



The DOJ has raised the stakes in criminal spoofing enforcement, [unveiling sweeping charges](#) against three traders who allegedly conspired to manipulate the precious metals market.

While the DOJ's involvement in spoofing enforcement—an area previously dominated by civil regulators and SROs—has become more commonplace, the DOJ is using a new tactic in this latest enforcement action. In addition to the usual spoofing and other financial crime offenses, the indictment charges the traders with a racketeering conspiracy. The DOJ's reliance on RICO increases the possible penalties for spoofing, while also potentially making the government's case simpler to prove.



A Potential New Era of Spoofing Enforcement After obtaining

mixed results in its previous [spoofing trials](#), the DOJ appears to be retooling its approach. Indeed, the [indictment](#) against these precious metals traders marks the first time the DOJ has alleged RICO violations against traders accused of spoofing electronic derivatives markets. Thus, while the alleged spoofing conduct may be familiar, the charges brought are significantly different and more serious than before. And so are the potential penalties. In addition to hefty incarceration sentences, RICO provides for the government to seek forfeiture of all proceeds derived from the racketeering activity. RICO was initially enacted to prosecute organized crime syndicates. To violate RICO, a person must engage in a "pattern of racketeering activity," including bank fraud, wire fraud, and securities fraud (among other things), that is connected to an "enterprise." Under the statute, an "enterprise" can include corporations, but also groups of individuals acting together although not formally a legal entity. When the government alleges the defendants "conspired" to violate RICO, it must also prove that the defendants knowingly entered into an agreement to violate the law. Applied to spoofing, the DOJ's RICO indictment alleges that the traders conspired to commit wire and bank fraud (i.e., predicate offenses) over a period of eight years to manipulate the trading prices of precious metals traded on the Chicago Mercantile Exchange. The DOJ alleges that the "enterprise" was "the precious metals desk" at the bank where the traders worked. According to the indictment, the traders engaged in thousand of spoofing instances by placing orders they intended to cancel before execution. The goal was to create liquidity and drive prices toward orders they wanted to execute on the opposite side of the market. The indictment also includes examples of electronic chats where the traders are allegedly coordinating their spoofing efforts. Besides profiting from bogus trades and minimizing trade losses, the DOJ alleges that that the traders misled other market participants and defrauded clients of the bank.

Increased Criminal Exposure under RICO The DOJ's shift to charging spoofing under the RICO Act is significant in at least two respects:

- First, charging a RICO offense will allow the DOJ to put on a more simplified case. As opposed to showing a series of orders, cancellations, price movements, and trades, the path to conviction under the RICO Act is much more straightforward. The DOJ can allege that the traders committed fraud by deceptively moving the market price and did it as part of an overall scheme to profit. The DOJ is likely hopefully this new approach will secure more convictions.
- Second, the potential penalties under the RICO Act are far more severe. As noted above, the RICO Act was originally aimed at organized crime organization. Sentences under the RICO Act are accordingly severe—20 years per RICO count. So in addition to pursuing a less burdensome path to conviction, the DOJ has also raised the stakes for traders who might be prosecuted.

After some recent defeats, it was questionable whether the DOJ's prosecution of spoofing would remain as vigorous as it started. The DOJ's latest indictment, and invocation of the RICO Act, suggests a "doubling down" of sorts—with the DOJ likely envisioning and more straightforward path to conviction and more significant sentences. In sum, we expect to see a continuation of the DOJ's vigorous criminal spoofing enforcement.

Authors



Thomas D. Ryerson

Partner

TRyerson@perkinscoie.com [602.351.8039](tel:602.351.8039)

Explore more in

[White Collar & Investigations](#)

Blog series

White Collar Briefly

Drawing from breaking news, ever changing government priorities, and significant judicial decisions, this blog from Perkins Coie's White Collar and Investigations group highlights key considerations and offers practical insights aimed to guide corporate stakeholders and counselors through an evolving regulatory environment.

[View the blog](#)