

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**COMMODITY FUTURES TRADING** )  
**COMMISSION,** )  
) )  
**Plaintiff,** )  
) )  
v. )  
) )  
**JITESH THAKKAR AND** )  
**EDGE FINANCIAL TECHNOLOGIES, INC.,** )  
) )  
**Defendants.** )  
\_\_\_\_\_ )

Case No. 1:18-CV-00619

**JOINT INITIAL STATUS REPORT**

Plaintiff Commodity Futures Trading Commission (“CFTC”) and Defendants Jitesh Thakkar (“Thakkar”) and Edge Financial Technologies, Inc. (“Edge”) jointly submit the following initial status report in advance of the case management conference scheduled for September 4, 2019 at 9:00 a.m.:

**1. Nature of the Case**

**A. Identify the attorneys of record for each party:**

Plaintiff: Thomas L. Simek – lead attorney  
Margaret Aisenbrey  
Carlin R. Metzger  
Commodity Futures Trading Commission  
4900 Main Street, Ste. 500  
Kansas City, Missouri 64112  
(816) 960-7700  
tsimek@cftc.gov  
maisembrey@cftc.gov  
cmetzger@cftc.gov

Defendants: Renato Mariotti – lead attorney  
Richard Reibman  
Holly H. Campbell  
Thompson Coburn LLP  
55 East Monroe, 37th Floor  
Chicago, Illinois 60603  
312-346-7500  
rmariotti@thompsoncoburn.com  
rreibman@thompsoncoburn.com

hcampbell@thompsoncoburn.com

**B. Identify any parties that have not yet been served:** none.

**C. State the basis for federal jurisdiction:** this case arises under the federal laws, specifically the Commodity Exchange Act, 7 U.S.C. § 1, *et. seq.* and therefore the Court properly has jurisdiction under 28 U.S.C. § 1331, and the plaintiff is an agency of the U.S. Government, giving this Court jurisdiction under 28 U.S.C. § 1345.

**D. Describe generally the nature of the claims asserted in the complaint, any counterclaims, and relief sought:**

Plaintiff alleges that Defendants Jitesh Thakkar and his company, Edge Financial Technologies, Inc., designed a custom trading application for Trader A that included a Back-of-Book function. Plaintiff alleges that Defendants designed the Back-of-Book function to help Trader A engage in spoofing (bidding or offering with the intent to cancel the bid or offer before execution), in violation of Section 4c(a)(5)(C) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 6c(a)(5)(C) (2012). Plaintiff further alleges that Defendants designed the Back-of-Book function also to help Trader A’s manipulative and deceptive scheme, in violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012) and CFTC Regulation 180.1(a)(1) and (3), 17 C.F.R. § 180.1(a)(1), (3) (2019). Plaintiff seek to hold Defendants responsible for these alleged violations of the Commodity Exchange Act and CFTC Regulations under Section 13(a) of the Act, 7 U.S.C. § 13c(a) (2012), which imposes liability on persons that aid and abet violations of the Act and CFTC Regulations.

The CFTC seeks an order finding that Defendants violated the Act, a permanent injunction against Defendants (1) selling the custom trading application, (2) trading any products or acting in any capacity within the CFTC’s jurisdiction, as further described in Section VI. Relief Requested, paragraph C, numbered 2-8, and (3) engaging in or directing any programming for others for the purpose of trading, as further described in Section VI. Relief Requested, paragraph C, numbered 9. The CFTC also seeks civil monetary penalties and disgorgement.

Defendants Jitesh Thakkar and Edge Financial deny the allegations in the CFTC’s Complaint and deny that the CFTC is entitled to any of the relief it seeks in the Complaint.

**E. State the major legal and factual issues in the case:**

The Parties anticipate that the major factual issues in this case will be: (1) whether Defendants knew that Trader A intended use the Back-of-Book function to engage in spoofing or engage in a manipulative deceptive scheme in the futures market in violation of the CEA; (2) whether Defendants intended to further Trader A's violations of the CEA; and (3) whether Trader A used the Back-of-Book function to engage in spoofing and a manipulative deceptive scheme in the futures markets.

The CFTC also believes the following are major factual issues, while Defendants do not agree: (4) Defendants' knowledge of the uses for the Back-of-Book function they were asked to develop and program and whether the Defendants were aware, when they developed the Back-of-Book function at Trader A's request, that Trader A intended to use the Back-of-Book function to engage in spoofing; (5) Defendants personal experience and knowledge of the futures trading industry, the microstructure of the futures markets, the purpose of the matching algorithms, and other industry practices, as well as their own knowledge of futures trading and their personal trading strategies; (6) the internal practices and procedures that Defendant Edge Financial followed during the development of the program; and (7) Defendants attempts to sell the application to other futures traders and their communications with or programming for their customers or other futures traders regarding a Back-of-Book function or software with other manipulative functionality.

This is the first civil case that attempts to hold a non-trader civilly liable for another trader's spoofing. As a first-of-its-kind case, this case will present a host of legal issues around the limits of the anti-spoofing statute.

**2. Mandatory Initial Discovery Pilot Project**

**A. All of the parties confirm that they have read and discussed the Standing Order Regarding Mandatory Initial Discovery Pilot Project.**

**B. The due date for each party's mandatory initial discovery response is September 6, 2020.**

**C. Describe the parties' discussions regarding the mandatory initial discovery responses:**

- a. Any objections invoked or limitations sought by any party in connection with the party's response: CFTC requested to limit the production of sensitive market information, protected by 7 U.S.C. § 12(a), because it may not be relevant to Defendants' defenses. If it is relevant, CFTC requested the production be delayed at least until a protective order is in place.

b. The parties are still working toward a resolution on this matter.

3. **Case Plan**

**A. Identify all pending motions:** none.

**B. State whether any defendant anticipates responding to the complaint by motion, and if so, the basis for the intended motion:** the Defendants have filed an answer in this matter.

**C. Submit a proposed discovery plan, including the following information:**

The parties met and discussed a proposed discovery plan, but have very different views on what discovery is appropriate for this case and could not reach an agreement on a proposed discovery plan. Accordingly, Plaintiff and Defendants set out their proposed plans below separately.

(1) Plaintiff's proposed discovery plan:

- i. The general type of discovery needed and ESI issues: Plaintiff anticipate needing written discovery from Defendants, including interrogatories and requests for admission as well as depositions of Defendants and current and former Edge employees. Plaintiff also anticipates seeking third party discovery, including from Edge customers on topics such as Defendants' discussions of or efforts to market the Back-of Book function or computer software with similar functionality, Defendants' typical course of dealing with its customers, and the Defendants' knowledge of the futures industry and its practices. Plaintiff believes expert discovery is likely to be needed as well. Discovery will include ESI and the parties do not anticipate any issues regarding ESI discovery.
- ii. Privilege after production: the parties will include this issue in a proposed protective order.
- iii. Fact Discovery completion date: **May 29, 2020.**
- iv. Expert Discovery: Plaintiff believes expert discovery may be necessary and propose that parties identify and provide a CV of their experts by **March 16, 2020**, that parties exchange Rule 26(a)(2) disclosures by **April 30, 2020**, that parties complete depositions of experts by **May 29, 2020**, and that parties exchange any rebuttal reports by **June 15, 2020.**
- v. Discovery Limitations: At this point, Plaintiff does not anticipate any changes need to be made in the limitations on discovery imposed by the Federal Rules of Civil Procedure or Local Rules. Plaintiff's view may change based on information obtained through discovery.
- vi. Final Date to Supplement Mandatory Initial Disclosures: **May 29, 2020.**
- vii. Dispositive Motion Deadline: **June 30, 2020.**

(2) Defendants' Proposed Discovery Plan

- i. General Type of Discovery Needed and ESI Discovery: No discovery is needed beyond the mandatory initial disclosures required under the pilot project. Edge

Financial produced *all* emails from *all* Edge Financial employees related to Trader A, the source code for Trader A's program, and all other relevant documents in its possession to the CFTC in response to a Voluntary Request for Documents from the CFTC in May 2015. Edge Financial again produced nearly 39,000 pages of documents and communications to the DOJ in the spring of 2018. Further, the CFTC interviewed at least 15 witnesses in relation to this case and/or the case against Trader A jointly with the DOJ during their investigation of this case and were able to interview any relevant witnesses during that time. Jitesh's testimony regarding the facts of this case is established in his 97 minutes of recorded interviews with the FBI, during which Jitesh allowed the FBI to ask him any and all questions they had. Finally, the material facts of this case were conclusively established during the 5-day criminal trial in this matter in April 2019, which the CFTC's Counsel of Record in this case personally attended. The CFTC also has access to the entire transcript from this trial. Requiring any further discovery in this case would be duplicative and unduly burdensome for Defendants.

- ii. Privilege after Production: The parties will include this issue in a proposed protective order.
- iii. Fact Discovery Completion Date: No further fact discovery is needed or warranted in this case.
- iv. Expert Discovery: Expert discovery is not needed or warranted in this case. The only issue to be determined in this case is whether Jitesh or Edge Financial employees knew that Trader A would use the computer program to engage in illegal trading, and intended to further that illegal trading. Expert testimony is not necessary to address that question. If the Court disagrees, Defendants reserve the right to engage a rebuttal expert in response to any expert the CFTC engages.
- v. Discovery Limitations: For the reasons discussed above, no further fact or expert discovery should be permitted in this case.
- vi. Final Date to Supplement Mandatory Initial Disclosures: **September 30, 2019**
- vii. Dispositive Motion Deadline: **October 14, 2019**

D. Both parties demanded a jury. The parties estimate that the case will take 7 days of trial.

#### 4. Settlement

- A. Beginning shortly after the court lifted the stay on this action, the parties began engaging in settlement discussions. In June and July, the parties exchanged specific proposals and narrowed the settlement parameters on which they disagreed. However, the parties have reached an impasse in their settlement discussions and are at present unable to make further progress.
- B. The Parties do not believe a settlement conference at this time would be productive.

#### 5. Consent to Proceed Before a Magistrate Judge

- A. Counsel for both parties have informed their clients regarding proceeding before the Magistrate Judge and do not consent to that procedure at this time.

Dated: August 28, 2019

Respectfully submitted,

PLAINTIFF COMMODITY FUTURES  
TRADING COMMISSION

DEFENDANTS JITESH THAKKAR and  
EDGE FINANCIAL TECHNOLOGIES,  
INC.,

By: /s/Thomas L. Simek  
Chief Trial Attorney

By: /s/ Renato Mariotti  
One of Their Attorneys

Charles Marvine (MO Bar #44906)  
Thomas L. Simek (DC Bar #57268)  
Margaret P. Aisenbrey (MO Bar #59560)  
Commodity Futures Trading Commission  
4900 Main Street, Ste. 500  
Kansas City, Missouri 64112  
Telephone: (816) 960-7700  
Facsimile: (816) 960-7751  
cmarvine@cftc.gov  
tsimek@cftc.gov  
maisenbrey@cftc.gov

Renato Mariotti  
Holly H. Campbell  
Thompson Coburn LLP  
55 East Monroe, 37th Floor  
Chicago, Illinois 60603  
Telephone: (312) 346-7500  
Facsimile: (312) 580-2201  
rmariotti@thompsoncoburn.com  
rreibman@thomsponcoburn.com

**CERTIFICATE OF SERVICE**

I hereby certify that on August 28, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and thereby caused service of the foregoing document via electronic notice on all parties and counsel of record.

/s/ Margaret P. Aisenbrey

Attorney for the Plaintiff