

Bridging the Week by Gary DeWaal: September 24 - 28 and October 1, 2018 (Manipulation; Insider Trading; What Is a Commodity?; Bitcoin; Cyber Intrusion)

Article By:

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The Commodity Futures Trading Commission brought and resolved multiple enforcement actions alleging manipulation and attempted manipulation, coordinating such actions with parallel disciplinary proceedings by relevant exchanges. The CFTC also filed an enforcement action in a federal court against an introducing broker and an associated person for illicit insider trading involving ICE Futures U.S. futures contracts. This matter was not settled although a prior disciplinary action involving the same facts and parties was settled last year by the CFTC defendants with IFUS. Separately, a federal court in Massachusetts said the CFTC has authority to bring an anti-fraud action against defendants in connection with their offer and sale of a unique cryptocurrency on which a specific futures contract has not been based. As a result, the following matters are covered in this week's edition of *Bridging the Week*:

- Trader Fined US \$600,000 for Cross-Market Manipulation by CFTC and Two Exchanges While Employees of Grain Firm Sanctioned for Role in Wheat Futures and Options Manipulation Scheme (includes **Legal Weeds1** and **Legal Weeds2**);
- Introducing Broker and Associated Person Charged by CFTC With Insider Trading (includes **Legal Weeds**);
- Second Federal Court Rules That Cryptocurrencies Are Commodities and CFTC Has Anti-Fraud Jurisdiction Over Alleged Wrongdoing; (includes **My View1** and **My View2**);
- Broker-Dealer Resolves SEC Charges That Inadequate Cybersecurity Procedures Led to Cyber Intrusion, Compromising Customer Personal Information (includes **Compliance Weeds**); and more.

The next regularly scheduled edition of *Bridging the Week* will be October 15.

Video Version:

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Briefly:

- **Trader Fined US \$600,000 for Cross-Market Manipulation by CFTC and Two Exchanges While Employees of Grain Firm Sanctioned for Role in Wheat Futures and Options Manipulation Scheme:** The Commodity Futures Trading Commission, the Chicago Mercantile Exchange, and the North American Derivatives Exchange brought and resolved charges against an individual claiming he engaged in a cross-market manipulation scheme involving trading on two CME Group exchanges to impact prices to benefit his binary contracts positions on NADEX. Additionally, two persons associated with a grain merchandising firm previously sanctioned by the CFTC for attempted manipulation of wheat futures and options settled separate charges brought against them individually by the CFTC and the Chicago Board of Trade.

Davis Ramsey

The CFTC filed and settled an enforcement action against Davis Ramsey, claiming that, from at least April 2015 through May 2017, he traded futures on two CME Group exchanges on multiple occasions to artificially impact prices in order to benefit binary contracts positions he owned or controlled on NADEX.

The CFTC alleged that, during the relevant time period, Mr. Ramsey purchased NADEX binary contracts that allowed him to make money if the prices of certain Commodity Exchange, Inc. or CME futures contracts traded above or below designated prices at specific times. To determine whether a particular binary contract was in the money (and thus earned winnings for its holder), NADEX calculated the binary contract's expiration value on a formula that relied on the 25 executions on COMEX or CME (no matter what size), as relevant, just prior to the designated time.

According to the CFTC, to make money on his NADEX positions, Mr. Ramsey would place multiple small lot orders in the relevant COMEX or CME futures contract just prior to the relevant expiration time of his binary contract, and immediately after such time, liquidate in a single transaction all his open CME Group exchanges' position. Mr. Ramsey's objective, claimed the CFTC, was to make more money on his NADEX positions than he might lose on his closed-out COMEX or CME positions.

The CFTC charged Mr. Ramsey with manipulation and attempted manipulation, as well as engaging in a prohibited manipulative or deceptive device or contrivance.

Both NADEX and CME filed separate disciplinary actions against Mr. Ramsey based on his purported wrongdoing. To resolve the CFTC enforcement matter, Mr. Ramsey agreed to pay a fine of US \$325,000 and disgorge profits of US \$250,636. He also agreed that, for five years, he would not directly or indirectly trade or be involved in any transaction for any commodity interest (e.g., futures contract or swap) regulated by the CFTC and permanently be prohibited from trading on NADEX. Separately, Mr. Ramsey agreed to pay a fine of US \$135,000 to CME and US \$140,000 to NADEX.

NADEX's binary contracts are considered swaps under the Commodity Exchange Act. (Click [here](#) to access CEA § 1a(47)(A)(ii), 7 U.S.C. § 1a(47)(A)(ii).) COMEX, CME, and NADEX are all registered with the CFTC as designated contract markets.

Adam Flavin and Peter Grady

Separately, the CFTC brought and settled two enforcement actions against traders associated with Lansing Trade Group, LLC – a grain merchandising firm – for their role in an attempted manipulation of the prices of certain wheat futures and options contracts from March 3 to 11, 2015. The two traders

were Adam Flavin and Peter Grady.

Both the CFTC and the Chicago Board of Trade charged Lansing with attempted manipulation to benefit its own futures and options positions in enforcement actions filed in July 2018.

Lansing resolved these matters by agreeing to pay aggregate fines of US \$6.55 million.

(Click [here](#) for background in the article "Commodity Merchandising Firm Agrees to Pay US \$6.55 Million in Fines to CFTC and CBOT for Attempted Manipulation of Wheat Futures" in the July 15, 2018 edition of *Bridging the Week*.)

The CFTC charged that Mr. Flavin and Mr. Grady orchestrated the attempted manipulation on behalf of Lansing. To resolve their enforcement actions, Mr. Grady agreed to pay a US \$250,000 fine and Mr., Flavin, a US \$125,000 penalty. Mr. Flavin also agreed to a four-year trading ban, and Mr. Grady, a nine-month trading ban on all CFTC-supervised trading facilities.

Both Mr. Flavin and Mr. Grady were also subject to parallel Chicago Board of Trade disciplinary actions for their roles in Lansing's attempted manipulation. Each settled by agreeing to pay additional fines equal to the amount of their fines to the CFTC, as well as other sanctions.

Legal Weeds1: The CFTC enforcement action against Mr. Ramsey does not represent the first time the CFTC has prosecuted cross-market activity that it alleged violated applicable law or its rules.

During September, the CFTC brought and settled an enforcement action against Victory Asset, Inc. and Michael Franko, its Director of Commodities Trading, for spoofing on individual CFTC-regulated exchanges, as well as cross-market spoofing on the COMEX and the London Metal Exchange.

The CFTC claimed when Mr. Franko engaged in spoofing solely on domestic markets, he would place a small order on one side of a particular futures market, and then place a larger order on the other side of the same market to create or augment order book imbalances. Mr. Franko purportedly would cancel his large order as soon as his small order was executed. When Mr. Franko engaged in cross-market spoofing, he would allegedly place an order to buy or sell copper futures on either the COMEX or LME market, and attempt to effectuate the order's execution by non-*bona fide* trading activity on the other market. Again, after his desired execution, Mr. Franko would cancel his spoofing order. (Click [here](#) for details in the article "CFTC and Exchanges Layer on Multiple Spoofing Cases" in the September 23, 2018 edition of *Bridging the Week*.)

More famously, in July 2013, the CFTC, the UK Financial Conduct Authority, and the four CME Group exchanges announced enforcement actions and settlements for disruptive trading practices involving various commodity futures traded on CME Group exchanges and ICE Futures Europe utilizing algorithmic trading by Panther Energy Trading LLC and its manager and sole owner, Michael Coscia. According to the CFTC, the nature of the disruptive practices – spoofing (or layering, as the FCA called it) – occurred from August 8 through October 18, 2011.

The CFTC Order required Panther and Coscia to pay a fine of US \$1.4 million and disgorge an identical amount in trading profits, and banned both respondents from trading on any CFTC-registered entity for one year. The FCA's order imposed a fine of GBP 597,993 while the CME imposed a fine of US \$800,000 and disgorgement of US \$1.3 million. The CME also banned Coscia from trading on CME exchanges for six months.

Later, Mr. Coscia was indicted and convicted for matters related to the same offenses.

The enforcement action against Mr. Ramsey involved a claim of cross-market manipulation and attempted manipulation. The CFTC relied on both its traditional anti-manipulation authority, as well as its newer fraud-based manipulation authority under the Dodd-Frank Wall Street Reform and Consumer Protection Act in leveling its charges.

Legal Weeds2: Generally, to prove traditional manipulation, the CFTC must show that a person has the ability to influence the relevant prices, that the person specifically intended to create or effect a market price or prices that do not reflect legitimate forces of supply and demand, that an artificial price or prices existed, and that the person caused the artificial price or prices. To prove attempted manipulation, the CFTC only has to evidence an intent to affect market price and an overt act in furtherance of that intent. (Click [here](#) for a discussion of the elements to show traditional manipulation in the CFTC's discussion of Commodity Exchange Act § 6(c)(3) and CFTC Rule 180.2 in the *Federal Register* Release Related to the Commission's 2011 adoption of CFTC Rules 180.1 and 180.2. Click [here](#) for a discussion of attempted manipulation in *In re Hohenberg Bros. Co.* (CFTC 1977).)

Under its newer Dodd-Frank authority, the CFTC does not need to demonstrate an intent to affect prices or an actual impact on prices. The Commission must only evidence an intentional or reckless employment of a manipulative or deceptive device, scheme or artifice to defraud. (Click [here](#) to access CEA § 6(c)(1), 7 U.S.C. § 9(1); click [here](#) to see CFTC Rule 180.1.)

- **Introducing Broker and Associated Person Charged by CFTC With Insider Trading:** The Commodity Futures Trading Commission filed a lawsuit against EOX Holdings LLC, a Commission-registered introducing broker, and one of its associated persons, Andrew Gizienski, for illegally sharing their customers' trading information with one customer, as well as impermissibly trading the one customer's account on a discretionary basis relying on other customers' trading information. The CFTC's lawsuit was filed in a federal court in New York.

According to the CFTC, from approximately August 2013 through May 2014, Mr. Gizienski provided confidential, nonpublic information to one customer regarding the trading activities of other customers purportedly "knowing or with reckless disregard of the fact, that the information would be used for trading." In addition, charged the CFTC, during this time, Mr. Gizienski also traded for the one customer while having nonpublic information regarding other EOX customers, and executed block trades against other customers for the benefit of the one customer more than 100 times. All of Mr. Gizienski's trades involved ICE Futures U.S. futures and options contracts, said the CFTC.

The CFTC charged that these alleged actions evidenced a breach of defendants' obligation to protect confidential customer information and constituted the misappropriation of material nonpublic information by both defendants in violation of the provision of law prohibiting fraud-based manipulation as well as the corresponding CFTC rule. (Click [here](#) to access CEA § 6(c)(1), 7 U.S.C. § 9(1); click [here](#) to see CFTC Rule 180.1.) The CFTC also claimed that EOX failed to fulfill its supervisory obligations and to maintain books and records required by law and CFTC rule related to pre-trade communications and orders.

Last year, EOX agreed to pay a fine of US \$442,500 to resolve charges brought by IFUS that, from August 2013 through July 2014, it may have failed to adequately supervise two of its employees in connection with their execution of block trades and handling of nonpublic customer information. Two of EOX's employees – Mr. Gizienski and Eric Torres – consented to payment of fines of US \$50,000 and US \$7,500, respectively, to resolve related charges. (Click [here](#) for details in the article "ICE Futures U.S. Charges Introducing Broker and Employees With Impermissibly Disclosing Customer

Order Information and Executing Block Trades Contrary to Requirements” in the December 10, 2017 edition of *Bridging the Week*.)

Additionally, last year ICE Futures settled disciplinary actions against AC Power Financial Corporation and Jason Vaccaro, the firm’s president, for a combined fine of US \$225,000 for Mr. Vaccaro’s alleged use of nonpublic information “received from his Introducing Broker” related to a customers’ block trades unrelated to any negotiation of a block trade between Mr. Vaccaro and such customers. It appears likely the unnamed referenced IB was EOX. (Click [here](#) for details of these two ICE Futures disciplinary actions in the article “ICE Futures U.S. Settles Disciplinary Actions Against Three Respondents for Alleged Block Trade Violations For US \$325,000 Combined Fine” in the May 14, 2017 edition of *Bridging the Week*.)

Concurrently with the publication of this enforcement action, the CFTC announced its formation of a new Insider Trading & Information Protection Task Force with its Division of Enforcement. The task force will not only investigate instances of potential misuse of client confidential information, but “ensure that registrants develop and enforce policies prohibiting the misuse of confidential information, as they are required to do under law.”

Legal Weeds: The CFTC has brought and resolved two prior enforcement actions charging persons with insider trading for misappropriating trading information. In the first action brought in 2015, the CFTC alleged that Arya Motazed, a gasoline trader for an unnamed large, publicly traded corporation, similarly misappropriated trading information of his employer for his own benefit. In the second action, the CFTC brought and settled charges against Jon Ruggles, a former trader for Delta Airlines, for trading accounts in his wife’s name based on his knowledge of trades he anticipated placing for his employer. Both actions were grounded in the Dodd-Frank Wall Street Reform and Consumer Protection Act provision and CFTC rule that prohibit the use of a manipulative or deceptive device or contrivance in connection with futures or swaps trading. (Click [here](#) to access Commodity Exchange Act Section 6(c)(1), US Code § 9(1), and [here](#) to access CFTC Rule 180.1. Click [here](#) for background on these CFTC enforcement actions in the article “Ex-Airline Employee Sued by CFTC for Insider Trading of Futures Based on Misappropriated Information” in the October 2, 2016 edition of *Bridging the Week*.)

- **Second Federal Court Rules That Cryptocurrencies Are Commodities and CFTC Has Anti-Fraud Jurisdiction Over Alleged Wrongdoing:** A second federal court has ruled that the Commodity Futures Trading Commission has jurisdiction to bring enforcement actions against persons engaged in purported fraudulent activities involving cryptocurrencies.

In an action against My Big Coin Pay, Inc., Randall Crater and certain relief defendants, the US District Court in Massachusetts held that cryptocurrencies are commodities as defined under applicable law, and that the CFTC’s authority to bring enforcement actions under its fraud-based manipulation authority extends to fraud cases that are not grounded in illicit market conduct. (Click [here](#) for background regarding the CFTC’s enforcement action in the article “CFTC Sues Unregistered Company and Promoters of Fake Virtual Coin for Alleged Fraud and Operating Purported Ponzi Scheme” in the January 28, 2018 edition of *Bridging the Week*.)

In August 2018, a federal court in Brooklyn, New York, reached the same conclusion in a CFTC enforcement action against Patrick McDonnell and Cabbagetechn Corp. (Click [here](#) for background in the article “Federal Court Enters Final Judgment Against Alleged Virtual Currency Fraudster; Confirms CFTC Authority to Bring Enforcement Action” in the August 26, 2018 edition of *Bridging the Week*.)

The Massachusetts court claimed that the digital coin at issue in this action – My Big Coin – was a cryptocurrency and satisfied the definition of commodity under the Commodity Exchange Act. (Click [here](#) for the definition of commodity under the Commodity Exchange Act, 7 U.S. Code § 1a(9).)

Mr. Crater and the relief defendants had argued in papers to support a motion to dismiss that the CFTC has no jurisdiction to bring its enforcement action alleging fraud in connection with the sale of the virtual currency known as “My Big Coin,” because the virtual currency was not a commodity under applicable law. This is because, said the defendants, the virtual currency was neither a good nor an article, or a service, right or interest in which contracts for future delivery are dealt in. If My Big Coin is not a commodity, the CFTC has no authority to prosecute a fraud case against them under applicable law, claimed the defendants.

The court rejected defendants’ view, noting that “commodity” under applicable law is defined “generally and categorically, not by type, grade, quality, brand producer, manufacturer, or form.” As a result, if there is futures trading within a certain class, all items within the class are commodities, said the court. Since there are multiple futures contracts that reference bitcoin and bitcoin is a cryptocurrency, all cryptocurrencies are commodities, ruled the court.

Additionally, the court held that the CFTC’s authority to prosecute fraud-based manipulation extends to fraud “even in the absence of market manipulation.” Although the court acknowledged that there were “some isolated statements in the legislative history” of the relevant Dodd-Frank provision supporting a contrary view, the court said this was “insufficient to overcome the broad language in the statute as it was passed.”

In other matters involving crypto assets:

- CFTC and SEC Charge Non-US Company With Illegally Engaging in Off-Exchange Margined Transactions With Retail Customers While Accepting Bitcoin as Payment: Both the CFTC and the Securities and Exchange Commission brought enforcement actions against 1pool Ltd. – an online trading platform – and its chief executive officer and principal, Patrick Brunner, for engaging in illegal transactions settling in bitcoin with retail clients and not being properly registered. The CFTC claimed that contracts for difference traded on 1pool that referenced gold and West Texas Intermediate crude oil, among other commodities, were illegal off-exchange margined transactions. Moreover, 1pool failed to register as a futures commission merchant, as required by law and to have a necessary supervisory system, charged the CFTC. The SEC claimed that 1pool-offered CFDs that tracked the price of stocks were security-based swaps, and its offer and sale of such products to US retail persons violated various securities laws, including requirements that security-based swaps be registered with it, and that dealers in CFDs in security products be registered as dealers. These lawsuits were filed by the CFTC and SEC in a federal court in the District of Columbia.
- CFTC Charges Individual With Impersonating CFTC Staff to Steal Bitcoin: The CFTC filed an action against two persons – one using the name Morgan Hunt doing business as Diamonds Trading Investment House and the other employing the name Kim Hecroft doing business as First Options Trading – for engaging in an illegal scheme to obtain bitcoin from retail investors purportedly to trade leveraged or margined foreign currency contracts, binary options and diamonds. In connection with the alleged fraud, the CFTC charged that the defendants impersonated a CFTC investigator and forged documents to suggest they were drafted by the Office of General Counsel.

My View1: The definition of a commodity under applicable law is clear:

The term “commodity” means wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, *Solanum tuberosum* (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice, **and** all other goods and articles, except onions ...and motion picture box office receipts (or any index, measure, value, or data related to such receipts), **and** all services, rights, and interests (except motion picture box office receipts, or any index, measure, value or data related to such receipts) in which contracts for future delivery are presently or in the future dealt in. [Emphasis added.]

Thus, a commodity includes 30 specifically enumerated commodities and all services, rights and interests in which contracts are presently or in the future dealt in.

However, the definition of a commodity also includes “all other goods and articles” except for onions and motion picture box office receipts. This clause stands alone in the CEA definition of commodity and is not modified by the qualification, “in which contracts for future delivery are presently or in the future dealt in.”

As a plain review of the placement of commas and the two uses of the word “and” make clear in the CEA definition of commodity, only the phrase “and all services rights and interests” is modified by the phrase “in which contracts for future delivery are presently or in the future dealt in.”

Notwithstanding, the court in *My Big Coin Pay* read this definition differently. The court said that the qualifier “dealt in” applies to both goods and articles as well as services, rights and interests. Although the court held for the CFTC in considering defendants’ motion to dismiss this enforcement action, such a view could severely limit the CFTC’s ability to bring enforcement actions involving new classes of commodities going forward until such time as it first approves a futures contract on a product within such class. This appears to be an unnatural reading of the relevant provision of law.

The definition of commodity is very broad. It includes (1) 30 enumerated commodities plus all (2) other goods and articles, as well as (3) “all services, rights and interests... in which contracts for future delivery are presently, or in the future dealt in.” Sentence construction is meaningful.

My View2: During the last few weeks, federal courts have issued a triumvirate of decisions that some may regard as the three horsemen of the cryptolypse in that they generally confirm CFTC and the Securities and Exchange Commission views regarding the reach of their enforcement authority.

In the first action during August 2018, a federal court in Brooklyn, New York, sided with the CFTC and entered an order of permanent injunction, imposed a civil penalty of approximately US \$871,000, and ordered restitution of approximately US \$290,000 against Cabbagetechn Corp. and Patrick McDonnell, its owner and controller for unlawfully soliciting customers to send money and virtual currencies for virtual currency trading advice and for the discretionary trading of virtual currencies. In ruling against the defendants, the federal court held that virtual currencies are commodities and that the CFTC had jurisdiction to bring its enforcement action relying on the fraud-based manipulation prohibition in Dodd-Frank.

In the first half of September 2018, a different judge in the same US federal court in Brooklyn, New York, declined to dismiss a criminal indictment against Maksim Zaslavskiy charging him with

securities fraud and related offenses in connection with two cryptocurrency investment schemes and their related initial coin offerings. Mr. Zaslavskiy had argued that the indictment should be dismissed because his activities did not involve securities and that the relevant law prohibiting fraud in connection with the offer and sale of securities was unconstitutionally vague.

The court rejected Mr. Zaslavskiy's arguments, saying that, at least for the basis of the defendant's motion to dismiss, the government had sufficiently alleged that the relevant digital assets were securities and that the relevant law prohibiting fraud is not unconstitutionally vague as applied in his case. In taking this view, the court adopted the arguments of the US Department of Justice and the SEC. (Click [here](#) for background on this decision in the article "Brooklyn Federal Court Rules ICO-Issued Digital Assets Could Be Securities" in the September 16, 2018 edition of *Bridging the Week*.)

The latest decision by the federal court in Massachusetts generally follows the reasoning of the *Cabbagepatch* decision, and is another victory for the CFTC – although a different outcome is possible after a jury considers all the relevant facts.

The age of cryptocurrencies began less than 10 years ago when Satoshi Nakamoto mined the first 50 bitcoins. For the first time, courts are now providing their views on how crypto assets may be regulated. Although these views are mostly consistent with the CFTC's and SEC's perspectives, it is better to have certainty rather than uncertainty.

- **Broker-Dealer Resolves SEC Charges That Inadequate Cybersecurity Procedures Led to Cyber Intrusion, Compromising Customer Personal Information:** The Securities and Exchange Commission settled an enforcement action against Voya Financial Advisors, Inc. related to purported deficiencies in its cybersecurity procedures that the SEC alleged contributed to a cyber intrusion and compromise of customers' personal information. Voya is registered with the SEC as a broker-dealer and investment adviser.

According to the SEC, over six days in April 2016 one or more persons impersonated Voya independent contractor representatives, obtained a reset of three such representatives' passwords for offsite access to Voya's web portal for brokerage customer and advisory client personal information, and used such passwords to access the personal information of at least 5,600 Voya customers and obtain account documents containing personal information of at least one customer. The SEC said that, in two instances, the impersonators obtained the password resets calling from phone numbers Voya previously had identified as associated with fraudulent activity. In two instances, Voya personnel also gave the impersonators the relevant representatives' user names.

Although the first compromised independent contractor representatives contacted Voya three hours after the impersonation scheme to note he had never requested a password change, the firm did not take adequate measures to prevent the two subsequent impersonation activities, alleged the SEC. Moreover, Voya did not cut off the intruders' access to the three representatives' accounts due to "deficient cybersecurity controls and an erroneous understanding of the operation of the portal," charged the SEC.

The SEC alleged that Voya's breakdown constituted violations of SEC rules designed to protect customer information and prevent and to respond to cybersecurity incidents, as well as to detect, prevent and mitigate identity theft.

Voya agreed to pay a fine of US \$1 million to the SEC to resolve its charges as well as retain an independent consultant to assess cybersecurity programs related to protecting customer information

and to adopt all recommendations for improvement.

The SEC acknowledged that there were no identified unauthorized transfers of funds or securities from any customers' account attributable to the breach.

Compliance Weeds: Voya was specifically charged with violations of the SEC's Safeguard Rule. (Click [here](#) to access Regulation S-P Rule 30(a), 17 C.F.R. § 248.30(a)) and [here](#) for a copy of the Theft Red Flags Rule, Regulation S-ID Rule 201, 17 C.F.R. § 248.201.)

Under the Safeguard Rule, broker-dealers, investment companies, and investment advisers must have written policies that ensure the security and confidentiality of customer records and information and protect against any anticipated threats, hazards, or unauthorized access to or use of such records and information in a way that might cause customers substantial inconvenience or harm.

Under the SEC's Theft Red Flags Rule, the same group of registered entities and certain other registrants must also implement an identity theft prevention program that aims to detect, prevent and mitigate identity theft in connection with the opening and maintenance of any covered account. This program must be appropriate in light of the size and complexity of the financial institution and nature and scope of its activities. A covered account includes an account for personal, family or household purposes that is intended to permit multiple payments or transactions. This includes a brokerage account or an account at an investment company. However, a covered account also includes any account at a financial institution "where there is a reasonable or foreseeable risk to customers or to the safety and soundness of the financial institution or creditor from identity theft, including financial, operational, compliance, reputation or litigation risks."

(Click [here](#) for additional information regarding the SEC's Safeguard Rule and [here](#) for more information regarding the Theft Red Flags Rule.)

The Commodity Futures Trading Commission requires futures commission merchants, introducing brokers, commodity trading advisers, commodity pool operators, and certain other registrants to comply with its version of the Theft Red Flags Rule. (Click [here](#) to access CFTC Part 162.)

(Click [here](#) to access the *Federal Register* release explaining the adoption of both the SEC's and CFTC's final Theft Red Flags Rule.)

More Briefly:

- **IB and Owners Resolve CFTC Charges for Unauthorized Trading by Former Employee:** Kooima & Kaemingk Commodities, Inc., an introducing broker registered with the Commodity Futures Trading Commission, and two of its co-owners – Bradley Kooima and Lauren Kaemingk – agreed to pay a fine of US \$1.25 million, and restitution of US \$11.9 million to resolve a CFTC enforcement action related to the IB's purported unauthorized trading of customers' accounts. The CFTC said that because respondents already paid US \$3.2 million to K&K customers, they would only be liable for an additional US \$8.7 million going forward. Mr. Kaemingk also agreed to a 15-month trading ban, and Mr. Kooima, a four-month trading ban, on all CFTC overseen trading facilities.

The CFTC claimed that from January 2012 to February 2016, Mr. Kaemingk and an unnamed K&K employee traded IB customer accounts without written authorization causing over US \$10 million in customer losses. Moreover, the unnamed employee caused one customer account to exceed

speculative position limits in live cattle futures contracts, and Mr. Kaemingk knowingly made false statements to the Chicago Mercantile Exchange during its investigation of the unnamed employee's unauthorized trading, charged the CFTC. The CFTC said that all the defendants failed to supervise the unnamed employee.

The CME also brought and settled disciplinary actions against the three respondents in the CFTC's enforcement action for the same underlying facts. Under the CME's settlement, the three respondents agreed to pay an additional US \$1.25 million fine to the exchange.

- **Broker-Dealer Consents to Business Exit and US \$800,000 Fine to Resolve SEC Charges for Not Reporting Suspicious Transactions:** COR Clearing LLC agreed to restrict its penny stock clearing business as well as pay a fine of US \$800,000 to resolve charges by the Securities and Exchange Commission that it failed to file suspicious activity reports involving suspicious sales of penny stocks. Typically, in these transactions, said the SEC, a customer deposited a large block of low-priced stocks with it, sold the stocks into the market, and then withdrew the proceeds from the sales (so-called "DSW activity"). The alleged wrongful conduct occurred from January 2015 through June 2016. Although during this time COR engaged a consultant and was in the process of upgrading software to better detect and report DSW activity, it continued to experience difficulties with its AML software in identifying DSW activity for review. Under applicable law, broker-dealers are obligated to file with the Financial Crimes Enforcement Network of the US Department of Treasury reports of suspicious transactions involving or aggregating to at least US \$5,000 which the BD knows, suspects, or has reason to believe might involve illegal activity or has no reasonable explanation.

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