Blogs
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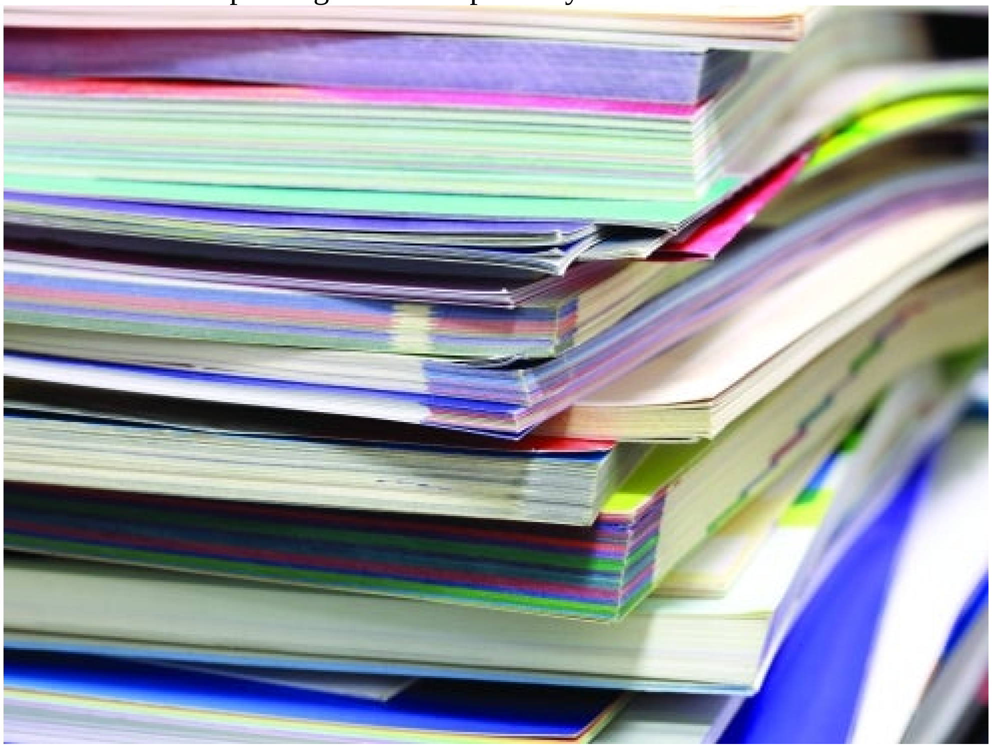
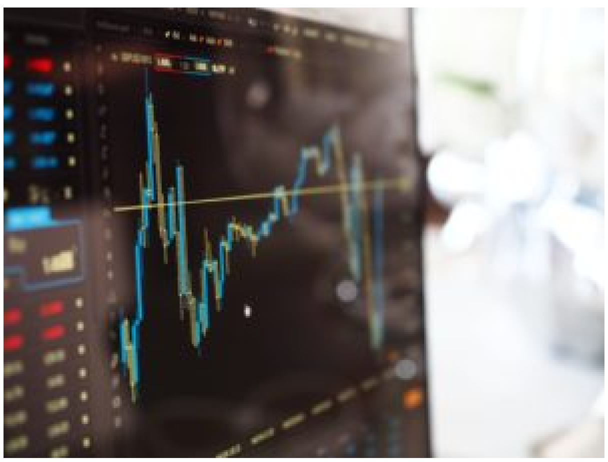
Latest Criminal Spoofing Trial Hampered by Obstacles



The criminal spoofing trial in *United States v. Vorley* kicked off in the U.S. District Court for the Northern District of Illinois on September 14, 2020.



Less than 10 days later, on the first full day of deliberations, jurors sent a note to the court indicating they had reached an impasse, with two jurors holding out against a consensus on the verdict. Following this development, the court denied the defendants' request to declare a mistrial and instructed the jury to continue deliberations. The jury's difficulty in reaching a verdict on the complicated charges may foreshadow a similar outcome that occurred last year in the criminal trial of software developer Jitesh Thakkar. In that case, Jitesh faced spoofing charges stemming from his company's development of software that was later used by a London-based trader to spoof E-Mini S&P 500 futures contracts, which allegedly led to the "flash crash" of 2010. The trial judge granted Thakkar's mid-trial motion for a judgment of acquittal on a conspiracy charge based on the lack of evidence of any agreement between Thakkar and the London trader, but the judge allowed the spoofing counts to proceed to the jury. The jury deadlocked 10-2 in favor of Thakkar on those charges and the government eventually dropped its case. ***Vorley*: The Government's Allegations** Prosecutors allege that two precious metals traders, James Vorley and Cedric Chanu, engaged in a years-long conspiracy to defraud other traders by placing fraudulent orders to create the appearance of false supply and demand and to induce other traders to trade at prices, quantities and times that they otherwise would not have traded. The indictment further alleges that at times, Vorley and Chanu coordinated spoofed trades with their colleagues and other market participants. For example, in 2009 while Chanu was allegedly collaborating with another trader, that individual noted: "Got that up 2 bucks… that does show you how easy it is to manipulate sometimes." Last week, the defendants' former colleague, David Liew, testified that he learned how to spoof the market by observing and copying their trading conduct. During direct examination, Liew, who pled guilty in 2017 to engaging in a conspiracy to commit wire fraud and spoofing, stated that at times he would coordinate his trading with the defendants to manipulate the market in a manner that would maximize his employer's and customers' profits while simultaneously minimizing the losses. **The Traders' Defenses** The government has faced numerous challenges in its case against Vorley and Chanu. Because the allegations arise from trading conduct that occurred from 2009 to 2011, the government is not relying on the anti-spoofing amendments to the Commodity Exchange Act implemented by the 2011 Dodd-Frank Act. Thus, to prove its wire fraud allegations, the government must establish that Vorley and Chanu made false statements or material misrepresentations through their trading activity, even though vast quantities of bona fide trades are placed and cancelled every millisecond in the normal course of market activity. Vorley and Chanu assert that every trade they placed on the market was genuine and capable of being executed. They counter that their conduct was neither spoofing nor wire fraud and that their actions were standard practice in the market, similar to other types of competition and transactions in the marketplace. As to the conspiracy charges, Vorley and Chanu argue that they were not participating in any criminal conspiracy, but rather were reasonably leveraging common trading techniques to make a profit.

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The government has a mixed track record at trial in high-profile spoofing cases, as illustrated by the disparate outcomes in *U.S. v Coscia* and *U.S. v. Flotron*. Coscia was convicted of spoofing and commodities fraud arising out of his use of a computer program designed to place small and large orders simultaneously on both sides of the commodities market to induce artificial market movement. On the other hand, Flotron was successful in dismissing the government's charges of spoofing, commodities fraud, and wire fraud on jurisdictional grounds. He went to trial on the remaining count—conspiracy to commit commodities fraud—and a jury acquitted Flotron after just one day of deliberations. Together, these cases highlight the challenges prosecutors face in proving "intent" in spoofing-based prosecutions. That conundrum appears to be continuing in the *Vorley* trial, where the jury must deliberate the line between a mere "bluff" and fraud.

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