

[Securities Regulation Daily Wrap Up, DERIVATIVES—S.D.N.Y.: No basis for reconsideration of summary judgment denial in DRW manipulation action, \(Nov. 4, 2016\)](#)

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By [Amy Leisinger, J.D.](#)

The Southern District of New York has refused to reconsider its denial of trading firm DRW Investments, LLC's motion for summary judgment on CFTC claims involving alleged manipulation of the price of a swap futures contract. According to the court, evidence and allegations regarding high bids for illiquid products benefiting the firm's large long position and the fact that none of the bids led to a transaction create a genuine issue of material fact regarding intent to create artificial prices. The defendants also fail to show any fact or point of law that was overlooked by the judge presiding during the summary judgment proceedings ([CFTC v. Wilson](#), November 2, 2016, Sullivan, R.).

Alleged manipulation. The CFTC alleged that DRW and its head manipulated the price of the IDEX USD Three-Month Interest Rate Swap Futures Contract by "banging the close," or placing a series of bids during the market's closing period. DRW allegedly knew the bids were at little risk of execution because the market was illiquid, and cancelled the bids before execution. The bids drove up the contract price, benefitting the firm's large long position and resulting in profits of at least \$20 million. The CFTC asserted that the firm's conduct violated anti-manipulation provisions of the Commodity Exchange Act.

Summary judgment denied. The district court denied both sides' motions for summary judgment, stating that, from the facts presented, a jury could reasonably conclude either that DRW had the specific intent to create an artificial price that not reflecting legitimate forces of supply and demand or that DRW believed the contract was undervalued and the bids were genuine.

DRW asked the court to reconsider its ruling, arguing that it had overlooked evidence that the firm believed the trades would be profitable if hit and employed a bidding strategy consistent with looking for a counterparty without manipulative intent. The CFTC [opposed](#) the motion for reconsideration, arguing that DRW's request was based on a flawed understanding of the standard for manipulative intent and that the firm was merely rehashing an argument that the trading strategy reflected legitimate forces that the court had already rejected. In its [reply](#), DRW stated that the court will "search in vain" for a material factual dispute and that whether the bids were legitimate is a legal question for the court. The firm genuinely believed that its bids would lead to profitable transactions if they were hit and it wanted that to happen, DRW argued.

Reconsideration denied. Noting that the Second Circuit has limited district courts' reconsideration of earlier decisions, the court denied DRW's motion for reconsideration. A previous ruling generally may not be changed unless the movant can demonstrate an intervening change in law or new evidence or show a need to correct clear error or to prevent injustice, such as a judge overlooking controlling decisions or specific data, the court found. DRW contends that the court overlooked its argument that knowledge that it was unlikely to find a counterparty cannot give rise to a reasonable inference that the bids were illegitimate, but the previous judge considered and rejected this argument, the court stated. The motion appears to be an attempted "second bite at the apple" before a different, potentially more sympathetic judge, which is not a proper basis for reconsideration, the court concluded.

The court did, however, grant the request to push back the deadlines on proposed findings of fact, conclusions of law, and agreed-upon stipulations. Trial is scheduled to begin December 1, 2016.

The case is [No. 13-cv-7884 \(RJS\)](#).

Attorneys: A. Daniel Ullman for the CFTC. Michael Sangyun Kim (Kobre & Kim LLP) for Donald R. Wilson and DRW Investments, LLC.

Companies: DRW Investments, LLC

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