

Securities Regulation Daily Wrap Up, TOP STORY—N.D. Ill.: Deja vu all over again: CFTC and Kraft tell judge they have agreed to settle, (Feb. 13, 2020)

Securities Regulation Daily Wrap Up

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By [Brad Rosen, J.D.](#)

After an earlier settlement blew up, an appeal to the 7th Circuit, and a remand, attorneys for the Commodity Futures Trading Commission and Kraft Foods and Mondelez Global advised the court they have again agreed to settle the pending litigation.

At a scheduled status hearing, lawyers for the CFTC and Kraft Foods Group and Mondelez Global told District Court Judge John Robert Blakey that they had reached a preliminary agreement to settle what has been a bitterly contested [enforcement action initially brought in April 2015](#) under the Dodd-Frank Act's expanded anti-manipulation authority. In August 2019, the parties entered into their ill-fated settlement which involved a "gag" provision and no findings by the commission. That settlement was set aside in the wake of post-settlement statements by the CFTC and two of its commissioners, the defendants' motion for contempt and sanctions, and [a subsequent appeal](#) to the Seventh Circuit ([CFTC v. Kraft Foods Group, Inc.](#) February 13, 2020, Blakey, J.).

Another attempt to settle this contentious litigation. CFTC Division of Enforcement Attorney Doug Snodgrass and J. Kevin McCall, on behalf of the defendants, advised the court of the following in connection with their preliminary settlement agreement:

- The CFTC will provide the defendants with advance notice of the text of any press release announcing the settlement;
- the parties will not be limited to issuing comments about the settlement;
- the defendants will withdraw their motion for contempt, sanctions, and other relief; and
- the terms of any settlement agreement will be subject to the approval of the full CFTC. DOE attorneys noted that approval process could take up to 60 days.

Judge Blakey weighs in. While welcoming the news of the proposed settlement, Judge Blakey observed that the court itself might have an interest in the outstanding issue concerning the CFTC's contempt in connection with the agency's conduct regarding the court's August 14, 2019 order. Additionally, at the request of the parties, the judge agreed to stay matters related to discovery and dispositive motions so that parties do not have to expend additional resources. Judge Blakey also invited the parties to submit their proposed agreement to him for his review as it is contemplated that the court will have injunctive authority with regard the enforcement of subsequent agreement.

The August 2019 settlement revisited. While the parties did not disclose material terms of the new proposed settlement, it's worth noting that [the failed August 2019 settlement](#) provided for the defendants to pay \$16 million to resolve claims that they manipulated wheat futures markets. Notably, Kraft, Mondelez, and the CFTC agreed to a "gag" provision in the [consent order](#) that limited its ability to speak publicly about the case. Moreover, the consent order did not contain any factual findings or conclusions of law. Commissioners Rostin Behnam and Dan Berkovitz described these two provisions as "unusual" in their [joint statement](#).

The next status hearing in this matter is set for March 26, 2020 at 9:45 a.m.

Editor's Note: Brad Rosen, the author of this story, will be moderating a panel discussion at the Chicago Bar Association titled CFTC v. Kraft: Administrative Enforcement and the Public's Right to Know. The event is

scheduled at a joint meeting of the CBA's Futures & Derivatives and Media & Entertainment Law Committees on February 27, 2020 at noon.

The case is [No. 15-cv-2881](#).

Attorneys: Doug Snodgrass and Susan Gradman for the CFTC. J. Kevin McCall (Jenner & Block LLP) for Kraft Foods Group, Inc. and Mondelez Global LLC

Companies: Kraft Foods Group, Inc.; Mondelez Global LLC.

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