

Securities Regulation Daily Wrap Up, ENFORCEMENT—N.D.III.: Extraordinary cooperation from flash crash trader results in extraordinarily lenient DOJ sentencing recommendation, (Jan. 15, 2020)

Securities Regulation Daily Wrap Up

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

The Department of Justice recommended that Navinder Sarao, the British trader thought to have played a major role in causing the 2010 flash crash, serve no additional jail time in advance of his sentencing later in the month.

In a memorandum filed in advance of the sentencing of Navinder Sarao, the Department of Justice recommended that the defendant serve no additional jail time in connection with his crimes associated with his role in causing the 2010 flash crash and related market manipulation schemes over a five-year period. Sarao [pleaded guilty](#) to fraud and spoofing charges in November 2016 and agreed to a consent order that imposed sanctions, including permanent trading and registration bans. Sarao has also settled related civil charges back in 2016 brought by the CFTC ([United States of America v. Sarao](#), January 14, 2020).

In its sentencing memorandum, the government cited Sarao's extraordinary cooperation with the government, the nature and circumstances of his offense, his individual history and characteristics, and the other pertinent factors set forth in 18 U.S.C. §3553(a) as the basis for the court to depart significantly below the advisory sentencing guidelines range. Specifically, the government agreed with the probation officer and Sarao that a sentence of time served would be appropriate.

Case background. Sarao was arrested in the U.K. in April 2015 based on a criminal complaint charging him with wire fraud, commodities fraud and manipulation, and spoofing. He was detained in the U.K. for approximately four months before being released on conditional bail pending his extradition. He was extradited from the U.K. to the U.S. in November 2016 and, immediately upon his extradition, admitted responsibility for his offenses and began cooperating fully with U.S. authorities. His cooperation has continued since then and is now substantially complete.

Sarao's offense. The defendant was a futures trader who resided at his parents' home in the U.K. and traded from proprietary trading companies in London and from his residence. He traded predominantly E-Mini S&P futures contracts. Sarao, in furtherance of his fraud scheme, from at least January 2009 through April 2014, placed thousands of large orders to buy or to sell E-Mini futures contracts that he did not intend to execute. These were considered by the government to be the illegal spoof orders.

Extraordinary cooperation warrants as significant departure from the advisory guidelines. According to the DOJ's advisory guidelines, a suggested range of imprisonment spanned from 78 to 97 months, as well as any supervised release, fines, forfeiture, and restitution the court might impose.

Notwithstanding, the DOJ stated that based on Sarao's extraordinary cooperation, which was deemed to be have been timely, complete, truthful, and helpful to the government, the government would request that the court depart significantly below the low end of the guidelines range. The DOJ identified the following factors and circumstances in support of its call for a reduced sentence:

- Although Sarao realized his conduct was wrongful, he clearly was not motivated by money, greed, or any desire for a lavish lifestyle. Sarao earned the equivalent of over \$70 million in trading profits, of which approximately \$12.8 million was attributable to the spoofing scheme. Nonetheless, he did not seem to

care about any of that money, and did not use it to live anything approaching an extravagant lifestyle. His only significant purchase was a car which cost £5,000 GBP.

- Of his remaining trading profits, Sarao lost over £40 million GBP to three apparently fraudulent investment schemes. Sarao has since surrendered his only remaining trading profits—approximately \$7.6 million, which he has represented to be, and the government believes to be, his only liquid assets. Sarao paid \$6.9 million, which was all that was available to him at the time, within 10 days of his arraignment and guilty plea in November 2016.
- Sarao resides with and is cared for and supported by his parents, uses coupons to buy food at McDonald's, lives in a child-like bedroom that includes multiple stuffed animals, and his current primary income is from U.K. government benefits.
- Sarao appears to have been driven by what he has described as an obsessive or addictive desire to excel at electronic trading. Sarao's autism diagnosis also informs his trading behavior and conduct.
- Sarao's cooperation has spanned years—from November 2016 through at least April 2019. It has been extraordinarily timely, complete, truthful, and helpful to the government.
- Sarao's fulsome, candid, and very substantial cooperation was particularly essential throughout the investigation, prosecution, and ultimately, the April 2019 trial in the case of *United States v. Thakkar*. Ultimately, the DOJ was unsuccessful in its prosecution of Thakkar and dismissed charges against him. Notwithstanding, the government noted that it understands that Sarao is expected to testify in the CFTC upcoming trial against Thakkar in its parallel civil enforcement action.

The government's recommended sentence would provide adequate deterrence. The government also stated that its recommended sentence will be adequate to deter Sarao from further crime, noting that he lacks any other criminal history, immediately accepted responsibility, extensively cooperated with the government, and has complied completely with his conditions of pre-sentence release. Sarao has also expressed complete remorse, punishing himself mentally for the instant offense. In the government's view, the defendant poses zero risk to recidivism that would warrant additional incarceration.

[Sarao's recently filed sentencing memorandum](#) echoes and elaborates upon many of the arguments made in the government's submission. The sentencing is set for January 28, 2020 at 1:00 p.m. in Chicago.

The case is [No. 18 CR 75](#).

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