

Clients & Friends Memo

CFTC / CME Settle Misappropriation Case

December 3, 2015

On December 2, 2015, the U.S. Commodity Futures Trading Commission (“**CFTC**” or “**Commission**”) and the New York Mercantile Exchange (“**NYMEX**”) simultaneously announced settlements with Arya Motazed, a gasoline trader, including for claims of insider trading under CFTC Rule 180.1.¹ On numerous occasions from approximately September to December of 2013, while trading RBOB Gasoline Physical Futures and CL Light Sweet Crude Oil Futures, Motazed allegedly engaged in: (1) trading that moved money from his employer’s account to two of his personal accounts;² and (2) transactions in his personal accounts, ahead of his employer’s account, to the detriment of the employer’s account. The Commission noted that Motazed caused his employer to lose \$216,955.80.

Motazed settled claims of fraud, misappropriation of material, non-public information, fictitious trading, and non-competitive trading. He agreed to: (1) a cease and desist order; (2) restitution to his employer in the amount of \$216,955.80; (3) a \$100,000 penalty with the CFTC and a \$100,000 penalty with NYMEX; and (4) a permanent trading ban. This settlement represents the first time that the Commission has used new powers granted to it in the Dodd-Frank Wall Street Reform and Consumer Protection Act to charge an individual with trading on material, non-public information in violation of a pre-existing duty.

Borrowing from established concepts of misappropriation under the securities laws, the CFTC concluded that Motazed and his employer shared a “relationship of trust and confidence.” By virtue of this relationship, Motazed “owed a duty to his employer not to misuse proprietary or confidential information.” Where, as here, Motazed was “privity to the material, non-public information regarding the intended trading of his employer, including the timing, contracts, prices and volume of its orders,” his alleged knowing or reckless use of his employer’s trading information to trade for his own benefit, and failure to disclose his plans to his employer, violated CFTC Rule 180.1. In reaching this conclusion, the CFTC noted further that Motazed’s employer expressly

1 Order, In the matter of Motazed, CFTC Docket No. 16-02 (Dec. 2, 2015), <http://www.cftc.gov/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfmotazedorder120215.pdf>; Notice of Disciplinary Action, In the matter of Motazed, NYMEX 14-9723-BC (Dec. 2, 2015), <http://www.cmegroup.com/tools-information/lookups/advisories/disciplinary/NYMEX-14-9723-BC-ARYA-MOTAZEDI.html#pageNumber=1>.

2 Motazed’s employer has not been disclosed.

prohibited him from “entering into transactions in personal accounts which posed an ‘actual or potential conflict of interest’ or involved the ‘improper use of [the company’s] proprietary or confidential information.’” The company’s trading guidelines also forbid “Motazedi and other employees from conducting personal financial transactions in energy commodities.”

The CFTC’s characterization of Motazedi’s relationship with his employer as one of “trust and confidence” is noteworthy. Under the securities laws generally, the misappropriation theory of insider trading may apply to fiduciary relationships or relationships of trust and confidence. Relationships of trust and confidence may arise, among other ways, based on a “history, pattern, or practice of sharing confidences, such that the recipient of the information knows or reasonably should know that the person communicating the material nonpublic information expects the recipient will maintain its confidentiality.”³

We expect enforcement staff to pursue similar claims going forward.

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Should you have any questions about the *Motazedi* order or wish to discuss strategies to address risks related to potential misappropriation claims, please contact:

Doron Ezickson	+1.202.862.2430	doron.ezickson@cwt.com
Paul Pantano	+1.202.862.2410	paul.pantano@cwt.com
Gregory Mocek	+1.202.862.2322	gregory.mocek@cwt.com
Anthony Mansfield	+1.202.862.2321	anthony.mansfield@cwt.com
Jonathan Flynn	+1.202.862.2214	jonathan.flynn@cwt.com
Natalie Mitchell	+1.202.862.2218	natalie.mitchell@cwt.com

³ 17 C.F.R. 240.10b5-2.