

Securities Regulation Daily Wrap Up, TOP STORY—N.D. III.:— CFTC resumes government’s battle against Chicago-area software developer, (Sept. 5, 2019)

Securities Regulation Daily Wrap Up

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

In the wake of an unsuccessful criminal prosecution, trial attorneys from the Commodity Futures Trading Commission told a federal judge the agency is prepared to move forward in its parallel civil enforcement action against a computer programmer on spoofing related charges.

At a status hearing, attorneys for the CFTC and defendants, Jitesh Thakkar and his company, Edge Financial Technologies, told Judge Andrea Wood they were unable to reach a resolution to a pending civil enforcement action. This comes after [the Department of Justice’s unsuccessful criminal prosecution](#) of Mr. Thakkar on charges that he aided and abetted illegal spoofing activity, the subject of a jury trial in April of this year. The CFTC initially brought [its parallel civil action](#), based essentially on the same set of facts as alleged in the criminal matter, in January 2018. The civil matter was stayed pending the outcome of the criminal matter. During the hearing, the court also considered the joint initial status report filed by the parties ([Commodity Futures Trading Commission v. Thakkar](#), August 28, 2019, A. Wood).

Defendants caught up in anti-spoofing sweep. In [a sweeping anti-spoofing initiative](#) in January 2008, the CFTC and DOJ brought charges against three banks and eight individuals. Included were Jitesh Thakkar and his company, Edge Financial Technologies, who [were charged](#) with aiding and abetting spoofing and a manipulative and deceptive scheme perpetuated by Navinder Sarao in the E-mini S&P futures contract market on the Chicago Mercantile Exchange. Thakkar and Edge recently filed [their answer](#) to the CFTC complaint.

In November 2016, Sarao pleaded guilty to criminal charges for engaging in manipulative conduct through spoofing-type activity involving E-mini S&P futures contracts traded on the CME. He ended up paying over \$38.6 million in criminal and civil monetary penalties. According to evidence adduced at Thakkar’s criminal trial, Sarao netted nearly \$13 million from his illegal spoofing activities in connection with computer consulting services provided by Edge Financial. Meanwhile, Edge received an initial consulting fees in the amount of \$24,200 for its services.

Defendants’ summary judgment gambit might not fly. At the onset of the status hearing, Thakkar’s attorney Renato Mariotti advised the court that a motion for [summary judgment](#) had been filed the previous day. Judge Wood queried Mariotti how a motion for summary judgment could be considered without there having been any discovery taken. Mariotti responded by noting that over 100,000 pages of documents had already been provided to the CFTC, and that the Commission had already interviewed multiple witnesses in connection with its role in the related criminal proceeding. Mariotti also indicated that the CFTC had the transcripts to two FBI interviews of Thakkar covering 90 minutes. Moreover, Mariotti underscored that the facts in this proceeding were the very same facts as in the criminal matter.

CFTC attorney Thomas Simek asserted that a summary judgment motion would not be appropriate at this time, and that the agency needed the opportunity to further develop the record. He noted that the CFTC had not interviewed Thakkar, or Edge employees or customers. Simek also indicated that most of the earlier witness interviews related to the cases against Sarao rather than relating matters involving Thakkar and Edge.

Judge Wood sided with the CFTC with regard to the timing for considering the summary judgement motion, and she set a discovery schedule for case. She noted that she might reconsider the issue once she had

the opportunity to review the summary judgment motion, and would set an appropriate briefing schedule if appropriate. Judge Wood also shared her observation that this case had a different standard of proof for determining liability. In this matter, a civil case, the standard is a preponderance of the evidence, while the standard in a criminal matter is beyond a reasonable doubt.

Discovery and next steps. The judge also ordered the following:

- the CFTC’s proposed discovery plan was adopted. That plan contemplates fact discovery to be completed on May 29, 2020;
- a deadline for exchanging initial discovery was set for Friday, September 6, 2019; and
- the parties were directed to negotiate and enter into an appropriate protection order to protect the disclosure of certain sensitive information.

The date for the next status hearing in this matter is set for September 11, 2019 to address any disagreements or unresolved matters.

Key legal player lineup. Renato Mariotti of Thompson Coburn is the attorney for Jitesh Thakkar and Edge. He represented Thakkar in the earlier criminal proceeding where a hung jury voted 10-2 to acquit Mr. Thakkar. Mariotti had previously served as an assistant U.S. Attorney and was the lead trial counsel in the landmark spoofing case [U.S. v. Coscia](#). He is joined by his associate Holly Campbell. Thomas L. Simek and Margaret P. Aisenbrey appeared at the hearing for the CFTC. Both are stationed out of the CFTC’s Kansas City, Missouri office. This is [somewhat odd](#) as the CFTC’s Chicago Regional Office is less than a mile and less than a 15-minute walk from the Dirksen Federal Building.

Judge Andrea Wood was appointed to the federal bench by President Obama in 2013. Her previous experience included serving as an attorney with the SEC’s Division of Enforcement from 2004-2013.

The case is [No. 1:18-cv-00619](#).

Attorneys: Charles Marvine, Thomas L. Simek, and Margaret P. Aisenbrey for the Commodity Futures Trading Commission Renato Mariotti and Holly Campbell (Thompson and Coburn LLP) for Jitesh Thakkar and Edge Financial Technologies, Inc.

Companies: Edge Financial Technologies, Inc

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