

## **Securities Regulation Daily Wrap Up, TOP STORY—N.D. Ill.: DOJ decides not to retry Chicago-area software developer over program used in spoofing scheme, (Apr. 24, 2019)**

Securities Regulation Daily Wrap Up

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By [Brad Rosen, J.D.](#)

The Department of Justice dismissed two counts of aiding and abetting spoofing against a computer programmer rather than engaging in another trial after a federal jury voted 10-2 to acquit.

In the aftermath of hard-fought trial in early April resulting in a hung jury and the declaration of a mistrial, the Department of Justice [moved to dismiss](#) the remaining two counts of its indictment against software developer Jitesh Thakkar of Naperville, Illinois. Thakkar had been [charged](#) with aiding and abetting the illegal spoofing trades of convicted felon and infamous market manipulator Navinder Sarao. Judge Robert Gettleman [entered an order](#) dismissing the indictment with prejudice (*U.S. v. Thakkar*, Gettleman, R. April 23, 2019).

**The flash crash and a novel application of Dodd-Frank's anti-spoofing provision.** Sarao gained notoriety for perpetrating the "flash crash" in 2010 in the E-mini S&P futures contracts traded on the CME. In November 2016, Sarao pleaded guilty to criminal charges for engaging in market manipulation and spoofing-type activity involving the E-mini futures contracts from April 2010 through April 2015. As part of his plea agreement, Sarao paid \$38.6 million in criminal and civil monetary penalties. Additionally, he agreed to cooperate and testify for the government in its case against Thakkar.

The charges against Thakkar represented the first case where a non-trader was indicted for having violated the anti-spoofing provision of the 2010 Dodd-Frank legislation. Specifically, the government claimed that Thakkar, through his company Edge Financial Technologies, had aided and abetted Sarao's illegal spoofing activities by developing software which included a custom "Back-of-Book" function.

This Back-of-Book feature automatically and continuously modified Sarao's orders by moving them to the back of relevant order queues so as to minimize the likelihood of their being executed. According to testimony at trial, Sarao netted \$12,871,587.26 from his illegal spoofing activities in connection with Edge's computer consulting services. Meanwhile, Edge Financial Technologies netted consulting fees in the amount of \$24,200 for its services to Sarao.

**A vigorous defense.** Renato Mariotti, Thakkar's defense attorney and formerly a nine-year veteran of the U.S. Attorney's Office in the Northern District, mounted [a vigorous and skillful defense](#) on his client's behalf. Mariotti can be credited with the following:

- After Sarao having testified at trial, successfully arguing for a judgment of acquittal on the conspiracy count, arguing that no rational jury could have found a conspiracy to commit spoofing had existed between Thakkar and Sarao;
- Deciding not to put Mr. Thakkar on the stand after determining that the government had failed to prove its case, even though he told the jury in opening arguments that the defendant would testify on his own behalf;
- Repeatedly declaring Mr. Thakkar's innocence to the jury, rather than more conventionally stating that the government had failed to carry its burden of proving guilty beyond a reasonable doubt;
- Aggressively discrediting the government's case by describing it to the jury as misleading and deceiving, and further noting that the government should be called out on it.

After entry of the dismissal order, Mariotti indicated in the days to come he will have more to say about the important precedents set by this landmark case. This will include more comment about the DOJ's position that non-traders can be criminally responsible for conduct they did not actually know about if they were knowledgeable about the applicable law and regulations.

The case is [No. 18-CR-36](#).

Attorneys: Mark John Cipolletti, U.S. Department of Justice, for the United States Renato Mariotti and Holly Campbell (Thompson and Coburn LLP) for Jitesh Thakkar

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