JONES DAY

ALERT

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CFTC Announces Insider Trading Task Force and New Insider Trading Case

Commodity brokerage firms need to be vigilant as the CFTC signals increased policing and prosecution of insider trading.

The Commodity Futures Trading Commission ("CFTC") filed a complaint on September 28, 2018, in the U.S. District Court for the Southern District of New York against the commodities brokerage firm EOX Holdings LLC ("EOX") and one of its brokers, Andrew Gizienski, alleging that the defendants violated Section 6(c)(1) of the Commodity Exchange Act ("CEA") and Regulation 180.1(a) promulgated thereunder. In particular, the CFTC alleged that in an effort to curry favor with a longstanding friend and customer ("Customer A"), Gizienski used material, nonpublic information he learned about the trading activities of other EOX clients to trade on Customer A's behalf. Simultaneous with the filing of its complaint against EOX and Gizienski, the CFTC announced that it had formed an Insider Trading and Information Protection Task Force ("Task Force"), which has been charged with investigating and prosecuting, among other things, the misappropriation of confidential information, the improper disclosure of clients' trading information, front running, and the use of confidential information to unlawfully prearrange trades in markets regulated by the CFTC.

These developments are significant because they appear to reflect a new area of focus for the CFTC. While the CFTC has had the authority to prosecute insider trading since the adoption of Regulation 180.1 (which is modeled after Securities and Exchange Commission Rule 10b-5), it had exercised that authority just twice before last month. In *In the Matter of Motazedi* in 2015, the CFTC imposed remedial sanctions against a futures trader for allegedly using proprietary and confidential information he learned about his employer's trading activity to trade in his own accounts. Then, a year later, in *In the Matter of Ruggles*, the CFTC imposed remedial sanctions against a futures and options trader for allegedly using material, nonpublic information he learned while developing his employer's fuel hedging strategy to execute trades for his own benefit.

The commencement of the CFTC's action against EOX and the formation of the Task Force suggest that the CFTC will now more actively police the misuse of confidential information by commodities markets participants. Commodity brokerage firms should be aware of this change in direction from the CFTC, and make sure that they have policies and procedures in place to prevent the misuse of confidential information by their employees.


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