Securities Regulation Daily Wrap Up, FRAUD AND MANIPULATION—U.S.: Former president of energy company asks Supreme Court to vacate ruling upholding his conviction, (Jul 9, 2025)

By Rebecca E. Hoffman, J.D.



The petitioner was convicted pursuant to a plea deal but wants the high court to reconsider arguments based on the void for vagueness and separation of powers doctrines.

After pleading guilty to participating in an illegal kickback scheme and commodities insider trading involving natural gas futures contracts, petitioner Matthew Clark is asking the Supreme Court to vacate or reverse the Fifth Circuit's decision to uphold the district court's judgment convicting him, asserting that the statutes and regulations on which the convictions were based are unconstitutionally vague and violate the separation of powers and non-delegation doctrines (Petition for Writ of Certiorari, *Clark v. U.S.*, No. 25-8 (U.S. filed June 30, 2025)).

"Despite the Fifth Circuit's failure to meaningfully consider all of petitioner's preserved and properly-presented arguments, petitioner's case presents this Court with an excellent vehicle to provide needed clarification about these constitutional doctrines," the petition submits.

Clark conspired with others to direct his company's trades to a brokerage firm owned by Matthew Webb in exchange for kickbacks totaling over $5.5 million. Clark also used confidential information about his company's trades to engage in insider trading, sharing profits with his co-conspirators. He pleaded guilty to multiple charges, including conspiracy to commit wire fraud, prohibited commodities transactions, and commodities insider trading. He was sentenced to 78 months in prison followed by three years of supervised release and must pay millions in restitution and forfeiture.

The petition underscores that the commodity futures trades at issue were "block trades," which are private trades that ostensibly were not prohibited by commodities exchange rules in 2017 when the trades were made. The petition claims that the Fifth Circuit "failed to address key parts of petitioner's challenges" to his convictions.

Void for vagueness. Clark was convicted of honest services wire fraud in violation of 18 U.S.C. § 1346. The Fifth Circuit relied on *Skilling v. United States*, 561 U.S. 358 (2010), which construed Section 1346 narrowly—to avoid vagueness, the petition said—and applied it only to bribes or kickbacks supplied by a party who had not been deceived, where the recipient is in breach of fiduciary duty. But in a more recent decision, *United States v. Davis*, 588 U.S. 445 (2019), the Supreme Court "unequivocally held that, once a court makes the threshold determination that statutory language is vague, the court cannot salvage the vague statute through a narrowing judicial interpretation." Clark argued that *Skilling* must be overruled and Section 1346 declared void.

Clark was also convicted under a commodities trading statute containing the allegedly vague terms "fictitious sale" and "not a true and bona fide price." These terms, "when considered in the specific context of commodity futures trading do not give an ordinary person fair notice of which trading practices are prohibited because the statutory terms lack 'any ascertainable standard for inclusion and exclusion' of conduct within its scope," the petition explained, citing *Smith v. Goguen*, 415 U.S. 566, 578 (1974). Clark also argued that since 1978, no one has been prosecuted for conducting a "fictitious sale" or reporting a non-bona-fide price, and this "desuetude" forecloses fair notice.

The terms are also problematic as applied to Clark, he argued, pointing out that block trades are prearranged trades that take place outside the commodities markets and should only be unlawful if they were deceptive.

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The petitioner challenged his insider trading conviction as well, arguing that in 2017, there was no notice that one could be criminally prosecuted for insider trading in the commodity futures context. Only particular types of insider trading are expressly prohibited, such that "insider-trading charges in criminal cases cannot be brought against a private commodities trader or broker who did not obtain inside information from a governmental official or employee of an exchange or trade-regulating body," Clark averred.

Separation of powers. According to the petition, Clark's prosecution under 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1 for insider trading is tantamount to Congress delegating to the CFTC to define conduct subject to criminal liability, which violates the separation of powers doctrine. Congress does so by, for example, "broadly delegating to the CFTC the authority to define 'any manipulative or deceptive device or contrivance.'"

The petition is No. 25-8.

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