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CFTC Sanctions Trader for Insider Trading by “Misappropriating” Employer’s Trade Data and Analysis

SRZ Private Funds Regulatory Update

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Although insider trading cases typically arise in the equities markets, managers should be reminded that the Commodity Futures Trading Commission has asserted its authority to bring such actions in the commodity interest space as well. In recent years, the CFTC has shown a particular interest in pursuing such actions under a “misappropriation” theory — i.e., where an individual has used proprietary information of an employer to advantage his or her personal trading, breaching confidentiality and duty-of-loyalty obligations through the use of material, non-public information.

As part of this trend, on Sept. 30, 2020, the CFTC settled charges^[1] against Marcus Schultz, a former natural gas futures trader who, over a period of approximately three years, provided a broker with unauthorized disclosures of proprietary information about his employer’s planned trading and private market analysis. Using “insider” trading information, the broker and Mr. Schultz contrived scenarios in which Mr. Schultz would execute non-competitive trades on behalf of his employer against the broker or its customers, permitting the latter to earn enhanced profits, in which Mr. Schultz shared. Mr. Schultz and his broker used obfuscating tactics to hide his kickbacks as legitimate payments or investments, such as funneling money through intermediate entities owned by the broker or Mr. Schultz or his family members. For these and other alleged wrongful actions (including making false statements to the CFTC staff), Mr. Schultz

was issued combined monetary penalties and disgorgement of \$1.1 million and a six-year trading ban.

The CFTC's posture on insider trading is still developing, and it remains unsettled as to how far the CFTC is willing to extend its view of insider trading. However, by pursuing relatively straightforward insider trading actions in a misappropriation context, the CFTC may be laying the groundwork for more aggressive enforcement in this area.

This article appeared in the October 2020 edition of SRZ's Private Funds Regulatory Update. To read the full Update, click here.

[1] See CFTC Release No. 8266-20 (Sept. 30, 2020), available here.

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