

EVIDENTIARY TRENDS IN THE CFTC'S MARKET ENFORCEMENT PROGRAM

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The Commodity Exchange Act's ("CEA") prohibitions against commodities and derivatives price manipulation and fraud-based manipulative schemes are the pillars of the Commodity Futures Trading Commission's ("CFTC") enforcement program targeting trading misconduct in covered markets. The CFTC's focus on protecting price integrity is de-

rived from its mission "to promote the integrity, resilience, and vibrancy of the U.S. derivatives markets through sound regulation."¹ Section 6(c)(3) of the CEA prohibiting price manipulation has been in the law since the CEA's 1936 enactment,² while the 2011 Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") added the fraud-based manipulative schemes prohibition.³ Bringing a successful case under Section 6(c)(3) concerning price manipulation requires the CFTC to prove that the defendant possessed an ability to influence market prices, an artificial price existed, the defendant caused the artificial price, and the defendant specifically intended to cause the artificial price.⁴ The CFTC's efforts to police price manipulation historically have involved challenging investigations of proof, as the standard is a difficult one for authorities to meet. Prior to the enactment of Dodd-Frank, at least one commentator had referred to manipulation as virtually "unprosecutable."⁵ Over the past two decades, however, technology has provided the CFTC with important advantages in policing price manipulation as well as fraud. First, the advent and widespread adoption of electronic communications greatly impacted enforcement. Whereas the CFTC previously needed to rely principally on the rare admissions of traders made during testimony or in only occasionally retained writings to prove state of mind, today, emails, chat platforms, and recorded telephone lines cap-



turing traders' statements evidencing concurrent intent of their actions provide invaluable linkages in the evidentiary chain. Second, the transition from "open outcry" trading pits to electronic markets provided the CFTC with vastly more precise and reliable trading data from which to seek circumstantial evidence of state of mind as well as evidence of artificial price and causation.

In contrast with earlier decades in which the CFTC had access only to imprecise records from trading pits, relatively few written communications, and only a few days of retained telephone tapes, these technological developments gave the CFTC a much greater ability to prove manipulation. Joining these two data sources together, the CFTC could demonstrate a trader's manipulative intent by showing what s/he had said regarding trading intentions at and around the precise time that a trade was blottered. This allowed the CFTC to have more success than ever before at proving manipulation.

The evolving quality of evidence that the CFTC has been able to build its cases upon is apparent through the factual details underpinning resolved matters. For example, in 2008, the CFTC settled manipulation charges against a Texas-based energy trading company, relying in part on recorded telephone conversations between a Senior Vice President and traders.⁶ Later resolutions evidenced a more thorough review and analysis of electronic communications. For example, in 2012, the CFTC settled with a global proprietary trading fund concerning a scheme to manipulate the prices of multiple futures contracts listed on NYMEX.⁷ In settlement papers, the CFTC stated that "Defendants' intent is well documented by their own emails and phone recordings which discuss their efforts to 'ham-

mer,' 'influence,' 'push,' 'move,' 'whack,' and 'bully' the prices of futures contracts."⁸ And notably, the CFTC's major settlements involving LIBOR and related benchmark interest rate manipulations focused heavily on "submitters and traders routinely communicat[ing] on Bloomberg chat terminals or internal [bank] messaging systems to discuss preferential LIBOR and Euribor requests."⁹ Most recently, exploitation and analysis of data to establish intent has proven to be an equally potent tool. In what reflects the highest civil monetary penalty and disgorgement that a respondent has encountered to date, in 2022, the CFTC resolved a manipulation investigation relying primarily on trading data.¹⁰

In recent years, the CFTC has sought to extend this trend by taking several steps. These include:

- A focus on WhatsApp and other typically uncaptured communications channels, to surface communications that traders may have thought were beyond the reach of the authorities;
- An investment in order/trade data capture and analysis, to demonstrate a trader's intent even in the absence of incriminating communications;
- The creation of a whistleblower program, which incentivizes market participants to provide testimonial or other evidence as a substitute for incriminating communications; and
- Enhanced "self-reporting" credit, which incentivizes trading businesses to investigate their traders, report violations, cooperate with CFTC requests, and admit wrongdoing, rather than forcing the CFTC to

prove its case without any assistance from the business.

ERA OF ANTI-MANIPULATION ENFORCEMENT BUILT ON CAPTURED ELECTRONIC COMMUNICATIONS

Beginning in the early 2000s, the CFTC began to enjoy a sharp uptick of high-dollar-value manipulation-related resolutions concerning individuals and entities trading in CEA covered markets. During that time, CFTC enforcement staff (as well as federal prosecutors) frequently relied upon records of communications, including principally e-mails, web-based chat platforms such as Bloomberg Chat and Reuters Dealer Chat, and recorded telephone conversations for proof of market participants' intent to manipulate market prices. These communications, which were easily reached by the authorities' subpoena powers, enabled enforcement staff to assess the timing of recorded statements concerning the making (or withholding) of bids and offers, prevailing rates and prices, and the trader's subjective intent in taking market actions. The color provided as to trader intent, coupled with very precise data showing trade-execution time, significantly bolstered enforcement authorities' abilities to build theories of a trader's purpose underlying particular trades or trading patterns. The successful cross-referencing of communications demonstrating a trader's mental state, or intent, against such market data provided core linkages in the evidentiary chain to successfully bring price manipulation charges. With evidence underpinning traders' intent to cause artificial prices, exposure for trading entities concerning misconduct captured within the recorded communications manifested in CFTC settlements

yielding billions of dollars in penalties as well as parallel Department of Justice ("DOJ") criminal enforcement resulting in further high-dollar penalties, disgorgement, deferred prosecution agreements and non-prosecution agreements, as well as guilty pleas and trials.

The zenith of the CFTC's financial penalty success in such matters, premised upon recorded communications showing manipulative intent, arguably came in the 2013-2015 period in which high-profile settlements resolved misconduct in the Foreign Exchange ("FX") markets, as well as LIBOR and related benchmark interest rates. In a variety of these settlement orders, the CFTC noted that "[c]ertain chat room participants used code words to evade detection by their banks' compliance monitoring systems."¹¹

Colorfully, many of the communications giving rise to the CFTC and DOJ's enforcement actions involved clubby online dealings, such as an exclusive electronic chat room limited to specific EUR/USD traders, which participants and others in the FX spot market referred to as "The Cartel" or "The Mafia."¹² Participants in the chat room used coded language to discuss manipulation of benchmark exchange rates by coordinating trading times to increase profits and withhold bids when there was a risk of an adverse impact on others in the group.

As these communications demonstrate, in many CEA covered markets, prices are typically set through rigorous competition for bids and offers by market participants, which can invite manipulative strategies in which participants acting alone, or in coordination, trade in a manner intended to influence price. For example, the DOJ and CFTC's cartel investigation of misconduct in the FX markets in 2014 and 2015 examined the

conduct of FX traders from major “dealer” banks, who executed trades on behalf of customers and for their respective banks’ proprietary trading accounts. The investigation revealed that traders had communicated in “near daily conversations” where they agreed to coordinate their trading in the USD/EUR currency pair to maximize their influence on two major daily FX benchmarks.¹³ The strategy was intended to benefit the traders’ respective positions at the expense of customers, or others, trading in FX-denominated products. Among other things, traders agreed and conveyed in electronic communications to refrain from certain trading behavior that would detrimentally impact a co-conspirator’s open trading position.

The conduct captured in recorded communications (and ultimately included in charging documents and settlement orders) can materially contribute to findings of manipulative intent and consciousness of guilt. In an example communication concerning the FX cartel, when considering adding a prospective member to the chat, one trader expressed his concern “that I know he’ll never tell us when at risk,” discussing whether or not the group could trust the new trader.¹⁴ Traders also expressed an agreement to “join forces” and “double team” trading conduct in the Euro currency market ahead of fixing windows.¹⁵ In the benchmark interest rate realm, through an excerpt of messages in which a Yen trading manager recorded efforts to manipulate Euroyen TIBOR submissions for the benefit of a Yen trader’s positions, the CFTC included messages conveying statements such as, “[s]o as soon as we move it two, other people start moving it.”¹⁶ Related resolutions with authorities such as the New York Department of Financial Services concerning misconduct in FX markets revealed that certain FX traders at a settling institution had

referred to customers, in captured communications, using code names such as the “fiddler,” “dodgy aussie seller,” and most colorfully, concerning a customer located at another large bank, “Satan.”¹⁷

SECOND ERA: DATA ANALYTICS DRIVES ENFORCEMENT PROGRAMS

In the latter part of the 2010s, and as many market participants came to expect routine and robust regulatory scrutiny of monitored communication platforms, the technical abilities of authorities, such as the CFTC, to recreate markets using data analytics developed significantly. By 2019, the CFTC’s now former Director of Enforcement noted that the CFTC had “enhanced our ability to detect misconduct through the use of data analysis,” with the “ability to identify, in the trading data, forms of misconduct in ways that complement our understanding of the activity through our other enforcement tools.”¹⁸ In short, the CFTC no longer needed to rely principally upon the contemporaneous recording of traders’ chats with others to demonstrate manipulative intent. Rather, the CFTC could recreate markets down to the nanosecond to show the precise state of the market’s central order book and the timing of orders and transactions to support allegations of causation and price impact of alleged market misconduct. For example, in a 2020 resolution of spoofing and false statements charges involving a major non-U.S. financial institution, the CFTC “relied on its enhanced data analytics capability and discovered that the Bank’s spoofing activities were broader than it had originally understood” when reaching an earlier settlement with that same bank for spoofing conduct.¹⁹ The earlier 2018 resolution, in

which the institution was penalized \$800,000 for spoofing in gold and silver futures markets, was premised upon statements that the CFTC ultimately found to be false through its later data analysis.²⁰ The 2020 resolution's \$127 million penalty dwarfed that of the 2018 resolution.²¹

Like the CFTC, the DOJ has also benefitted from materially increased capabilities in the data analytics realm, and these authorities have materially deepened their cooperation over time.²² Through their continued cooperation, both have developed skillsets previously unique to one another. The CFTC's current enforcement and case development approach has come closer to that of the DOJ. The DOJ in turn has strengthened its ability to prosecute market misconduct through increased reliance on data analysis, an area previously falling under the expertise of the CFTC.²³ Since 2018, on an annual basis, the DOJ has filed a record-breaking number of criminal actions in conjunction with CFTC civil enforcement actions.²⁴ The close relationship between the Fraud Section of the DOJ's Criminal Division and the CFTC has obvious implications for any party facing a CFTC fraud or market manipulation investigation.

RECENT BIG WINS FOR DOJ & CFTC BUILT UPON DATA ANALYTICS CAPABILITIES

Major resolutions over the past several years demonstrate the civil and criminal authorities' abilities to bring cases concerning manipulation that satisfy evidentiary requirements as to intent based upon trading data. In 2020, the CFTC settled a case with a major oil trading firm on market manipulation allegations, noting that the trading firm had attempted to manipulate ap-

plicable benchmarks by "submitting bids, offers, and intents to trade in order to benefit [their] related physical and/or derivatives positions such as futures and swaps."²⁵ In settlement papers, the CFTC did not reference any electronic correspondence as evincing the attempts to manipulate. Conversely, the CFTC credited the trading firm with cooperation for providing material information and even in assisting it with "analyzing trading data."²⁶

In May of 2022, in a manipulation and corruption case involving a global commodities trading firm, the CFTC secured the highest civil monetary penalty and disgorgement amount in its history.²⁷ The settlement order makes no mention of specific communications that indicate market participants' manipulative intent. Instead, the settlement provides that traders understood the relevant benchmark organization "made price assessments . . . based primarily on the trading activity in a daily trading window," and that the traders subsequently "placed bids or offers in the relevant trading window with the intent of pushing or controlling the results of the trading window, and thus Platts's price assessments, in a direction and manner intended to benefit [the trading firm's] exposure."²⁸ The remainder of the settlement papers provide extensive detailed trading information, such as the numbers of bids and offers placed by traders on specific dates.²⁹ The CFTC's leveraging of data analytics tools doubtless provided significant support in building and resolving this matter. The settled conduct also resulted in two parallel criminal actions brought by the DOJ.³⁰

These settlements signal to the market that even in the absence of clear contemporaneous communications providing evidence of manipu-

lative intent, the CFTC and DOJ can garner sufficient information through market recreation and data analytics to bring and resolve enforcement actions. In fact, the sort of “smoking gun” trader chatroom communications that were featured in the benchmark interest rate and FX matters have rarely been included in CFTC resolutions in recent years.³¹

FOCUS ON OFF-CHANNEL COMMUNICATIONS

One indication of the CFTC’s reliance upon trader communications as a key part of its enforcement program is the emphasis it has placed on the duty of regulated entities to capture and maintain records of business communications pursuant to the CEA’s recordkeeping and supervision requirements. This emphasis has been particularly apparent with respect to WhatsApp communications, as a series of resolutions over the past two years have demonstrated.

Market participants have found that communications occurring across unmonitored electronic platforms (even *encrypted* platforms) can give and have given rise to massive consequences for organizations and individuals involved in such communications. In February 2021, the CFTC filed a civil complaint against a swaps trader at a non-U.S. bank alleging in part that the employee-trader made false statements to the CFTC concerning the use of his personal phone and unmonitored means to communicate with other employees about the bank’s business.³² Further, the trader also used WhatsApp specifically to discuss the CFTC’s investigation and then proceeded to delete messages, including WhatsApp messages, after receiving a document retention notice.³³ In a related enforcement action

against the employer-bank, a CFTC registrant, the CFTC found that the bank had violated its recordkeeping and supervision requirements under the CEA where traders participated in unmonitored communications and further took steps to impede the prior investigation, revealing a broader culture of such unauthorized use within the bank.³⁴ The CFTC specifically pointed out that use of such communications violated the bank’s own policies and procedures, thus its failure to stop the “widespread use” was a result of inadequate internal controls.³⁵

In a matter involving a separate CFTC registrant, in December 2021, the CFTC announced a \$75 million settlement concerning failures to maintain, preserve, and produce records that were required to be kept under CFTC recordkeeping requirements.³⁶ The CFTC found the employer-bank to be at fault for its failure to supervise and retain records where, since 2015, widespread use of unapproved communications had occurred.³⁷ The settlement order specifically noted that the use of unapproved communications was “not hidden within the firm,” and that the management responsible for enforcing proper use of communications were themselves involved in the conduct.³⁸ The order elaborated that the widespread use of unauthorized communication methods, such as personal text messages and WhatsApp messages, by the organization’s employees to conduct firm business violated the registrant’s own policies and procedures, which prohibited business-related communications on unapproved channels.³⁹

Most recently, in September 2022, the CFTC settled charges with 11 financial institutions concerning recordkeeping and supervision failures related to off-channel communications,

which the institutions were required to retain because they related to their business as CFTC registrants.⁴⁰ As these resolutions show, the CFTC has responded to the proliferation of unmonitored and uncaptured communications by imposing severe penalties on regulated entities that fail to ensure compliance. The CFTC will continue to look unfavorably upon trading organizations that allow their employees to communicate on personal devices or use WhatsApp or similar applications that evade capture, retention, and surveillance.

CFTC'S WHISTLEBLOWER PROGRAM AND SELF-REPORTING EXPECTATIONS

The CFTC's Whistleblower Program encourages tipsters to report original violations of the CEA to the CFTC in exchange for an award of 10-30% of the monetary sanctions that the CFTC (or the DOJ or other domestic or foreign enforcement agency) collects if the total penalties enforced are over \$1 million.⁴¹ In deciding the amount to award to the whistleblower, the CFTC will consider the:

- a) significance of the information to the success of the enforcement action, b) participation of the whistleblower in the company's internal compliance process, c) the whistleblower's interference with the company's internal compliance process, d) participation of the whistleblower in the culpable conduct, e) timeliness of the report to the CFTC, f) degree of assistance provided, and g) the award's effect on deterring future violations of the CEA by encouraging whistleblowers to come forward.⁴²

Importantly, the CFTC's program does not require the tipster to report internally to their compliance teams in order to be eligible for the award.⁴³ Awards can be lucrative, as a nearly

\$200 million award to a single whistleblower in 2021 demonstrates.⁴⁴

In addition, from 2017 until present, the CFTC has updated its policies on self-reporting to "shift [the] analysis in favor of self-reporting" when companies become aware of misconduct and weigh whether or not to self-report.⁴⁵ The CFTC also indicated that its self-reporting program should "line up with other self-reporting programs, most notably at the Department of Justice," to reduce the burden of reporting to agencies with conflicting requirements.⁴⁶ The incentives to report include the possibility of a "substantial reduction" of otherwise applicable civil penalties or in "extraordinary circumstances," a declination to prosecute the conduct at issue.⁴⁷ To earn such credit, the company is encouraged to timely disclose misconduct.⁴⁸ Once disclosed, the CFTC considers the following factors before granting credit: 1) the value of the company's cooperation to the CFTC's investigations and enforcement actions, 2) the value of the company's cooperation to the CFTC's broader law enforcement interests, and 3) the level of the company's culpability and history of misconduct balanced against its acceptance of responsibility, mitigation, and remediation.⁴⁹

CONCLUSION

The CFTC has made clear through its public statements and its track record of successfully resolved civil charges that it will pursue misconduct in its covered markets through all available means, and in coordination with criminal investigation and prosecution by the DOJ. The CFTC's focus on captured and uncaptured communications, as well as analysis of trading data, reflects a continuing adaptation of its enforcement toolkit

to the operation and technology of the covered markets. Conversely, its reliance upon and encouragement of whistleblowing and self-reporting by market participants represents a tacit acknowledgement of the practical limitations on its ability to discover and prove misconduct in the absence of inside information and the cooperation of market participants.

ENDNOTES:

¹COMMODITY FUTURES TRADING COMM'N, *The Commission*, <https://www.cftc.gov/About/AboutTheCommission>.

²7 U.S.C.A. §§ 9(1), 13(a)(2).

³See 17 C.F.R. § 180.1.

⁴Although the CFTC has asserted that a reckless state of mind will suffice under the fraud-based provision added as part of the Dodd-Frank legislation, it is questionable whether it would be judicially accepted. See David Yeres et al., *U.S. Market Manipulation: Has Congress Given the CFTC Greater Latitude than the SEC to Prosecute Open Market Trading as Unlawful Manipulation? It's Doubtful*, 38 FUTURES & DERIVATIVES L. REP., at 1 (June 2018), <https://www.cliffordchance.com/content/dam/cliffordchance/PDFDocuments/fdlr-6-art-1.pdf>.

⁵ See Jerry W. Markham, *Manipulation of Commodity Futures Prices—The Unprosecutable Crime*, 8 YALE J. ON REG. 281, 283 (1991), https://openyls.law.yale.edu/bitstream/handle/20.500.13051/8429/15_8YaleJonReg281_1991.pdf.

⁶See Complaint in *Commodity Futures Trading Comm'n v. Energy Transfer Partners et al.*, No. 07-CV-01301 (N.D. Tex. filed July 26, 2007), ECF No.1 at 10; Consent Order in *Commodity Futures Trading Comm'n v. Energy Transfer Partners et al.*, No. 07-CV-01301 (N.D. Tex. filed Mar. 17, 2008), ECF No. 45 at 4.

⁷See Complaint in *Commodity Futures Trading Comm'n v. Optiver US, LLC*, No. 08-CV-06560 (S.D.N.Y. filed July 24, 2008), ECF No. 1 at 2-3; Consent Order in *Commodity Futures*

Trading Comm'n v. Optiver US, LLC, No. 08-CV-06560 (S.D.N.Y. filed April 19, 2012), ECF No. 45.

⁸See Complaint in *Optiver US, LLC*, ECF No. 1 at 3.

⁹See, e.g., *In re Deutsche Bank AG*, CFTC No. 15-20, at 8-9 (Apr. 23, 2015).

¹⁰*In re Glencore*, CFTC No. 22-16, at 7-10 (May 24, 2022).

¹¹*In re HSBC Bank PLC*, CFTC No. 15-07, at 5 (Nov. 11, 2014).

¹²See, e.g., Plea Agreement in *United States v. Barclays PLC*, at 5-6 (May 20, 2015), <http://www.justice.gov/file/440481/download>.

¹³See, e.g., Plea Agreement in *United States v. Citicorp*, No. 15-CR-00078 (D. Conn. filed May 20, 2015), ECF No. 8 at 5-6.

¹⁴COMMODITY FUTURES TRADING COMM'N, *Foreign Exchange Benchmark Case: In re Barclays Bank PLC Examples of Misconduct in Private Chat Rooms*, at 1 (May 20, 2015), <https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/fxbarclaysmisconduct052015.pdf>.

¹⁵*Id.* at 2.

¹⁶COMMODITY FUTURES TRADING COMM'N, *Examples of Misconduct From Written and Oral Communications by Citibank, N.A. (Citi) and Its Affiliates, Citibank Japan Ltd. (CJL) and Citigroup Global Markets Japan Inc. (CGMJ)*, at 2 (May 25, 2016), <https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/document/file/libormisconduct052516.pdf>.

¹⁷See Consent Order in *In re Goldman Sachs Group Inc.*, N.Y. State Dep't Div. Fin. Serv., at 4-5 (May 1, 2018), https://www.dfs.ny.gov/system/files/documents/2020/03/ea180501_goldmansachs.pdf.

¹⁸James McDonald, Dir. Enf't, Commodity Futures Trading Comm'n, Remarks During CFTC-DOJ Press Conference Call (Sept. 16, 2019), <https://www.cftc.gov/PressRoom/Speeches/Testimony/opamcdonald4>.

¹⁹See David Yeres et al., *Record-setting*

CFTC and DOJ Penalties Imposed After Failure to Provide Complete and Accurate Information, CLIFFORD CHANCE (Aug. 27, 2020), <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2020/08/Record-setting-CFTC-and-DOJ-penalties-imposed-after-failure-to-provide-complete-and-accurate.pdf>.

²⁰*In re* Bank of Nova Scotia, CFTC No. 18-50 (Sept. 28, 2018); Press Release Number 8220-20, COMMODITY FUTURES TRADING COMM'N, CFTC Orders the Bank of Nova Scotia to Pay \$127.4 Million for Spoofing, False Statements, Compliance and Supervision Violations (Aug. 19, 2020), https://www.cftc.gov/PressRoom/PressReleases/8220-20?utm_source=govdelivery.

²¹*In re* Bank of Nova Scotia, CFTC No. 20-26 (Aug. 19, 2020); *In re* Bank of Nova Scotia, CFTC No. 20-27 (Aug. 19, 2020); *In re* Bank of Nova Scotia, CFTC No. 20-28 (Aug. 19, 2020). The combined penalties from all three orders against the bank, one for spoofing, one for false statements, and one for compliance failures, totaled \$127.4 million.

²²Lydia Beyoud & Jacob Rund, *CFTC, DOJ Enforcement Tag-Team Raising Stakes for Market Fraud*, BLOOMBERG L. (Nov. 4, 2019), <https://news.bloomberglaw.com/banking-law/cftc-doj-enforcement-tag-team-raising-stakes-for-market-fraud>.

²³*Id.*

²⁴COMMODITY FUTURES TRADING COMM'N, FY2020 DIVISION OF ENFORCEMENT ANNUAL REPORT, at 9-10 (Dec. 1, 2020), <https://www.cftc.gov/PressRoom/PressReleases/8323-20>.

²⁵*In re* Vitol Inc., CFTC No. 20-01, at 6-7 (Dec. 3, 2020).

²⁶*Id.* At 8.

²⁷Press Release No. 8534-22, COMMODITY FUTURES TRADING COMM'N, CFTC Orders Glencore to Pay \$1.186 Billion for Manipulation and Corruption (May 24, 2022), <https://www.cftc.gov/PressRoom/PressReleases/8534-22>.

²⁸*In re* Glencore, CFTC No. 22-16, at 2 (May 4, 2022).

²⁹*Id.* at 7-10.

³⁰Press Release No. 22-554, U.S. DEP'T OF JUST., Glencore Entered Guilty Pleas to Foreign Bribery and Market Manipulation Schemes (May 24, 2022), <https://www.justice.gov/opa/pr/glencore-re-entered-guilty-pleas-foreign-bribery-and-market-manipulation-schemes>.

³¹Todd Ehret, *Chat Room Messages are 'Smoking Gun' in \$25 Million Merrill CFTC Spoofing Penalty*, REUTERS (July 17, 2019), <http://www.reuters.com/article/bc-finreg-chat-room-messages/chat-room-messages-are-smoking-gun-in-25-million-merrill-cftc-spoofing-penalty-idUSKCN1UC2BZ>.

³²See Complaint in *Commodity Futures Trading Comm'n v. John Patrick Gorman*, No. 21-CV-00870 (S.D.N.Y. filed Feb. 1, 2021), ECF No. 1 at 19-20.

³³*Id.* at 21-22.

³⁴*In re* Nomura Global Fin. Prods., Inc., CFTC No. 22-41, at 2-3 (Sept. 27, 2022).

³⁵*Id.* at 3.

³⁶*In re* JPMorgan Chase Bank, N.A., CFTC No. 22-07 (Dec. 17, 2021).

³⁷*Id.* at 4.

³⁸*Id.*

³⁹*Id.*

⁴⁰See *In re* Deutsche Bank AG, CFTC No. 22-48, at 3-4 (Sept. 27, 2022); *In re* Morgan Stanley, CFTC No. 22-44, at 4-5 (Sept. 27, 2022); *In re* Credit Suisse, CFTC No. 22-47, at 3-4 (Sept. 27, 2022); *In re* Barclays, CFTC No. 22-39, at 3-4 (Sept. 27, 2022); *In re* Bank of America, CFTC No. 22-38, at 4-7 (Sept. 27, 2022); *In re* UBS, CFTC No. 22-42, at 3-4 (Sept. 27, 2022); *In re* Nomura, CFTC No. 22-41, at 4-6 (Sept. 27, 2022); *In re* Goldman Sachs, CFTC No. 22-40, at 3-4 (Sept. 27, 2022); *In re* Citibank, CFTC 22-46, at 3-4 (Sept. 27, 2022); *In re* Cantor Fitzgerald, CFTC no. 22-45, at 2-3 (Sept. 27, 2022); *In re* Jefferies, CFTC No. 22-43, at 3-4 (Sept. 27, 2022).

⁴¹See Robert Houck et al., *CFTC Makes First Whistleblower Award Under Dodd-Frank*, CLIFFORD CHANCE at 2 (May 2014), <https://www.cliffordchance.com/content/dam/cliffordchance/briefin>

[gs/2014/05/cftc-makes-first-whistleblower-award-under-doddfrank.pdf](https://www.cftc.gov/2014/05/cftc-makes-first-whistleblower-award-under-doddfrank.pdf).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Press Release No. 8453-21, COMMODITY FUTURES TRADING COMM'N, CFTC Awards Nearly \$200 Million to a Whistleblower (Oct. 21, 2021), <https://www.cftc.gov/PressRoom/PressReleases/8453-21>.

⁴⁵ See James McDonald, Dir. Enf't, Commodities Futures Trading Comm'n, Remarks Regarding Perspectives on Enforcement: Self-Reporting and Cooperation at the CFTC (Sept. 25, 2017), <http://www.cftc.gov/PressRoom/SpeechesTestimony/opamcdonald092517> [hereinafter McDonald 2017 Speech]; see also David Yeres et al., *Responding to a U.S. Government Investigation in the Derivatives, Commodities, and Securities Markets*, CLIFFORD CHANCE at 24 (June 2021), <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2021/06/Responding%20to%20a%20US%20Government%20Investigation%20in%20the%20Derivatives%20Com>

[modities%20and%20Securities%20Markets.pdf](#).

⁴⁶ McDonald 2017 Speech.

⁴⁷ COMMODITY FUTURES TRADING COMM'N, ENFORCEMENT MANUAL, at 33 (May 20, 2020), <https://www.cftc.gov/sites/default/files/2021-05/EnforcementManual.pdf>; COMMODITY FUTURES TRADING COMM'N, ENFORCEMENT ADVISORY: UPDATED ADVISORY ON SELF REPORTING AND FULL COOPERATION, at 3 (Sept. 25, 2017), <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfadvisoryselfreporting0917.pdf> [hereinafter CFTC September 2017 Updated Advisory].

⁴⁸ CFTC September 2017 Updated Advisory at 1.

⁴⁹ COMMODITY FUTURES TRADING COMM'N, ENFORCEMENT ADVISORY: COOPERATION FACTORS IN ENFORCEMENT DIVISION SANCTION RECOMMENDATIONS FOR COMPANIES, at 1 (Jan. 19, 2017), <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfadvisorycompanies011917.pdf>.