# CFTC cracks down on insider trading

New taskforce and enforcement should spark manager actions

**By Brian Daly and Harry Davis, partners at Schulte Roth & Zabel**

On 28 September, the CFTC took two new steps in an ongoing process of expanding its enforcement role and promoting the growth of traditional insider trading principles in the commodities derivatives markets.

The CFTC filed a civil enforcement action against EOX Holdings, an introducing broker, and one of its registered associated persons, Andrew Gizienski, alleging misuse of material, non-public information in the commodities futures markets. Even more significantly, the CFTC announced the formation of a new Insider Trading and Information Protection Task Force to enforce its insider trading rules.

The CFTC's increased focus in this area, particularly given conspicuous budgetary limitations, signals that preventing insider trading is now a CFTC priority. Managers that actively trade in this space must ensure that they understand the CFTC's expanded enforcement role and address risks raised by their trading and investment strategies.

The 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act granted the CFTC authority to promulgate rules and regulations reasonably necessary to prohibit trading practices that disrupt fair and equitable trading, and made it unlawful to violate CFTC anti-manipulation and anti-fraud regulations. The CFTC subsequently promulgated Rule 180.1, which, like the better-known securities rule it models (SEC Rule 10b-5), prohibits trading on material non-public information in violation of a pre-existing duty, as well as trading on such information obtained through fraud or deception.

Since then, the CFTC has obtained two insider trading settlements, In re Motazedi and In re Ruggles, both of which involved allegations of employees trading for personal accounts using their employers' proprietary and confidential trading and portfolio information.

The CFTC is accusing EOX Holdings and Gizienski, in 2013 and 2014, of violating the CEA and CFTC insider trading regulations by misusing material, non-public information in connection with block trades of energy contracts on the ICE Futures US exchange. They allege that Gizienski shared with one customer material, non-public information relating to other customers, including those other customers' identities, trading activity and positions.

He allegedly traded for a customer's account while in possession of and on the basis of material, non-public information of other customers.

According to the CFTC, he quoted bids and offers to customers for the purpose of negotiating block trades without disclosing that he was doing so for the benefit of his discretionary trading, and EOX Holdings failed to effectively supervise Gizienski and to implement policies and procedures sufficient to monitor his trading and to minimise the "readily apparent conflicts of interest" created by his access to material, non-public information. The CFTC is seeking monetary, injunctive and equitable relief from both parties.

This case underscores the CFTC's commitment to aggressively bringing insider trading cases, and may be an attempt to expand the case law through new fact patterns.

The Insider Trading and Information Protection Task Force 7 is a multi-office "coordinated effort across the Division [of Enforcement] to identify and charge those who engage in insider trading or otherwise improperly use confidential information in connection with markets regulated by the CFTC". Together with the EOX Holdings complaint, the task force announcement sends a clear message to the market on the seriousness of the CFTC's attention. While none of the CFTC's insider trading actions to date involve private fund managers, their lessons are broadly applicable.

In the EOX Holdings press release, the CFTC identified four common ways market participants could run afoul of the insider trading rules, including misappropriating confidential information, improperly disclosing a client's trading information, front-running, or using confidential information to unlawfully prearrange trades.

The CFTC generally does not examine its registrants, deferring to the NFA. However, any manager that trades in commodity futures, options or swaps markets and comes under CFTC scrutiny could be asked to substantiate its commitment to preventing insider trading and demonstrate the sufficiency of its policies and compliance procedures.

Managers engaged in commodity interest trading need policies and procedures that specifically address the insider trading risks that their investment programs pose, including tailored surveillance, training and other compliance efforts. As ever, the stakes of insider trading violations are high, and it often makes sense to seek outside advice to assess appropriate compliance efforts.


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