

Insights

2024 CFTC ENFORCEMENT: AGENCY CELEBRATES RECORD MONETARY RELIEF

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SUMMARY

On December 4, 2024, the Commodity Futures Trading Commission (“CFTC”) released its enforcement results for Fiscal Year 2024 (“FY 2024”), showcasing record awards of monetary relief totaling more than \$17.2 billion. The historic awards reflect the agency’s continued pursuit of misconduct charged in enforcement actions filed in FY 2023 in the digital asset space along with enforcement actions against traditional financial services firms and commodity trading houses. The CFTC’s FY 2024 robust enforcement efforts featured a focus on intermediaries, emphasizing the importance of proper registration and compliance by entities facilitating derivative transactions. Enforcement against repeat offenders intensified, reflecting a strategy of escalating penalties to deter recidivism and safeguard market integrity. Additionally, the agency expanded its attention to environmental fraud, bringing its first enforcement cases involving fraud in the voluntary carbon markets.

DIGITAL ASSETS

The CFTC has continued to allocate enforcement resources to the digital asset marketplace in FY 2024. Out of the fifty-eight enforcement actions filed by the CFTC in FY 2024, ten of the actions involved conduct related to digital asset commodities. The CFTC brought several cases against markets or trading platforms that offer margined or leveraged trading in digital assets or the trading of digital asset derivatives to retail customers without the required registration. For instance, the CFTC:

- Charged Uniswap Labs for illegally offering leveraged or margined retail commodity transactions in digital assets via a decentralized digital asset trading protocol. Uniswap Labs paid \$175,000 as a civil monetary penalty and was required to cease and desist from violating the Commodity Exchange Act.

- Charged Falcon Labs, Ltd. in the CFTC's first action against an unregistered futures commission merchant ("FCM") that inappropriately facilitated access to digital asset exchanges. Falcon Labs was required to pay \$1,179,008 in disgorgement and \$589,504 as a civil monetary penalty.
- Charged Mek Global Limited, PhoenixFin PTE Ltd., Flashdot Limited, and Peken Global Limited, which collectively operate a centralized digital asset exchange under the name KuCoin, with several violations related to digital assets. These include illegally dealing in off-exchange digital asset futures and retail transactions, soliciting and accepting orders for digital asset futures and swaps without proper registration, and failing to supervise their digital asset trading activities.

In other cases, the CFTC continued to exercise its authority over fraud in the digital asset cash market, where it:

- Charged Voyager Digital's former CEO Stephen Ehrlich with fraud and registration failures related to the Voyager digital asset platform. Ehrlich and Voyager falsely promoted the platform as a "safe haven" for digital assets, promising high-yield returns. However, they took reckless risks with customer assets, leading to Voyager's bankruptcy and significant customer losses. In its continuing litigation, the CFTC seeks restitution, penalties, and permanent bans against Ehrlich for these violations.
- Charged Debiex and Zhang Cheng Yang for utilizing popular romance scam tactics to fraudulently misappropriate \$2.3 million in customer funds intended for digital asset commodity trading.

MANIPULATIVE AND DECEPTIVE CONDUCT

The CFTC continues to crack down on manipulation and deception in the marketplace. During FY 2024, the CFTC brought seven charges against various entities relating to fraud or manipulation of commodities markets. In a stark contrast from the previous fiscal year, no enforcement actions were brought with allegations of spoofing in FY 2024, as opposed to five during FY 2023. The following were a few key actions brought by the CFTC this year:

- Filed and settled charges against Trafigura Trading LLC, ordering it to pay a civil monetary penalty of \$55 million for trading on misappropriated nonpublic information and manipulation.
- Settled charges with CQC Impact Investors LLC for reporting false and/or misleading data to carbon credit registries, third parties, and others for the purposes of obtaining increased carbon credits. The company admitted to the alleged violations and was ordered to pay a civil monetary penalty of \$1 million.

- Imposed a \$3.25 million civil monetary penalty on Olam Group Limited stemming from the company's submission of false and/or misleading data to the United States Department of Agriculture with the purpose of affecting the price of cotton.
- Filed and settled charges against Nasdaq Futures, Inc. for failing to properly establish, monitor, enforce, or report a portion of its business model which provided increased payments for certain market participants that engaged in a large volume of trades through its Designated Market Maker program. The CFTC issued a civil monetary penalty of \$22 million.
- Imposed a \$48 million civil monetary penalty on TOTSA TotalEnergies Trading SA (formerly known as TOTSA Total Oil Trading SA) for manipulating the market price of a specific type of refined gasoline by selling the product in markets for lower than what buyers indicated they would pay.

TRADE PRACTICE VIOLATIONS

The CFTC continued to bring enforcement actions against market participants that violate federal and exchange-imposed position limits. A few key actions are as follows:

- Imposed a \$1.5 million civil monetary penalty on the swap dealer affiliate of a well-known securities brokerage firm after resolving charges related to exceeding federal and ICE Futures U.S. position limits in contracts tied to natural gas futures traded on the New York Mercantile Exchange ("NYMEX"). The charges also included deficiencies in swap dealer oversight and position limit monitoring.
- Filed and settled charges against Aspire Commodities LLC after the company was found to have exceeded the federal spot month speculative position limits for cash-settled reference contracts to the NYMEX natural gas futures contract on seven occasions over a two-year period. Aspire had breached the conditions set by ICE Futures U.S. and Nodal Exchange, which permitted Aspire to hold up to 8,000 contracts in excess of the federal spot limit. The resolution included an \$800,000 civil monetary penalty.
- Marking the CFTC's first use of its authority to enforce position limits on aggregate positions held across multiple exchanges, the CFTC imposed a civil monetary penalty of \$500,000 against Vitol, Inc. and Vitol SA. The case involved positions held in futures and options on futures contracts referencing West Texas Intermediate crude oil, trading on both NYMEX and ICE Futures markets, that in the aggregate exceeded federal speculative position limits. In addition, the CFTC charged that Vitol violated the Live Cattle Futures contract federal spot month speculative position limit.

The CFTC also brought cases against market participants who engaged in wash or fictitious trades. Respondents in those cases included:

- A Brazilian energy and sugar company and a Swiss sugar merchant settled charges of engaging in wash sales and noncompetitive transactions in sugar futures traded on ICE Futures U.S., resulting in a \$750,000 civil monetary penalty;
- A \$150,000 civil monetary penalty levied on a Taiwanese ETF market maker whose traders had engaged in wash sales in six different contracts traded on the Chicago Mercantile Exchange; and
- A non-U.S. individual who engaged in a series of fictitious trades on the Chicago Board of Trade.

REPORTING, RISK MANAGEMENT, ADEQUATE COMPLIANCE PROGRAMS AND BUSINESS PRACTICES

“Reporting is at the heart of the Commission’s market and financial surveillance programs, which are critical to the Commission’s mission to protect market participants and promote market integrity.”^[1] The CFTC continued to reinforce the importance of accurate reporting by bringing at least ten charges against various established financial institutions related to their failures to report data. Some of the highlights are as follows:

- Filed and settled charges against a U.S. bank’s FCM and swap dealer affiliate for failing to diligently supervise its business as a CFTC registrant, resulting in it failing to capture billions of orders in its surveillance systems. The firm was ordered to pay a \$200 million civil monetary penalty.
- Imposed a \$5 million civil monetary penalty against another U.S. bank following its admission that the bank failed to correctly report swap transactions and failed to supervise its swap dealer business.
- Settled charges against a British bank stemming from its failure to correctly, or timely, report over five million swap transactions. There the CFTC imposed a \$4 million civil monetary penalty.

MISCONDUCT INVOLVING CONFIDENTIAL INFORMATION

The CFTC continues to combat the threat to market integrity posed by the misappropriation of non-public information in making trading decisions. The number of actions involving this type of misconduct in FY 2024 remained at a similar level to previous years. Many of the actions involving the misuse of confidential information also involve other violations. The following are a few key actions brought by the CFTC in FY 2024:

- Settled misappropriation-based fraud charges against Freepoint Commodities LLC involving improper efforts to access non-material information from a South American state-owned

enterprise regarding fuel oil transactions. The company was ordered to pay \$91 million in civil monetary penalties and disgorgement.

- Imposed a civil monetary penalty of \$55 million against Trafigura Trading LLC. This action resulted, in part, from Trafigura's receipt of material non-public information from an employee of another trading entity and using that information when making its own trades.

PROTECTING CUSTOMERS

Protecting the public from fraud and other schemes remained a priority of the CFTC in FY 2024, as evident by the following actions, where the CFTC:

- Charged Agrimide LLC and its founders, Joshua Link and Jed Wood, alleging they operated a fraudulent scheme resembling a Ponzi scheme. The defendants are accused of defrauding thousands of customers across at least fourteen states by misusing customer funds to pay undisclosed commissions and using new customer funds to cover payouts to earlier investors.
- Filed and settled charges against Get Money Tradez LLC and its managing member, Jeffrey Carmon, as a result of making material misrepresentations and omissions to at least nineteen pool participants in trading pools controlled and operated by Carmon and his company. As a result of Carmon's misappropriation of approximately \$113,000, he and his business, jointly and severally, were ordered to pay a civil monetary penalty of \$262,000.

PARALLEL ENFORCEMENT

In FY 2024, the CFTC continued to collaborate with criminal prosecutors, other state, federal and international regulatory authorities and self-regulatory organizations. For example, the CFTC brought an enforcement action in conjunction with thirty state securities regulatory authorities against a precious metals dealer and its owner in an alleged \$68 million fraudulent scheme preying upon elderly investors.

FY 2024 COMPARED TO PRIOR YEARS

The chart below compares the number of different types of enforcement cases the CFTC brought in FY 2024 with the prior six fiscal years. The numbers show that the total number of enforcement actions filed in FY 2024 represent a forty percent drop from FY 2023. While the number of new cases brought remained roughly similar in most categories, the number of fraud cases brought fell from fifty-nine in FY 2023 to eleven in FY 2024. Even when recognizing that FY 2023 represented a recent highwater mark in the number of fraud cases brought by the CFTC, the eleven fraud cases brought in FY 2024 represent only about thirty-three percent of the average of fraud cases brought in FY 2018 through FY 2022, the five fiscal years preceding FY 2023.

What accounts for the substantial year-over-year drop in fraud cases and overall new enforcement filings? Thirty, or slightly more than half of the fraud cases the CFTC brought in FY 2023, were cases filed in federal court which require substantial enforcement staff time to litigate. In comparison, only twelve of the FY 2024 total enforcement cases were actions filed in federal court requiring ongoing litigation.

Of the \$17 billion in monetary relief awarded in CFTC enforcement actions during FY 2024, \$12.7 billion was awarded in the CFTC's continuing litigation of its enforcement action against FTX and Alameda Research filed in FY 2023. Another \$2.7 billion was awarded in the CFTC's enforcement action against Binance, Changpeng Zhao, and Samuel Lin which was also filed in FY 2023.

Number of actions in each category (i.e. fraud, failure to register, etc.)	2018	2019	2020	2021	2022	2023	2024
Manipulative Conduct, False Reporting, Spoofing	26	16	16	6	7	5	5
Fraud	30	25	56	25	31	59	11
Misappropriation of Confidential Information, Trade Allocation Schemes, Mismarking	2	4	1	4	3	2	3
Supervision, Financial Integrity, Business Conduct	6	6	24	1	7	9	5
Registered Entity Violations (includes System Safeguards, Reporting, and Other Regulatory)	n/a	n/a	n/a	4	n/a	3	4
Swap Data Reporting	n/a	7	n/a	3	n/a	n/a	n/a
Illegal Off-Exchange Contracts, Failure to Register	11	1	9	12	12	2	9
Trade Practice Violations (includes Wash Trades, Fictitious Trades, Position Limits)	5	4	2	3	2	3	6
Reporting, Recordkeeping	3	3	3	14	18	12	11
False Information to CFTC or SRO, Violation of Prior Order	n/a	3	1	1	1	n/a	n/a
Statutory Disqualification	n/a	n/a	1	1	1	1	4

Total	83	69	113	75	82	96	58
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LOOKING FORWARD TO FY 2025 AND THE NEW ADMINISTRATION

As the CFTC Enforcement Staff continues to work through the litigation of previously filed enforcement actions brought in federal courts and bring those matters to a conclusion, the staff will be able to refocus its efforts on new investigations. Market participants can expect to see new statutory requests for information and, in some cases, investigative subpoenas, as staff members begin the process of collecting evidence to determine whether new charges need to be brought.

As current CFTC Chair, Rostin Benham, a Democrat appointed by President Biden, steps aside in January 2025 to make way for the incoming Republican administration, the basic work of the CFTC Enforcement Division will likely remain mostly the same. That said, a Republican-led CFTC may take a different approach to cases involving recordkeeping and reporting issues, as well as matters that represent the application of Commodity Exchange Act provisions or CFTC regulations to truly novel facts and circumstances. The two current Republican Commissioners criticized some of the former cases as unnecessarily heavy handed, and the latter as being in danger of verging on regulation by enforcement.

The new Congress may also finally pass legislation providing clarity around the regulation of at least some digital assets which the new Administration appears poised to support. Several of the draft bills currently pending in the House and Senate would give the CFTC greater regulatory authority over at least portions of the digital asset marketplace. Whether or not such legislation is passed and signed into law, those who would be inclined to engage in fraudulent and manipulative conduct in the digital asset marketplace or engage in activities requiring registration with the CFTC can expect to see a continued vigorous enforcement response from the CFTC.

[1] CFTC Dkt. No. 24-18 at 2.

RELATED PRACTICE AREAS

- Financial Regulation Compliance & Investigations
- Commodities, Futures & Derivatives
- Crypto and Digital Assets

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