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DOJ Secures Spoofing Conviction, but Loses on Novel RICO Charges

The DOJ recently garnered a win in its [spoofing case](#) against two precious metals traders who prosecutors alleged had engaged in widespread market manipulation and fraud through a practice known as "spoofing."

But the verdict is *also* in on the DOJ's novel attempt utilize racketeering charges against traders accused of spoofing: the jury found the defendants not guilty of the alleged RICO violations. While the case highlights the DOJ's continued crackdown on market manipulation schemes, it also illustrates the limits of the government's reach.

Background

The DOJ's case against the traders dates back to 2019, when prosecutors unveiled [sweeping charges](#) alleging that the traders had engaged in thousands of deceptive trading sequences for gold, silver, platinum, and palladium futures contracts between May 2008 and August 2016. The DOJ alleged that by engaging in these practices, the traders violated the Commodity Exchange Act's [anti-spoofing provisions](#), which prohibit disruptive trading practices, including "bidding or offering with the intent to cancel the bid or offer before execution."

However, in addition to the usual spoofing and other financial crime-related offenses, the indictment charged the traders with a racketeering conspiracy. When the indictment became public back in 2019, [commentators](#) predicted that the DOJ's inclusion of RICO charges could make the government's case simpler to prove. Instead of convincing the jury through a complicated series of orders, cancellations, price movements, and trades (i.e., the typical evidence used to establish a pattern of spoofing), the path to conviction under the RICO Act was supposed to be more straightforward. In this case, the indictment alleged that "the defendants and their co-conspirators were members of an enterprise—namely, the precious metals desk at [the bank]—and conducted the affairs of the desk through a pattern of racketeering activity, specifically, wire fraud affecting a financial institution and bank fraud."

Spoofing on Trial

At trial, the government argued the traders used spoofing tactics to deceive other market participants and improperly maximize their own profits. Prosecutors also described the traders' scheme as an "operation" that included recruiting and training junior traders and deceiving regulators and their bank's own compliance department. In return, the defense accused the government of cherry-picking data, misrepresenting legitimate trade activity, and relying on the testimony of non-credible witnesses.

The case ultimately may have turned on the testimony of the traders' former coworkers, who had previously [entered guilty](#) pleas in connection with their settlements with the DOJ. These coworkers admitted to taking part in the defendants' alleged spoofing activity and outlined how they applied the strategy to turn profits. Prosecutors also introduced internal chat logs to substantiate that the defendants intended to place large bids and cancel them before execution.

After more than a month of trial and deliberations, the jury convicted the traders of wire fraud, attempted price manipulation, commodities fraud, and spoofing. But the jury acquitted the traders on the RICO charges in an apparent rebuke of the prosecutors' racketeering theory.

Corporate Lessons

Financial services firms and other companies have come under heightened scrutiny by the DOJ and other regulators, including the SEC and CFTC, for the actions of rogue employees. The head of the DOJ's Criminal Division, Assistant Attorney General Kenneth A. Polite, Jr., [hailed](#) the verdict as underscoring "the Department's commitment to prosecuting those who undermine the investing public's trust in the integrity of our commodities markets."

With this prosecutorial "commitment" in mind, companies should implement properly-tailored compliance programs that include both training and surveillance components. Compliance departments should train (and retrain) employees regularly. Training measures can help stave off problematic activity by educating firm personnel on the serious legal risks of unauthorized trades and the regulators' expansive view of what might constitute market manipulation. Likewise, surveillance can identify suspicious or unusual trading patterns, with an aim towards addressing them before they rise to a level that garners regulatory scrutiny.

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