Securities Regulation Daily Wrap Up, TOP STORY—Self-reporting in spoofing matter leads to substantially reduced monetary penalty, (Aug. 7, 2017)

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By Brad Rosen, J.D.

The CFTC simultaneously filed and settled charges against The Bank of Tokyo-Mitsubishi UFJ, Ltd. (BTMU) for engaging in multiple acts of spoofing in a variety of futures contracts on the Chicago Mercantile Exchange and the Chicago Board of Trade, including futures contracts based on U.S. Treasury notes and eurodollars. The Commission became aware of the violative conduct through BTMU's voluntary self-reporting of the wrongdoing which involved the trading activities of a BTMU employee operating out of the company's Tokyo headquarters. As a result of BTMU's self-reporting of the matter, the civil monetary penalty imposed was a relatively modest $600,000. The CFTC's order also requires BTMU to cease and desist from violating the Commodity Exchange Act's prohibition against spoofing (*In the Matter of The Bank of Tokyo-Mitsubishi UFJ, Ltd.*, August 7, 2017).

Benefits of self-reporting, cooperation, and implementing remedial measures. The CFTC has recently underscored the high value it places on cooperation from respondents in enforcement investigations and proceedings. In January 2017, the Division of Enforcement issued specific guidance on the role and the potential benefits associated with cooperation by both individuals and corporations in its investigations

James McDonald, the CFTC's Director of Enforcement, had this to say about the role of cooperation in this proceeding: "This case shows the benefits of self-reporting and cooperation, which I anticipate being an important part of our enforcement program going forward. We expect market participants, through adequate supervision, to prevent this sort of misconduct before it starts." He continued, "But when market participants discover wrongdoing, we want to incentivize them to voluntarily report it and to cooperate with our investigation, as the Bank of Tokyo did here." Importantly, McDonald noted, "The Bank of Tokyo benefitted from its self-reporting and cooperation in the form of a substantially reduced penalty."

While a $600,000 penalty is no trivial amount, that sanction pales in comparison to other penalties recently levied by the division and federal courts in spoofing and market manipulation matters. Some of those fines include:

- The CFTC ordered Citigroup Global Markets Inc. to pay $25 million for spoofing in U.S. Treasury futures markets and for related supervision failures on January 19, 2016.
- The federal district court for the Northern District of Illinois ordered U.K. resident Navinder Singh Sarao to pay more than $38 million for price manipulation and spoofing on November 17, 2016.
- The federal court in the Northern District of Illinois ordered Chicago trader Igor B. Oystacher and 3Red Trading LLC to pay $2.5 million for spoofing and employment of a manipulative and deceptive device while trading futures contracts on multiple futures exchanges on December 20, 2016.
- The CFTC ordered Rosenthal Collins Capital Markets LLC, now known as DV Trading LLC, to pay $5 million for engaging in illegal wash sales designed to generate exchange rebate fees on June 29, 2016.
- The federal district court for the Southern District of New York ordered UAE residents Heet Khara and Nasim Salim to pay combined civil monetary penalties of $2.69 million for spoofing in the gold and silver futures markets, on April 5, 2016.

In the Bank of Tokyo matter, the CFTC's order made additional findings about BTMU's self-reporting, cooperation, and efforts towards remediation. The order found that BTMU commenced an expansive internal review and assisted the division's investigation of the conduct. The order also found that BTMU launched an overhaul of its systems and controls and implemented a variety of enhancements to detect and prevent similar misconduct. Additionally, the order found that BTMU revised its policies, updated its training, and implemented electronic systems to identify spoofing.

Underlying wrongful conduct by the Bank of Tokyo employee. The order specifically found that during the period starting from at least July 2009 through December 2014, although largely in 2010 and 2011, a Bank of Tokyo employee (identified in the order as Trader A) placed multiple orders for futures contracts with an intent to cancel the orders before their execution. The trader's spoofing strategies included submitting orders on opposite sides of the same market at nearly the same time. The order also found that the trader engaged in this spoofing activity in order to move the market in a direction favorable to his orders.

The proceeding is CFTC Docket No. 17-21.

Companies: The Bank of Tokyo-Mitsubishi UFJ, Ltd.

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