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The Bank of Nova Scotia Agrees To Pay $60.4 Million in Connection with Commodities Price Manipulation Scheme

The Bank of Nova Scotia (Scotiabank), a Toronto, Canada-based global banking and financial services firm, has entered into a resolution with the Department of Justice to resolve criminal charges related to a price manipulation scheme involving thousands of episodes of unlawful trading activity by four traders in the precious metals futures contracts markets.

Scotiabank entered into a deferred prosecution agreement (DPA) in connection with a criminal information filed today in the District of New Jersey charging the company with one count of wire fraud and one count of attempted price manipulation. Under the terms of the DPA, Scotiabank has agreed to the imposition of an independent compliance monitor, and will pay over $60.4 million in a criminal monetary penalty, criminal disgorgement, and victim compensation, with part of the criminal monetary penalty credited against payments made to the Commodity Futures Trading Commission (CFTC) under a separate agreement with the CFTC being announced today.

"For over eight years, Scotiabank traders placed thousands of orders for precious metals futures contracts in an attempt to manipulate prices for their own and the bank's benefit and to deceive other market participants," said Chief Robert A. Zink of the Justice Department's Criminal Division, Fraud Section. "This deferred prosecution agreement—which includes a criminal monetary penalty at the top of the United States Sentencing Guidelines range, money to compensate victims, and an independent compliance monitor—reflects the seriousness of the offense and the state of Scotiabank's compliance program, and further helps to promote the integrity of our public markets."

"For the markets to work fairly, everyone needs to be able to make trading decisions with consistent, accurate information," said U.S. Attorney Craig Carpenito for the District of New Jersey. "In the conduct described here, four Scotiabank traders attempted to rig precious metals futures prices in their favor by placing thousands of orders they knew they would cancel before the trades were executed. In this way, they sought to illegally manipulate the market to their own advantage, and to the disadvantage of other traders. The resolution announced requires Scotiabank to pay a substantial penalty and places them under watch by an independent compliance monitor."

"Today, Scotiabank has admitted to their role in a massive price manipulation scheme aimed at falsely manufacturing the prices of precious metals futures contracts to serve the bank's best interests," said Assistant Director in Charge William F. Sweeney Jr. of the FBI's New York Field Office. "The bank's actions were designed to lead others to trade in ways they never would have without what was believed to be legitimate market activity. Scotiabank's agreement to surrender more than $60 million in criminal fines, disgorgement and victim compensation underscores the severe penalties that can be levied against those who wish to engage in similar, illegal business tactics."

"The consequences of the actions of these traders are far reaching, affecting not only the economy of the United States, but also the world's financial markets," said Inspector in Charge Delany De Leon-Colon of the U.S. Postal Inspection Service's (USPIS) Criminal Investigations Group. "Anyone who thinks that manipulating trading markets to benefit their own bank accounts should see today's announcement as a significant warning. The U.S. Postal Inspection

Service has an extensive history of investigating complex financial fraud schemes in order to protect investors as well as the integrity of the financial marketplace."

According to admissions and court documents, between approximately January 2008 and July 2016, four precious metals traders located in New York, London and Hong Kong engaged in fraudulent and manipulative trading practices in the markets for gold, silver, platinum, and palladium futures contracts (collectively, precious metals futures contracts) that traded on the New York Mercantile Exchange Inc. (NYMEX) and Commodity Exchange Inc. (COMEX), which are commodities exchanges operated by the CME Group, Inc. One of the traders, Corey Flaum, 42, of Delray Beach, Florida, pleaded guilty on July 25, 2019, to one count of attempted price manipulation in connection with his precious metals futures contracts trading at Scotiabank and another financial services firm, and his sentencing is scheduled for Jan. 27, 2021, before U.S. District Judge Brian M. Cogan of the Eastern District of New York.

As part of the DPA, Scotiabank has agreed to, among other things, continue to cooperate with the department in any ongoing investigations and prosecutions relating to the underlying misconduct, to modify its compliance program where necessary and appropriate, and to retain an independent compliance monitor for a period of three years.

A number of relevant considerations contributed to the department's criminal resolution with Scotiabank, including the nature and seriousness of the offense, the state of Scotiabank's compliance program, and Scotiabank's failure to fully and voluntarily self-disclose the offense conduct to the department.

As Scotiabank admitted in the DPA, Flaum and the three other traders, collectively, placed thousands of orders to buy and sell precious metals futures contracts with the intent to cancel those orders before execution. By placing these orders, the traders intended to artificially move the prices of precious metals futures contracts in a direction that was favorable to them, and to inject false and misleading information into the precious metals futures markets in order to deceive other market participants into believing something untrue, namely that the market reflected legitimate supply and demand. This false and misleading information was intended to, and at times did, trick other market participants into reacting to the apparent change and imbalance in supply and demand by buying and selling futures contracts at quantities, prices, and times that they otherwise likely would not have traded.

As set forth in the DPA, Scotiabank's compliance function failed to detect or prevent the four traders' unlawful trading practices. Moreover, between August 2013 and February 2016, three Scotiabank compliance officers possessed information regarding unlawful trading by one of the traders other than Flaum but failed to prevent further unlawful conduct by this same trader. These facts were significant considerations that counseled for the imposition of a criminal monetary penalty at the high end of the applicable United States Sentencing Guidelines range under the DPA.

Since the time of the underlying offense conduct, Scotiabank has made significant investments to improve its compliance technology and trade surveillance tools, has nearly doubled its annual compliance operating budget, has added more than 200 full-time equivalent compliance positions, and is in the process of winding down its precious metals business. The department ultimately determined, however, that an independent compliance monitor was necessary because Scotiabank's remedial improvements to its compliance and ethics program have yet not been fully implemented and tested to demonstrate that they would be effective in detecting and preventing similar misconduct in the future.

Scotiabank did not receive voluntary disclosure credit because it did not voluntarily and timely disclose the offense conduct to the department. In 2016, after one of its futures commission merchants flagged trading by Flaum for possible spoofing, Scotiabank made a voluntary disclosure regarding Flaum to the CFTC. As a result of recordkeeping failures, however, Scotiabank's disclosure to the CFTC was materially incomplete. As a result, the CFTC was impaired in its ability to fully investigate Flaum's unlawful trading and discover the true extent of the misconduct. The CFTC, relying on Scotiabank's incomplete and, ultimately, inaccurate disclosure, entered into a resolution with Scotiabank in 2018 that did not reflect the full extent of Flaum's conduct (2018 CFTC Resolution). In the 2018 CFTC resolution, Scotiabank received a substantially reduced penalty in recognition of, among other things, its purported self-reporting.

Today, the CFTC announced two separate settlements with Scotiabank in connection with related, parallel proceedings. One of Scotiabank's resolutions with the CFTC relates to unlawful trading by Flaum and the three other traders that Scotiabank did not fully disclose to the CFTC in connection with the CFTC's prior investigation that resulted in the 2018 CFTC Resolution, discussed above. Under the terms of the new agreement between Scotiabank and the CFTC,

Scotiabank agreed to pay approximately $60.4 million, which includes a civil monetary penalty of $42 million, as well as restitution and disgorgement that will be credited to any such payments made to the department. The second resolution between Scotiabank and the CFTC relates to certain false statements that Scotiabank made to the CFTC (including in connection with the investigation that resulted in the 2018 CFTC Resolution), the COMEX, and the National Futures Association. Under the terms of this agreement, Scotiabank has agreed to pay a civil monetary penalty of approximately $17 million.

The FBI's New York Field Office and the USPIS investigated this case. Assistant Chief Avi Perry and Trial Attorneys Matthew F. Sullivan and Alexander Kramer of the Fraud Section and Assistant U.S. Attorney Catherine R. Murphy of the District of New Jersey prosecuted the case. The CFTC's Division of Enforcement provided assistance in this matter.

Individuals who believe that they may be a victim in this case should visit the Fraud Section's Victim Witness website at https://www.justice.gov/criminal-vns/case/the-bank-of-nova-scotia-dpa or call (888) 549-3945.

The year 2020 marks the 150th anniversary of the Department of Justice. Learn more about the history of our agency at www.Justice.gov/Celebrating150Years.

Attachment(s):
Download Scotiabank Deferred Prosecution Agreement
Download Scotiabank Information

Topic(s):
Securities, Commodities, & Investment Fraud

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