

Securities Regulation Daily Wrap Up, TOP STORY—N.D. Ill.: Futures exchange must reveal under seal identity of alleged manipulators, (Sep. 23, 2015)

By Lene Powell, J.D.

In an action by a proprietary trading firm against anonymous traders who allegedly manipulated Treasury futures markets, a federal district court in Illinois ruled that a futures exchange must reveal under seal the identities of the traders. The court said it needed to know whether the traders are members of the Chicago Board of Trade in order to decide whether to compel arbitration. If the traders are CBOT members, then the court will likely grant anticipated motions to arbitrate ([*HTG Capital Partners, LLC v. Doe\(s\)*](#), September 22, 2015, Chang, E.).

Alleged manipulation. HTG Capital Partners, a proprietary trading firm with offices in Chicago, London, and Singapore, sued a group of unidentified traders for alleged “spoofing” activity in about 7,000 trades in the CBOT U.S. Treasury futures markets, where trading is anonymous. According to HTG, the unknown traders [entered orders](#) that they did not intend to execute in order to create the false appearance of market demand and force the price up or down, in violation of the Commodity Exchange Act.

After HTG issued a non-party subpoena to CBOT’s parent group, the Chicago Mercantile Exchange Group, one defendant (Doe 1) revealed anonymously that it was the counterparty to three trades at issue. Doe 1 and the CME Group moved to quash the subpoena. Doe 1 also requested to be allowed to proceed anonymously, not just as to the public, but also as to HTG.

CME Group must reveal traders. The court first ruled that Doe 1 had standing to challenge the subpoena. Although it was a non-party subpoena served on the CME Group, Doe 1 had a privacy interest in the trading information sought. Next, the court ruled that it could not determine whether to compel arbitration without knowing if the anonymous traders were CBOT members. For the court to know that, the CME Group needed to disclose their identities. It was not an undue burden for the CME Group to reveal this, because all the alleged trades at issue had a unique and well-defined pattern of a three-phase “spoof.” In addition, CME Group’s confidentiality policy was not a valid basis to quash the subpoena.

Accordingly, the court directed the CME Group to disclose the identity and membership status of all the Doe defendants—for now *ex parte* and under seal—and explain how it had identified them. The court directed further briefing on whether Doe 1 should be allowed to proceed anonymously.

Arbitrability. The dispute was presumptively arbitrable as to Doe 1. CBOT rules provide for mandatory arbitration between members, and both HTG and Doe 1 are CBOT members. HTG did not dispute that the transactions at issue were conducted on the exchange, and that was all that was required for mandatory arbitration. The court was not concerned that arbitration would allow aspooferto escape because spoofing is barred by CBOT Rule 575.

The court concluded that the dispute was arbitrable as to Doe 1, as long as it was established on the record that Doe 1 was a CBOT member at the time of the trades in question. In addition to the above-mentioned disclosure of the traders' identities and membership status, the court directed Doe 1 to file a motion to compel arbitration. The court noted that this path would also be available to the other Does upon disclosure of their identities and membership status.

The case is [No. 15 C 02129](#).

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Companies: HTG Capital Partners, LLC; Chicago Mercantile Exchange, Inc.; The Board of Trade of the City of Chicago, Inc.

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