

Record-Breaking Year for CFTC Enforcement Division Shows Continued Growth of Enforcement Program and No Slowing Down in FY 2021

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Who Needs to Know

Financial Advisors and Institutions, Traders, Investors, Corporations.

Why It Matters

As evidenced in the FY 2020 Division of Enforcement [Annual Report](#) (Report), the COVID-19 pandemic did not hinder the Commodity Futures Trading Commission's (CFTC or Commission) Enforcement Division's (Division) efforts to protect the public and preserve market integrity. Rather, 2020 proved to be a record-breaking year for the Division, as the Commission ordered over \$1.3 billion in monetary relief and brought a record number of enforcement actions — a trend we expect to continue through 2021.

CFTC Enforcement Priorities

The Division identifies, investigates, and prosecutes violations of the Commodity Exchange Act (CEA) and the Commission's regulations in furtherance of the CFTC's broader mission "to promote the integrity, resilience, and vibrancy of the U.S. derivatives markets through sound regulation and the strategic goal of being tough on those who break the rules."[\[1\]](#)

The four priorities guiding the Division's enforcement efforts as set forth in its first Annual Report published in 2018, include: (1) preserving market integrity; (2) protecting customers; (3) promoting individual accountability; and (4) increasing coordination with other regulators and criminal authorities.[\[2\]](#)

FY2020 Annual Report Highlights

With these priorities at the forefront of its enforcement efforts, the Division was more active than ever in 2020, as reflected by the following highlights from its Report:[\[3\]](#)

- The Commission, through the Division, filed the most enforcement actions (113) in its history, and approximately 65% of the matters filed involved commodity fraud, manipulative conduct, false reporting, or spoofing.[\[4\]](#)
- The total monetary relief ordered in CFTC enforcement actions in FY 2020 (more than \$1.3 billion) stands as

the fourth highest total in its history. This was the third straight year-over-year increase in the total amount of monetary relief ordered in the CFTC's enforcement actions — and the second straight year in excess of \$1 billion.

- The Commission filed its largest ever spoofing and manipulation case, and addressed significant supervisory lapses by market participants.^[5] In a resolution reflecting the gravity and scope of the violations, the Commission imposed the highest monetary relief (\$920 million) in its history, which included the highest restitution (\$311,737,008), disgorgement (\$172,034,790) and civil monetary penalty (\$436,431,811) amounts in a spoofing case.
- The Commission filed the most retail fraud actions (56) in its history for a single fiscal year, including a record number of actions involving digital assets (7) and a total of 28 actions since the COVID-19 national emergency was declared on March 13, 2020.
- The Commission filed 16 actions in parallel with federal criminal authorities, raising the three-year total of such actions to 46, a number which far surpasses the total number (27) over the prior seven fiscal years.
- The Commission jointly filed an enforcement action with 30 state regulators, the most partners for a single case in the Commission's history.^[6]

Additionally, the Division issued two significant pieces of guidance ("Civil Monetary Guidance" and "Guidance on Evaluating Compliance Programs"), and prosecuted a docket of over 140 pending litigations, including cases against corporate entities and individuals involving allegations of manipulation, spoofing, fraud, and various other violations.

Looking Ahead

With a historic year in the rearview mirror, looking ahead, the Division will continue to prioritize enforcement efforts to preserve market integrity, protect customers, promote individual accountability, and will continue to work alongside other regulators and criminal authorities on parallel matters.

Indeed, the Division's successes in Q1 FY 2021 underscore its vigilance in pursuing manipulative conduct that disrupts the commodities and derivatives markets at the heart of the American economy and in holding rule breakers accountable.

- In January, the CFTC charged an individual with fraud for operating a Ponzi scheme in which he fraudulently solicited and obtained digital assets, such as bitcoin and ether worth more than \$5 million, from customers.^[7]
- In February, the CFTC brought charges against a swaps trader at a global investment bank for engaging in a scheme to deceive and manipulate the price of an interest rate swap between a bond issuer and the bank. The individual was also charged with making materially false statements to the Commission in the course of the investigation after deleting messages on his personal phone that the Division requested be preserved.^[8]
- In March alone, the CFTC charged three individuals, while also charging its first manipulative scheme involving digital assets.
- In a complaint filed in the U.S. District Court for the Southern District of New York, the CFTC charged businessman and computer programmer John McAfee, and his former employee Jimmy Gale Watson, for

engaging in a manipulative and deceptive digital asset “pump-and-dump” scheme in which they secretly accumulated positions in digital assets, deceptively promoted the digital assets through social media as valuable long-term investments, then sold their holdings as prices rose as a result of deceptive endorsements made by McAfee. Criminal and civil actions have also been brought against McAfee and Watson by the Department of Justice and the Securities and Exchange Commission.[9]

- In Wisconsin, the CFTC charged an individual with fraud and misappropriation for allegedly persuading clients to provide access to their personal commodity futures accounts, trading futures contracts in those accounts, and abandoning the clients after losing their money while trading. In a related criminal action, the U.S. Attorney’s Office for the Eastern District of Wisconsin indicted the individual on counts of wire fraud, bank fraud, money laundering, and aggravated identity theft.[10]

Lastly, having issued first-of-its-kind guidance on the factors the Division will use in evaluating corporate compliance programs in connection with enforcement matters, the Division made clear its expectation that companies also play a significant role in detecting and preventing misconduct. While this is by no means a new concept — in 2020 the Commission imposed its largest penalty yet against a swap dealer in a case involving compliance program inadequacy and required the entity to retain an independent monitor[11] — it puts companies on heightened notice regarding the risks associated with not maintaining adequate compliance programs in a particularly active and growing enforcement landscape.

[1] See 2020 Annual Report, at 1 (Dec. 01, 2020), https://www.cftc.gov/media/5321/DOE_FY2020_AnnualReport_120120/download.

[2] See 2018 Annual Report, at 1-2 (Nov. 15, 2018), https://www.cftc.gov/sites/default/files/2018-11/ENFAnnualReport111418_0.pdf.

[3] See 2020 Annual Report, at 1 (Overview and Performance Highlights).

[4] See 2020 Annual Report, Appendix A: Enforcement Program Metrics (providing quantitative and qualitative assessment of actions filed).

[5] See Release No. 8260-20, “CFTC Orders JPMorgan to Pay Record \$920 Million for Spoofing and Manipulation” (Sept. 29, 2020), <https://www.cftc.gov/PressRoom/PressReleases/8260-20>.

[6] See Release No. 8254-20, “CFTC and 30 States Charge Los Angeles Precious Metals Dealers in Ongoing \$185 Million Fraud Targeting the Elderly” (Sept. 25, 2020), <https://www.cftc.gov/PressRoom/PressReleases/8254-20>.

[7] See Release No. 8356-21, “CFTC Charges New York Man in Multi-Million Dollar Digital Asset Ponzi Scheme Involving Bitcoin and Ether” (Jan. 26, 2021), <https://www.cftc.gov/PressRoom/PressReleases/8356-21>.

[8] See Release No. 8359-21, “CFTC Charges Swaps Trader with Manipulation, Attempted Manipulation, and Making False Statements” (Feb. 01, 2021), <https://www.cftc.gov/PressRoom/PressReleases/8359-21>.

[9] See Release No. 8366-21, “CFTC Charges Two Individuals with Multi-Million Dollar Digital Asset Pump-and-Dump Scheme” (March 05, 2021), <https://www.cftc.gov/PressRoom/PressReleases/8366-21>.

[10] See Release No. 8367-21, “CFTC Charges Wisconsin Man with Fraud and Misappropriation” (March 05, 2021), <https://www.cftc.gov/PressRoom/PressReleases/8367-21>.

[11] See Release No. 8220-20, “CFTC Orders the Bank of Nova Scotia to Pay \$127.4 Million for Spoofing, False Statements, Compliance and Supervision Violations” (Aug. 19, 2020), <https://www.cftc.gov/PressRoom/PressReleases/8220-20>.

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