

[Securities Regulation Daily Wrap Up, FRAUD AND MANIPULATION— N.D. Cal.: CFTC wins judgment against adviser for using fraudulent promotional materials, making false statements to NFA, \(Jul. 29, 2013\)](#)

Securities Regulation Daily Wrap Up

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By John M. Jascob, J.D.

The CFTC has been awarded summary judgment in a civil action against a California-based commodity trading adviser who violated the Commodity Exchange Act (Act) by issuing fraudulent promotional materials to investors and by making false statements to investigators with the National Futures Association (NFA). Judge Claudia Wilken of the U.S. District Court for the Northern District of California held that there was no material dispute of fact that James D. Crombie violated the Act by willfully providing NFA investigators with fraudulent account statements and making false statements about the nature of payments made to and from his firm, Paron Capital Management, LLC (Paron). The court also held that Crombie willfully provided false information about the history of his performance as an adviser that Paron used to solicit potential clients (*CFTC v. Crombie*, July 26, 2013, Wilken, C.).

Background and allegations. The CFTC alleged that, during a March 2011 NFA audit of Paron, Crombie and Paron made false statements to prevent the NFA from discovering that they were using fraudulent promotional materials to solicit clients to trade commodity futures. According to the CFTC, Paron had used a “flip book” and a monthly newsletter which falsely claimed that Paron and Crombie had previously achieved annual rates of return as high as 38 percent in 2008. The CFTC also alleged that Crombie and Paron used a due diligence questionnaire that falsely claimed that Paron managed assets of approximately \$35 million in 2011 and that the firm’s largest current account was \$20 million. The CFTC contended that, after investigators requested that Crombie provide them with supporting documentation for the historical returns, Crombie provided fraudulent or forged account statements and made a number of misstatements designed to impede the NFA’s audit.

False statements to the NFA. The court held that there was no material dispute that Crombie violated Section 9(a)(4) of the Act by willfully providing the NFA with fraudulent account summaries purportedly from Fimat Futures USA LLC, a futures commission merchant. The court noted that the summaries Crombie provided to investigators did not match the financial information contained in the authentic statements for the Fimat accounts at issue. The CFTC also established that Crombie acted willfully by submitting evidence that Crombie knew of the daily performance of his trading program and had received daily reports from Fimat concerning those accounts. Even if Crombie did not create the summaries himself, the court reasoned, he should have known that the summaries did not reflect the accounts’ actual performance.

The court also found that there was no dispute of material fact that Crombie willfully made misstatements to the NFA about loans to his firm. For example, although Crombie told NFA investigators during a telephone call that the only outstanding loan that he had at the time was a loan from a family member, he later admitted in his interrogatory responses that he had received a \$50,000 “working capital loan” from an individual who was establishing a hedge fund. Accordingly, there was no dispute that Crombie had misrepresented the nature of the payment when he told the NFA that they were for “financial engineering services,” the court concluded.

Misrepresentations to prospective investors. The court also held that there was no material dispute that Crombie violated the Act by providing false information about his performance history to prospective customers. Even if Crombie did not himself author the promotional materials provided to customers, the court found, he provided the false performance information that was used in creating the materials. Additionally, Crombie admitted knowledge that the due diligence questionnaire contained false information about the amount of assets advised by Paron. The fact that Crombie knew that the due diligence questionnaire contained

misrepresentations, did not take steps to address those misrepresentations, and participated in its distribution demonstrated that he acted in “careless disregard” of whether his actions violated the Act, the court reasoned.

The case is [No. C 11-4577 CW](#).

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Companies: Paron Capital Management, LLC

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