Securities Regulation Daily Wrap Up, TOP STORY—CFTC busts Deutsche trader, but bank gets a pass for cooperating, (Nov. 8, 2018)

Securities Regulation Daily Wrap Up

http://resource.stg.cch.com/resource/scion/document/default/sld01d9c159207d271000a22690b11c18cbab02?cfu=Legal&cpid=WKUS-Legal-Cheetah&uAppCtx=cheetah

By Anne Sherry, J.D.

A Deutsche Bank trader will pay a $350,000 penalty to settle CFTC charges of mismarking the values of inflation swap instruments to cover up his trading losses. In its first public declination letter, the CFTC's Division of Enforcement explained that it was closing its investigation of the bank based on its timely and voluntary disclosure, full cooperation, and remediation efforts directed at enhancing the bank's swap valuation process (*In the Matter of Bourne*, CFTC Docket No. 18-51, September 28, 2018).

The declination letter details how the bank discovered the trader's mismarking in mid-June 2017 as part of a routine review of marking procedures. The discrepancies had begun only a few days prior to the discovery, and they were corrected a few days later. Upon discovering more discrepancies, the bank interviewed the trader, who chalked them up to a software issue. This initially checked out, but another review in which a technology group participated revealed that the trader had in fact mismarked the valuations and then had altered historical documents to cover his tracks.

As described further in the order instituting proceedings, the bank's policies required a designated employee to input end-of-day brokerage marks into a spreadsheet, export the data to other bank systems, and save the spreadsheet as a new file on a shared internal drive. During a period when the trader was this designated employee, he entered marks that failed to match the daily brokerage marks. Because the spreadsheet was used to calculate profits and losses, the mismarks diminished approximately $13.82 million of the trader's estimated $16.26 million in recent trading losses.

The bank self-reported the issue to the Division of Enforcement in mid-July 2017 and continued to cooperate in the Division's investigation by providing timely updates on its own internal investigation, responding to requests for information, disclosing information proactively, and attributing facts to specific sources. The declination letter also details that the bank disclosed pertinent facts relevant to the misconduct, including as to the involvement of individuals; made individuals available for interviews; and identified the specific documents that were particularly relevant to the misconduct at issue, including their provenance. Finally, the bank immediately placed the trader on administrative leave while it conducted its investigation and terminated him at the conclusion of its investigation, in September 2017.

By settling with the CFTC, the trader agreed to cease and desist from further violations, pay a $350,000 civil monetary penalty, and be permanently prohibited from engaging in trading on or subject to the rules of any registered entity. The trader also agreed to undertakings barring him from trading in commodity interests, whether for his own accounts or on behalf of others.

CFTC Enforcement Director James McDonald said that the action demonstrated both the agency's commitment to holding wrongdoers accountable and the concrete benefits of cooperation. Deutsche's self-reporting, along with its full and proactive cooperation and remediation, contributed to the Division's decision to decline to recommend charges against the bank, McDonald said. CFTC Chairman J. Christopher Giancarlo highlighted the aspect of global regulatory cooperation, noting that the agency was "grateful to have an open line of communication" with the German financial regulator, BaFin.

This is CFTC Docket No. 18-51.

Companies: Deutsche Bank Securities Inc.; Deutsche Bank AG

MainStory: TopStory CommodityFutures Enforcement FraudManipulation