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CFTC ENFORCEMENT TRENDS FROM FY 2024

In FY 2024 the CFTC continued its aggressive enforcement agenda with ever-increasing civil monetary penalties for industry participants. It embraced new methods of rule interpretation and enforcement areas while receiving criticism from sitting Commissioners and suffering losses in the court system. This criticism and losses will present challenges for the CFTC and the industry as we look to the future.

By Elizabeth Davis and Michael McDonald *

In Fiscal Year 2024, the Commodity Futures Trading Commission's ("CFTC") Division of Enforcement ("Division") continued its aggressive agenda in enforcing the Commodity Exchange Act ("CEA") and CFTC regulations by pursuing actions ranging from altcoins to lean hogs. In the process, the steep penalty amounts assessed by the agency continued to increase, while the scope of the CFTC's jurisdictional reach broadened. However, this push has encountered challenges, including increasingly critical dissents from CFTC Commissioners Caroline Pham and Summer Mersinger along with recent litigation setbacks, which highlight the complexities involved in the Division's expanded enforcement efforts.

RECENT CASES

During this past fiscal year, the CFTC intensified its enforcement actions across various areas, focusing particularly on its mainstays of fraud, market manipulation, swaps reporting, recordkeeping, and registration violations. This period witnessed a notable increase in penalty amounts, reflecting the CFTC's commitment to safeguarding market integrity and protecting investors.

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Market manipulation and trade practice actions saw rigorous enforcement during this period. Trafigura faced a $55 million penalty for manipulating fuel oil benchmarks and trading gasoline based on non-public information.[1] Trafigura was alleged to have obtained material non-public information from an employee of a Mexican trading entity, which included the Mexican trading entity's pricing formulas and information related to the total expected import volumes of gasoline, types, and anticipated destination ports. Trafigura was found to be reckless in not knowing that the information had been transmitted to them in violation of the Mexican trading entity's duties to his employer in violation of CEA Section 6(c)(1) and Regulation 180.1(a)(1). The company was also found to have allegedly created an artificially high value of the USGC HSFO benchmark by engaging in heavy bidding and buying of physical fuel oil in the Platts Market-on-Close ("MOC") daily trading window against its physical position, which tended to increase prices paid in the window and benefitting the company's long derivatives position.

[1] *In re Trafigura Trading LLC,* CFTC Dkt. No. 24-08 (June 17, 2024).