

The CFTC Annual Enforcement Report

The CFTC Division of Enforcement filed its Third Annual Report at the end of November 2019, reviewing the fiscal year ([here](#)). The Report is the typical mixture of goals, statistics, analysis and initiatives. Overall it offers insight into an agency which monitors a most important segment of the markets.

The report

The Report cites four key priorities of the Division: Market integrity, protecting customers, individual accountability and coordination with criminal and other authorities. The first, market integrity, centers on ensuring the proper functioning of the nation's commodity and derivative markets. This is a critical point as the Report makes clear since those markets focus on proper price discovery which is critical to the economy.

Customers, another key focus, are the heart of any market – no customers, no markets. For the CFTC this meant bringing actions in historical areas such as precious metals, forex and binary options. It also meant bringing cases in emerging areas such as digital assets.

A third focus was individual accountability. The Division has concluded that individual accountability “must sit at the center of any effective enforcement program.” It is not sufficient to bring the action against the firm or even employees at a lower or mid-level. Deterrence is built holding those accountable for actions responsible and imposing adequate penalties. According to the Report, this goal is reflected in the number of senior persons held accountable in its cases.

Finally, a key goal for the Enforcement Division is coordination with criminal prosecutors and other regulators. As the markets evolve and are increasingly connected, it is critical that regulators and enforcement authorities work together. Coordinated actions also aid deterrence, a key point of enforcement.

The numbers in the report largely reflect the goals of the Division. First, the number of

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actions brought last fiscal year exceeded those brought in every fiscal year this decade except 2018. Last year the Commission initiated 69 new enforcement actions. Nevertheless, the amount of monetary relieve ordered in those cases of \$1.3 billion significantly eclipsed that in every other fiscal year this decade. For example, in 2018 when more actions were brought over \$946 million in relief was ordered. That amount is far lower than the sum in 2019.

The largest category of cases brought in 2019 involved commodities fraud at 25. The second largest category of cases involved manipulation and spoofing at 16. That represents more cases involving manipulation and spoofing than in any other year this decade except 2019. Indeed, from 2009 through 2017 the Commission filed an average of 5 manipulation cases per year. In 2019 the agency filed more than triple that number, suggesting an increased focus on market integrity.

In fiscal 2019 the CFTC also moved forward with its goal of coordinating with other regulators. Last fiscal year the agency filed more actions tied to a parallel criminal case than in any other year this decade – 16. The next closest year was fiscal 2018 when fourteen actions had a parallel criminal case. This suggests that the cases brought last year may have centered on more serious misconduct than in other years.

Finally, in fiscal 2019 the Division moved forward not just in implementing its four key themes but also in other areas such as transparency, risk management and cooperation. The Division helped achieve greater transparency last year by publishing its Enforcement Manual which provides significant insight into the operations of the Division.

The Division also sought to ensure that registrants adopted and implemented proper risk management process. This point is reflected in actions such as the one brought against a registered Derivatives Clearing Organization for violating the Core Principles of financial risk management, operational requirements and information system security. This case, along with others brought last year, highlight the necessity of proper compliance.

The agency also focused on cooperation and self-reporting. Cooperation is a key tool for all regulators and enforcement agencies. The CFTC has attempted to foster cooperation through recent initiatives such as splitting the resolution of actions involving cooperation and its whistleblower program. Last year, for example, self-reporting and cooperation was key in a number of enforcement actions. Overall these tools significantly aided the Enforcement Division last year.

Comment

The goals of the Division, coupled with the enforcement statistics, provide good insight into the work of the CFTC Enforcement Division. Clearly the Division has an increasing focus on manipulation and spoofing tied to holding individuals accountable, protecting the markets and coordinating with DOJ.

Each of the key goals of the agency is reflect in the case output last year – protecting the

markets from manipulation, holding those responsible accountable and coordinating with DOJ in bringing parallel criminal cases. In the end, the CFTC's report suggests an enforcement program that is achieving its goals. Market participants would do well to examine the Report and review their compliance programs.