

Securities Regulation Daily Wrap Up, COMMODITY FUTURES—Sanctions for info misappropriation target energy futures trader, (Dec. 3, 2015)

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The CFTC barred a gasoline contracts trader from trading on any registered entity because the agency said the trader had engaged in many fraudulent and fictitious trades based on misappropriated non-public, confidential and material information. According to the CFTC, the trades ran afoul of Commodity Exchange Act Sections 4b(a), 4c(a), and 6(c)(1), and CFTC Regulations 1.38 and 180.1. All told, the trader must pay \$316,956 in restitution and civil monetary penalties in the settled matter (*In the Matter of Motazed*i, [Release No. 16-02](#), December 2, 2015).

A CFTC spokesperson confirmed that this is the first time the CFTC has imposed sanctions for a violation of CEA Section 6(c)(1) for the misappropriation of material, non-public information. The CEA provision was part of the Dodd-Frank Act reforms and its implementing regulation tracks much of the existing case law on securities law misappropriation theory.

Gasoline futures trades. Arya Motazed*i*, who was never registered with the CFTC, was accused of making a total of 46 fraudulent trades in the New York Mercantile Exchange's RBOB Gasoline Physical Futures and CL Light Sweet Crude Oil Futures contracts. The order explained that Motazed*i* employed two personal accounts while also trading on his employers' behalf in a proprietary account.

Thirty-four of the trades (some of them round trip trades) were done to the detriment of the employer's account. Another 12 trades amounted to frontrunning of the employer's account in which Motazed*i* traded for himself first. The upshot of Motazed*i*'s trading was that he profited while depressing his employer's returns or even turning them to losses.

The CFTC said Motazed*i* violated his employer's policies against misuse of proprietary data and on trading for oneself if potential conflicts of interest exist between the

employee and the employer's trades. Motazed, said the agency, was in a position to know his employer's planned energy futures trades, including timing, volume, and pricing data.

Anti-manipulation rule akin to SEC's Rule 10b-5. One of the charges against Motazed was that he engaged in manipulative trades in violation of CEA Section 6(c)(1) and CFTC Regulation 180.1. Dodd-Frank Act Section 753(a) added this provision to the CEA as part of the 2010 financial reforms.

A footnote to the CFTC's order explained that while the Commission drew inspiration for its implementing rule from the SEC's "virtually identical" Exchange Act Section 10(b) and Rule 10b-5, it would be only "guided" by case law developed under the SEC's nearly equivalent regime. Still, the order favorably cited the Supreme Court's *O'Hagan* opinion, a bulwark of securities law misappropriation theory. Under *O'Hagan*, the breach of the duty of trust and confidence owed to the source of the information is a deception that can lead to legal liability.

Moreover, CFTC Regulation 180.1 filled a gap in CEA Section 6(c)(1) regarding scienter in order to require that a person act intentionally or recklessly. The CFTC's regulation also took a broad view of the CEA's "in connection with" requirement. As a result, one may run afoul of CFTC Regulation 180.1 by trading on material non-public information by breaching a pre-existing duty.

According to the CFTC, Motazed's legal liability arose from the relationship of trust and confidence he had with his employer. The order said Motazed breached his duty to his employer by knowingly or recklessly trading energy futures without disclosing his plans despite the possible conflicts with his employer's interests.

The Commission also charged Motazed with fraud under CEA Section 4b(a), fictitious sales under CEA Section 4c(a), and with engaging in non-competitive trades under CFTC Regulation 1.38. The order requires Motazed to stop violating the CEA and related regulations, and to pay restitution of \$216,956 and a civil monetary penalty of \$100,000. Motazed also is permanently barred from trading on any registered entity.

The release is [No. 16-02](#).

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