2018) (French AMF); *CFTC v. Lucrative Pips Corporation*, Case No. 1:18-cv-04549 (N.D. Ga.) (St. Vincent and Grenadines Financial Services Authority); *CFTC v. Salerno*, Case No. 2:18-cv-01585 (E.D. Pa.) (Cyprus Securities and Exchange Commission and St. Vincent and the Grenadines Financial Services Authority); *CFTC v. EOX Holdings LLC*, Case No. 1:18-cv-08890 (S.D.N.Y.) (Alberta Securities Commission); *CFTC v. JAFX, Ltd.*, Case No. 2:18-cv-00598 (D. Utah) (Financial Supervision Commission of Bulgaria); *CFTC v. Mark Olsen Mining Co.*, Case No. 9:18-cv-80759 (S.D. Fla.) (Financial Sector Conduct Authority of South Africa); *CFTC v. Jin Choi*, *et al.* Case No. 2:18-cv-03991 (C.D. Cal.) (Hong Kong Securities and Futures Commission, Financial Services Agency of Japan, and British Virgin Islands Financial Services Commission); *In re Glencore Agriculture B.V.*, CFTC Dkt. No. 18-12 (Apr. 30, 2018) (Dutch Authority for the Financial Markets); *CFTC v. Dillon Michael Dean, et al.*, Case No. 2:18-cv-00345 (E.D.N.Y.) (British Columbia Securities Commission).

D. *Assistance of NFA and Exchanges*

In addition to providing cooperation and assistance to the CFTC in its investigations,[38] several CFTC investigations stemmed from related actions and inquiries by the NFA and the exchanges.

In a number of instances, the CFTC's action was conducted in conjunction with related inquiries by the exchanges. On September 27, 2018, the CFTC announced that it settled cross-exchange manipulation charges against a Florida-based futures trader. The CFTC noted that its investigation was conducted in conjunction with related inquiries by CME Group and NADEX. *See In re Davis Ramsey*, CFTC Dkt. No. 18-49 (Sep. 27, 2018). Likewise, on September 26, 2018, the CFTC charged two commodity traders, Adam Flavin and Peter Grady, for attempted manipulation of certain CBOT wheat futures and options. *See In re Peter Grady,* CFTC Dkt. No. 18-41 (Sep. 26, 2018); *In re Adam Flavin*, CFTC Dkt. No. 18-40 (Sep. 26, 2018). The CFTC conducted its investigation in

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[37] *See* Press Release, *CFTC, NASAA Sign Agreement for Greater Information Sharing Between Federal Commodities Regulator and State Securities Regulators*, (CFTC May 21, 2018), available at: https://www.cftc.gov/PressRoom/PressReleases/7730-18.

[38] *See e.g.,* https://www.cftc.gov/LawRegulation/Enforcement/EnforcementActions/index.htm?year=all&page=7*;* https://www.cftc.gov/PressRoom/PressReleases/7797-18; https://www.cftc.gov/PressRoom/PressReleases/7787-18.

conjunction with a related inquiry by the CME Group, which also issued Notices of Disciplinary Action against both traders on the same day. *See* CBOT-15-0160-BC-2, -3.

During FY 2018, the CFTC also considered fines imposed by the exchanges in determining the amount of the civil monetary penalty. For example, on July 12, 2018, the CFTC imposed a $3.4 million civil monetary penalty against a commodity merchandising firm for attempted manipulation of CBOT wheat futures and options contracts and for aiding and abetting the attempted manipulation of the cash price for yellow corn from Columbus, Ohio. *See In re Lansing Trade Group, LLC*, CFTC Dkt. No. 18-16 (Jul. 12, 2018). The same day that the settlement was announced by the CFTC, CME Group issued a Notice of Disciplinary Action in which Lansing agreed to pay a fine of $3.15 million arising out of the conduct that was the subject of the CFTC's order. *See* CBOT-15-0160-BC. The administrative consent order noted that the CFTC investigation was conducted in conjunction with a related inquiry by CME and considered the CME's fine.

Similarly, *In re Kooima & Kaemingk Commodities, Inc.,* CFTC Dkt. No. 18-39 (Sep. 26, 2018), the CFTC settled charges against an Iowa introducing broker and its principals for fraud, unauthorized trading, and false statements to the CME. The settlement was announced on the same day that the CME issued Notices of Disciplinary Action (*see* CME-14-9938-BC-1, -2, and -3), whereby the CFTC took into account the fine that the CME imposed in its related action. Both CME and NFA assisted the CFTC in its action. *See also In re Anuj C. Singhal*, CFTC Dkt. No. 18-11 (Apr. 9, 2018), and CBOT-15-0282-BC, CBOT-11-8477-BC (ordering $150,000 civil monetary penalty and four-month trading ban for spoofing in wheat markets between at least March and June 2016, in conjunction with CME Notice of Disciplinary action with $60,000 fine $60,000 and three-month trading suspension).

The CFTC also brought several actions stemming from Member Responsibility Actions issued by the NFA. On July 30, 2018, the CFTC assessed a civil monetary penalty in the amount of $600,000 against R.J. O'Brien & Associates LLC for failing to diligently supervise its employees' handling of customer accounts and violating a prior Commission order. *See In re R.J. O'Brien & Assocs. LLC*, CFTC Dkt. No. 18-17 (July 30, 2018). During the relevant period, NFA issued two regulatory actions prohibiting the client from soliciting funds or withdrawing money from managed accounts and ultimately banned the client from trading. Despite the NFA's regulatory actions, the client was able to open a new account in his spouse's name. *See also In re X-Change Finan. Access LLC*, CFTC Dkt. No. 18-13 (May 29, 2018) (settling charges against then-futures commission merchant and now introducing broker for supervision and recordkeeping where NFA issued prior regulatory actions). In a similar vein, on September 17, 2018, a Chicago-based introducing broker and its principal were ordered to pay $300,000 for supervisory and recordkeeping failures. *See In re Global Asset Advisors*, CFTC Dkt. No. 18-30 (Sep. 14, 2018). During the relevant period, the NFA had issued two regulatory actions prohibiting the CTA from soliciting funds or withdrawing money from managed accounts, and later, an order banning the CTA from trading.

VI. WHISTLEBLOWERS

Another stated initiative of the Division in FY 2018 was its whistleblower program. The CFTC's Division of Enforcement frequently initiates investigations based on complaints received by its whistleblower office. In its most recent annual report to Congress, the CFTC reported that it

received complaints relating to issues including virtual currencies, spoofing, manipulation, and fraud.[39] The CFTC's Whistleblower Program provides monetary incentives to individuals who voluntarily provide original information relating to possible violations of the CEA that lead to a successful enforcement action resulting in more than $1 million in sanctions.[40] Whistleblowers can receive between 10 and 30 percent of the monetary sanctions collected.

The CFTC defines a "whistleblower" as any individual providing information relating to a violation of the CEA to the CFTC in a manner established by the CFTC. The CFTC's Regulations provide that an employer cannot retaliate against a whistleblower for providing information to the CFTC or assisting in any CFTC investigation or action based upon such information. The CFTC's anti-retaliation rules are enforceable in a CFTC proceeding, including where retaliation is in response to a whistleblower providing information to the CFTC after reporting the information through internal whistleblower, legal or compliance procedures.

The CFTC was particularly active in FY 2018 in issuing awards to whistleblowers. In FY 2018, the CFTC issued five awards totaling over $75 million. On July 12, 2018, the CFTC announced an award of approximately $30 million to an individual – its largest ever. Four days later, the CFTC announced its first award to a whistleblower living in a foreign country. Immediately after, on August 2, 2018, the CFTC announced three awards totaling more than $45 million. By contrast, over the preceding four years, the CFTC had issued just four awards to whistleblowers. Indeed, the CFTC issued no awards in fiscal years 2011-2013 and 2017 and issued only four awards totaling just over $12 million in fiscal years 2014-2016. In an August press release, the Division's Director indicated that he expects the trend to continue and reported that both the volume and complexity of whistleblower submissions have increased.[41]

Given the CFTC's intense focus on whistleblower complaints and the increased monetary incentives in award amounts and frequency by the CFTC, businesses should avoid potential enforcement actions by maintaining robust internal whistleblower programs.

VII. LOOKING FORWARD

McDonald's speech at NYU was entitled "Enforcement Trends at the CFTC." Whether he meant "What's past is prologue,"[42] from the Division's work in FY 2018, we anticipate that FY 2019 will see the continuation of some trend lines along with some new developments. So, as we sing *Auld Lang Syne* in celebration of FY 2018 and the beginning of FY 2019, we suspect FY 2019 will bring the continuation of the following FY 2018 trends:

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[39] Annual Report on the Whistleblower Program and Customer Education Initiatives, available at: https://whistleblower.gov/sites/whistleblower/files/2018-10/FY18%20Annual%20Report%20to%20Congress%20Final.pdf.

[40] *See* 7 U.S.C. § 23(b)(1).

[41] Press Release, *CFTC Announces Multiple Awards Totaling More than $45 Million*, (CFTC Aug. 2, 2018), available at: https://www.cftc.gov/PressRoom/PressReleases/7767-18.

[42] Shakespeare, *The Tempest*, Act 2, Scene 1.

- The Division will nearly certainly continue its efforts to combat spoofing and continue to expand those efforts in the areas of cross-market and mere attempted spoofing.
- It will also no doubt continue to focus on market manipulations. Indeed, the *Lansing* case included a second count in addition to the first count of manipulating wheat futures and options, of aiding and abetting an unnamed broker's manipulation the price of yellow corn for delivery in Columbus, Ohio. Charges will likely be forthcoming against the broker and the broker's client who benefited from the corn price manipulation.
- The Division will likely continue its work to ferret out and prosecute perceived fraud in the cryptocurrency cash markets.
- Announced late in FY 2018 was an insider trading case involving a broker, Andrew Gizienski, who allegedly shared customer order information with a favored customer to curry that customer's favor and possibly get a job with that customer.[43] With the FY 2018 Annual Report's announcement of a "specialized task force" to address "insider trading and protection of confidential information," we expect the *Gizienski* case to likely be the beginning of a trend.

In terms of new developments, another specialized task force announced in the FY 2018 Year in Review report was a "Bank Secrecy Act" task force to focus on CFTC registrants' compliance with Bank Secrecy Act mandates such anti-money laundering, know your customer, customer identification program, and suspicious activity reporting requirements. With no cases apparently brought by the Division's Bank Secrecy Task Force, we expect to see some of the fruit of the task force's work unveiled in the form of settlements or litigated cases in FY 2019.

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[43] *CFTC v. EOX Hldgs. LLC, et al.*, Case No. 18-cv-8890 (S.D.N.Y.).