ALERT

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# Second Circuit Concludes Commodity Exchange Act Claims Accrue When Plaintiffs Learn Of Their Injuries

***Under the "discovery accrual rule" discovery of the injury starts the clock for statute of limitations purposes.***

On February 28, 2019, the Second Circuit issued an important decision regarding the statute of limitations for claims under the Commodity Exchange Act ("CEA"). In a decision that may serve as a focal point for future motions to dismiss CEA claims, the Second Circuit concluded that the statute of limitations for such claims begins to run when the plaintiff discovers its injury, rather than when it learns of the other elements of its claim.

In *Levy v. BASF Metals, Ltd.*, an investor in platinum futures alleged that she was harmed when the platinum market crashed in 2008. The plaintiff brought suit against one group of defendants in 2012 for allegedly manipulating the platinum market in violation of the CEA and other laws. The plaintiff brought a second set of CEA claims in 2015 against a different group of defendants for allegedly manipulating the platinum futures market through a separate scheme. The plaintiff contended that she did not learn about the second alleged scheme until she read about it in a separate class action suit filed in 2014. The second group of defendants asserted that the plaintiff's claims were time barred by the two-year statute of limitations applicable to CEA claims, and the district court agreed.

The Second Circuit rejected the plaintiff's argument that the statute of limitations on her claims did not start to run until she learned of the separate class action lawsuit and instead held (for the first time) that the "discovery accrual rule" applies to CEA claims. Under this rule, the "discovery of the injury, not discovery of the other elements of a claim," "starts the clock" for statute of limitations purposes. This rule has been applied to RICO and other federal statutes that, like the CEA, are silent on when claims accrue, but not to federal statutes that expressly provide a different accrual rule (such as the Securities Exchange Act of 1934). The Second Circuit concluded that the plaintiff's allegation that there was no explanation for the market crash in 2008 "other than market distortion due to manipulation" demonstrated that she had "*actual* knowledge" of her injury in 2008. Thus, the statute of limitations began to run in 2008 and expired several years before the plaintiff filed her claims.

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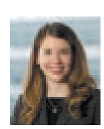
Steven J. Obie
New York


Jayant W. Tambe
New York


Ryan J. Andreoli
New York


Céalagh P. Fitzpatrick
New York


*David Sverdlov of the New York Office assisted in the preparation of this* Alert.

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