



FY2019
DIVISION OF
ENFORCEMENT
ANNUAL REPORT

CFTC

U.S. COMMODITY FUTURES TRADING COMMISSION

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I. Introduction

The mission of the Commodity Futures Trading Commission (CFTC or Commission) is to promote the integrity, resilience, and vibrancy of the U.S. derivatives markets through sound regulation. A vigorous enforcement program is essential to carrying out this mission. Put quite simply, the CFTC's Division of Enforcement (Division) is committed to being tough on those who break the rules. This is reflected in the Division's own mission: To protect the public and preserve market integrity by detecting, investigating, and prosecuting violations of the Commodity Exchange Act (CEA) and the Commission's Regulations (Regulations).

Strong enforcement is essential to realizing the CFTC's mission. Well-functioning commodities and derivatives markets should work for all Americans. These markets ensure the stability in prices that customers have come to expect, and the economic growth Americans enjoy. For the economy to grow, businesses and individuals need to have confidence they are competing on a level playing field. Unlawful activity puts honest businesses at a disadvantage. It impedes free and fair competition. It dampens economic growth. And it undermines our democratic values, public accountability, and the rule of law. That's why we are committed to ensuring all companies and individuals in our markets play by the rules, and to being tough on those who do not.

In this Annual Report, the Division outlines the priorities that guided it over the past Fiscal Year (FY), which closed on September 30, 2019. This report also details the important work the Division has done during FY 2019, including key metrics that reflect the Division's accomplishments, as well as several themes that present themselves in the enforcement actions.

Priorities. One year ago, at the conclusion of FY 2018, the Division published its first Annual Report. There, the Division outlined four priorities around which the Division focused its enforcement efforts. The priorities that drove the Division during FY 2019 are the same as in FY 2018: (1) preserving market integrity; (2) protecting customers; (3) promoting individual accountability; and (4) increasing coordination with other regulators and criminal authorities.

This consistency in high-level priorities, we believe, is a good thing. Enforcement programs should not pivot sharply between priorities from year to year. In part, that is because enforcement actions take time—often stretching across multiple fiscal years, and sometimes multiple administrations. Notably, during FY 2019 there was a transition from Chairman J. Christopher Giancarlo to Chairman Heath P. Tarbert. But, as with prior leadership changes, the Division maintained a base level of continuity and consistency in its priorities. Consistency is also good from the perspective of market participants, who should know how the Government will enforce the law. One goal of our enforcement efforts is to change behavior in a positive way—and ultimately, to deter those who may be tempted to violate the law from engaging in the misconduct in the first place. Consistency in priorities helps achieve this optimal deterrence. It

thus makes good sense, in our view, to let market participants and the public know the priorities of the enforcement program, and to commit to consistency in those priorities over time.

Here is how we think about each of these priorities.

Preserving market integrity: When the commodities and derivatives markets are functioning well, producers are able to hedge the risk that this year's output might not be as good as the last, which protects them and consumers against price increases. These markets allow companies and individuals to allocate capital more efficiently, which contributes to the growth of the broader American economy. But these markets will not function well if participants lack confidence in their integrity. That is why the Division has focused on detecting, investigating, and prosecuting misconduct that has the potential to undermine the integrity of the markets—misconduct like fraud, manipulation, spoofing, and other forms of disruptive trading.

Protecting customers: Since its inception, the Commission has focused on protecting customers in its markets from fraud and other abuse. That focus remained a priority during FY 2019. The Division aggressively prosecuted fraud in some of the historical areas of focus, like precious metals, forex, and binary options. The Division also continued to track down fraudsters as they entered new markets—and sometimes entirely new asset classes, like digital assets—seeking to use new products or new technologies to target unsuspecting customers. Through all of this, we have worked hard to ensure that we are keeping pace with these new technologies, and staying one step ahead of the bad actors.

Promoting individual accountability: Individual accountability must sit at the center of any effective enforcement program. It's not enough simply to hold the responsible companies accountable. The responsible individuals must be held accountable too. Individual accountability ensures that the person committing the illegal act is held responsible and punished, and when appropriate, banned from the market; it deters others, fearful of facing individual punishment, from breaking the law in the future; it incentivizes companies to develop cultures of compliance and to report to regulators when they find bad actors; and it promotes the public's confidence that we are achieving justice. In pursuing these goals, we must not stop at low-level employees, but we must work to hold accountable the supervisors and others in control who may be culpable as well.

Increasing coordination with criminal authorities and other regulators: We can most effectively protect our markets when working closely with our colleagues in the enforcement and regulatory community, both domestic and international. That is particularly true as our markets evolve and become more interconnected. Bad actors do not conform their misconduct to the technical boundaries of different regulatory jurisdictions, nor do they pause as they cross international borders. So regulators here in the United States and abroad must work together to ensure the entire scope of the misconduct is identified, investigated, and prosecuted. In the same

vein, a robust combination of criminal and regulatory enforcement in our markets is critical to deterring violators, punishing misconduct, preserving market integrity, and protecting customers.

Measuring Success. Just like last year, we offer the same caveats this year: Any end-of-year report discussing metrics of success inevitably places a certain emphasis on numbers. But a strong enforcement program is about much more than that. It's about preserving market integrity, protecting customers, and deterring misconduct from happening in the first place. It's about being tough, but it's also about being fair. And it's about allocating resources to ensure our efforts target the most pernicious forms of misconduct. These sorts of things cannot be measured by numbers alone. That's a good thing: Federal agencies should not be motivated to hit certain headline numbers when enforcing the law. And we in the Division are not.

At the same time, we recognize that numbers can tell part of the story. They might show the direction an enforcement program is heading. They might reflect the types of cases and conduct that stand as priorities. Or they might offer some perspective on the program's broader goals. Here we offer both quantitative and qualitative measures that can help the public understand the work of our Division in the last Fiscal Year.

II. Summary of FY 2019

During FY 2019, the CFTC continued its trend of active enforcement. That can be seen by any measure, but below are a few representative ones.

- The number of actions filed by the CFTC during FY 2019 (69) marked a slight increase over the average of the prior five fiscal years (67.5).
- In FY 2019, the Division maintained a docket of over 140 pending litigations against corporate entities and individuals that involve allegations of manipulation, spoofing, fraud, misappropriation of confidential information, illegally offering new products, including digital assets, and other violations.
- The total monetary relief awarded in CFTC enforcement actions in FY 2019 (more than \$1.3 billion) marked a 39% increase over the prior Fiscal Year, and stands as the fourth highest total in the Agency's history.
- In FY 2019, the CFTC filed more cases involving manipulative conduct and spoofing than any prior year but one—which was FY 2018.
- Approximately 65% of all cases filed during FY 2019 involved charges of commodities fraud, manipulative conduct, or spoofing—violations that can strike at the heart of market integrity and can directly harm market participants.

- In FY 2019, the CFTC filed more actions in parallel with criminal authorities (16) than in any prior year.
- The Commission reaffirmed its commitment to doing all of this the right way—with the appropriate transparency, accountability, and fairness. Consistent with these guiding principles, in May 2019 the Division published its Enforcement Manual, which for the first time made public the Division’s general operating policies and procedures, to ensure that they would be readily accessible to those affected by them.

Notably, enforcement activity at the Commission shows no sign of slowing down as we enter the new Fiscal Year. On July 15, 2019, Heath P. Tarbert was sworn in as the Fourteenth Chairman of the CFTC. Chairman Tarbert has made clear that, under his leadership, the CFTC will be tough on those who break the rules. He has carried through on that commitment, with the Commission having filed 48 enforcement actions from July 15 through September 30 (nearly 70% of the actions for FY 2019). Many of those were significant actions involving commodities fraud and manipulation, as well as other forms of misconduct.¹

One final introductory point bears highlighting. The breadth and significance of the enforcement activity in FY 2019 would be notable in any year. But that is particularly true for FY 2019, during which Commission staff achieved these results despite losing approximately 10% of the year due to a government shutdown. Thus, to the extent a single narrative accompanies FY 2019, it should center around the professionalism, dedication, and commitment to excellence of the Commission staff. The discussion below reflects the sustained commitment from the career civil servants at the CFTC, who have carried out the Commission’s mission with integrity and purpose.

III. Analysis of FY 2019 Enforcement Actions

Overview of enforcement actions. During FY 2019, the CFTC filed 69 enforcement actions. That marks a slight increase over the average of the prior five years, which was 67.5.

In FY 2019, the Commission obtained monetary relief in its enforcement actions totaling \$1,321,046,710. This total covers all monetary relief ordered in CFTC actions, including in the form of civil monetary penalties, disgorgement, and restitution.²

¹ See, e.g., *In re BGC Fin., LP*, CFTC No. 19-48 (Sept. 30, 2019), <https://www.cftc.gov/PressRoom/PressReleases/8035-19>; *In re GFI Sec., LLC*, CFTC No. 19-49 (Sept. 30, 2019), <https://www.cftc.gov/PressRoom/PressReleases/8035-19>; *In re Tullett Prebon Americas Inc.*, CFTC No. 19-25 (Sept. 13, 2019), <https://www.cftc.gov/PressRoom/PressReleases/8012-19>.

² This total consists of \$205,596,167 in civil monetary penalties and \$1,115,450,543 in disgorgement and restitution, which includes, among other things, disbursements of funds to victims by courts as well as receivers appointed in CFTC actions, one instance of which accounted for a significant amount of the overall total. See *CFTC v. WG Trading*, No. 09-cv-1749-GBD (S.D.N.Y. June 26, 2019) (final order as to corporate defendants). Consistent with

| Monetary Relief Ordered In CFTC Enforcement Actions | |
|--|--------------------------------------|
| Fiscal Year | Total Monetary Relief Ordered |
| FY19 | \$1,321,046,710 |
| FY18 | \$947,278,038 |
| FY17 | \$412,816,307 |
| FY16 | \$1,292,310,528 |
| FY15 | \$3,202,940,849 |
| FY14 | \$3,272,978,947 |
| FY13 | \$1,772,109,976 |
| FY12 | \$931,942,825 |
| FY11 | \$498,527,486 |
| FY10 | \$201,563,915 |
| FY09 | \$275,674,718 |

Types of matters. Numbers only tell part of the story. Overall amounts of monetary relief and total number of cases filed can serve as imprecise measures. A small number of filings with relatively high penalties could account for a large percentage of the overall amount. And the total number of cases could be inflated by a large number of less impactful matters. What follows is an attempt to provide context for the bottom-line numbers—context that illustrates the broad range of significant actions the Division pursued, which reflect the Division’s mission and priorities.

the Commission’s historical practice, this calculation includes only monetary relief in court or Commission orders issued during FY 2019, regardless of when the money was collected or disbursed to victims, or the particular case was filed.

The actions filed during the last Fiscal Year break down into the following categories:

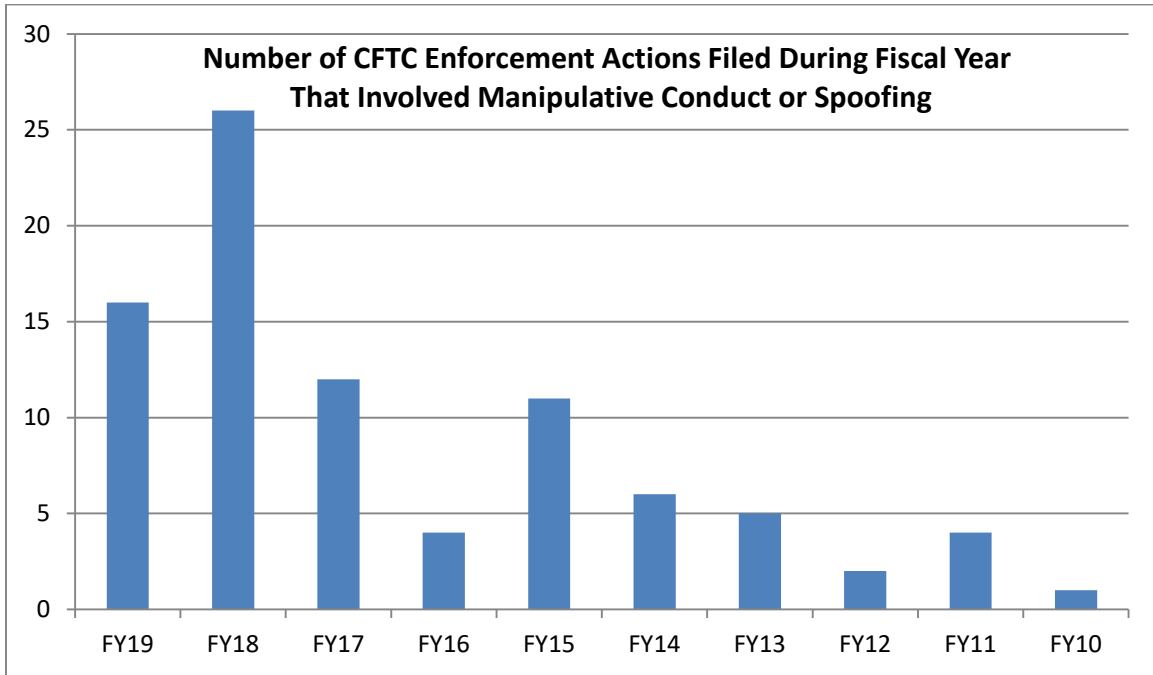
| CFTC Enforcement Actions Filed FY 2019 | |
|--|--------|
| Case Category | Number |
| Manipulative Conduct, Spoofing | 16 |
| Commodities Fraud | 25 |
| Misappropriation of Confidential Information, Trade Allocation Schemes, Mismarking | 4 |
| Protection of Customer Funds, Supervision, and Financial Integrity | 6 |
| Swap Data Reporting | 7 |
| Illegal Off-Exchange Contracts, Failure To Register | 1 |
| Other Trade Practice, Including Wash Trades, Fictitious Trades, Position Limits | 4 |
| Recordkeeping, Other Reporting | 3 |
| False Information to CFTC or SRO, Violation of Prior Orders | 3 |
| Total | 69 |

Actions aimed at preserving market integrity. This breakdown of cases shows that the enforcement program has targeted some of the most pernicious forms of misconduct in our markets—i.e., manipulative conduct, commodities fraud, and fraudulent misappropriation of confidential information. In fact, approximately 65% of the matters filed in FY 2019 involved commodities fraud, manipulative conduct, false reporting, or spoofing.³

If this point strikes a familiar chord, it should—the Division’s focus on these cases is driven by the dual priorities, explained above, of preserving market integrity and protecting market participants. Cases involving commodities fraud and manipulative conduct strike at the core of these priorities, and we have accordingly enhanced our focus on those areas.

In addition, FY 2019 continued the upward trend in filings involving manipulative or disruptive trading. During FY 2019, the Commission filed more such cases than in any prior year other than FY 2018. From FY 2009 to FY 2017, the Commission filed, on average, approximately five such cases per year. In FY 2019, the Commission filed 16—over three times the prior annual average.

³ This percentage includes cases involving manipulative conduct and spoofing (the first row in the chart above) as well as commodities fraud (the second row) and fraud perpetrated through misappropriation of confidential information, trade allocation schemes, and mismarking (the third row).

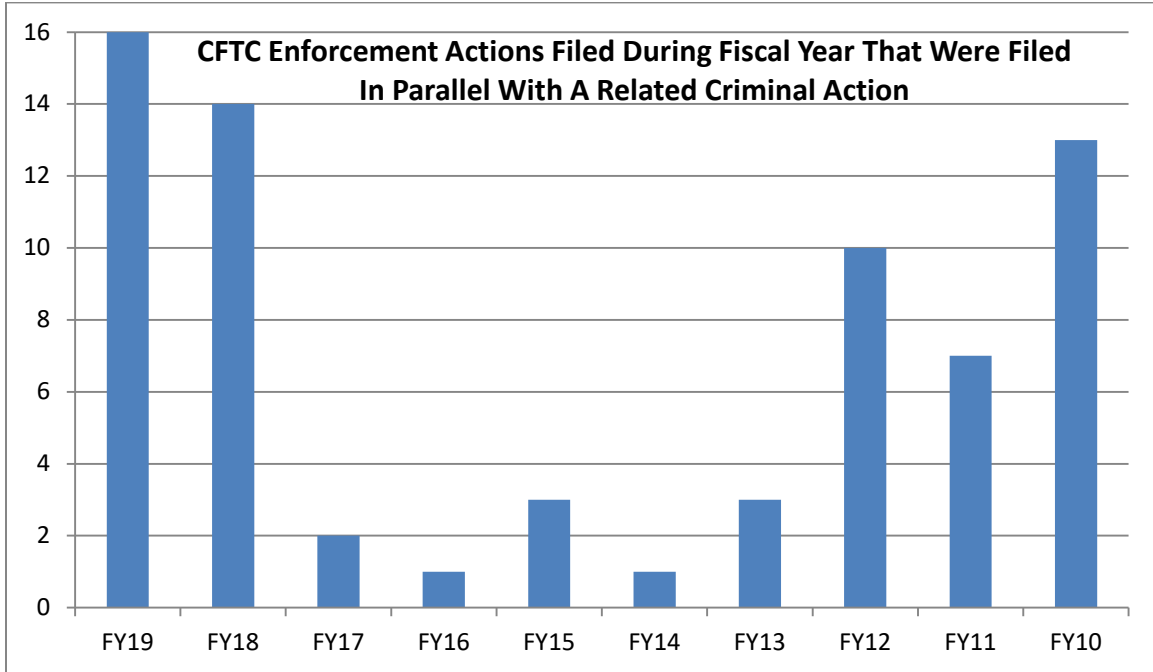


Parallel enforcement actions. Our parallel enforcement program starts with the premise that we can most effectively protect our markets when working together with our colleagues in the enforcement and regulatory community. In particular, we believe a robust combination of criminal prosecution and regulatory enforcement is critical to deterring violators, punishing misconduct, preserving market integrity, and protecting market participants.

Our ultimate goal is to deter wrongdoers from committing misconduct in the first place. In pursuing that goal, we know there is no greater deterrent than the prospect of criminal prosecution—and the reality of time in jail. When criminal penalties are added to the broader range of other remedies the CFTC can impose, the result is a robust combination of sanctions, which can be tailored to the violation at issue to achieve optimal deterrence.

During the last Fiscal Year, we filed more cases in parallel with criminal authorities (sixteen) than any prior year.⁴ The previous high point (fourteen) was reached during FY 2018. As the chart below makes clear, we have seen a significant increase in the number of actions filed in parallel with our criminal counterparts, in what marks a trend we expect to continue.

⁴ For purposes of this Annual Report, we count an action as “parallel” when the criminal action was filed within seven days of the Commission’s action.



Individual accountability. During the last Fiscal Year we continued our efforts to hold individuals accountable for wrongdoing. Approximately 58% of the Commission’s actions involved charges against one or more individuals. We charged individuals at financial institutions, proprietary trading firms, and managed funds. We charged primary wrongdoers, and those who facilitated the conduct as aiders and abettors. And we did not stop with low-level employees; we charged supervisors, desk heads, chief compliance officers, and chief executives.

Among other significant actions, we charged the global head of precious metals trading as well as a senior trader at a major financial institution with manipulative conduct and spoofing in the precious metals markets. We filed the CFTC action in parallel with a criminal case filed by the Department of Justice, whose Assistant Attorney General described the charges as “the government’s most significant step to date in [its] ongoing efforts to identify and prosecute fraud and manipulation in our Nation’s commodities markets.”⁵ All told, during FY 2019, the Commission charged eleven individuals with spoofing-related misconduct.

In addition, the Commission charged the CEO of a managed fund with fraud and misappropriation in connection with commodity futures trading.⁶ The Commission charged

⁵ *Opening Remarks by Assistant Attorney General Brian A. Benczkowski on Press Call Announcing United States v. Gregg Smith, et al.*, (Sept. 16, 2019), <https://www.justice.gov/opa/speech/opening-remarks-assistant-attorney-general-brian-benczkowski-press-call-announcing-united>.

⁶ *CFTC v. Fabio Bretas de Freitas and Phy Capital Investments LLC, f/k/a Phynance Capital Management LLC*, No. 1:19-cv-04238 (S.D.N.Y. filed May 9, 2019); <https://www.cftc.gov/PressRoom/PressReleases/7927-19>.

traders at multiple entities with mismarking swaps.⁷ The Commission charged a principal, his company, and others with carrying out an alleged \$200 million precious metals fraud.⁸ The Commission charged an array of foreign currency trading firms and their principals, among others, alleging a \$75 million fraud involving hundreds of victims.⁹ And the Commission charged five companies and four individuals with operating an alleged \$103 million fraudulent global binary options enterprise that targeted U.S. victims.¹⁰ This is just to name a few of the significant actions the Agency filed against individuals during FY 2019.

Publication of Division’s Enforcement Manual. Also during FY 2019, the Division published, for the first time, its Enforcement Manual.¹¹ The Enforcement Manual provides an overview of the Commission and the Division, and it establishes certain general policies and procedures that guide the work of the Division’s staff in detecting, investigating, and prosecuting violations of the CEA and Commission Regulations. The Enforcement Manual serves as a reference for Division staff, and it provides the general public with information about the Division’s operations. We published it to increase transparency, certainty, and consistency, and, more generally, to advance the rule-of-law principles that underpin our enforcement program. We expect this to be a living document, to be updated as the Division announces new policies and refines old ones. The benefits of the Enforcement Manual, both to those inside the Commission and to those in the general public, should extend well beyond the past Fiscal Year.

Other themes. A number of other themes can be seen through the enforcement actions the Commission filed in the last Fiscal Year. Below are several.

1. Ensuring registrants adopt and implement proper risk management processes: A core component of the Dodd-Frank Act gave the CFTC the responsibility to regulate systemic risk endemic to the derivatives markets. Commission regulations promulgated thereafter implemented a number of measures to ensure that risk is properly managed. During FY 2019, the Commission filed a number of enforcement actions aimed at ensuring the responsible parties are meeting their obligations.

⁷ *CFTC v. David Smothermon*, No. 1:19-cv-04185 (S.D.N.Y. filed May 9, 2019), <https://www.cftc.gov/PressRoom/PressReleases/7926-19>; *In re Swapnil Rege*, CFTC No. 19-14 (Jul. 18, 2019), <https://www.cftc.gov/PressRoom/PressReleases/7979-19>.

⁸ *CFTC and State of Utah Division of Securities v. Rust Rare Coin Inc., and Gaylen Dean Rust*, No. 2:18-cv-00892-TC (D. Utah filed Nov. 13, 2018, amended Dec. 6, 2018); <https://www.cftc.gov/PressRoom/PressReleases/7842-18>; and <https://www.cftc.gov/PressRoom/PressReleases/7856-18>.

⁹ *CFTC v. Oasis Int’l Grp., Ltd, Oasis Management, LLC, Satellite Holdings Company, Michael J. DaCorta, Joseph S. Anile, II, Raymond P. Montie, III, Francisco “Frank” L. Duran, and John J. Haas.*, No. 8:19-cv-00886-VMC-SPF (M.D. Fla. filed Apr. 15, 2019); <https://www.cftc.gov/PressRoom/PressReleases/7915-19>.

¹⁰ *CFTC v. Yukom Comm’ns Ltd., Linkopia Mauritius Ltd., Wirestech Ltd. D/B/A BigOption, WSB Inv. Ltd. D/B/A BinaryBook, Zolarex Ltd. D/B/A BinaryOnline, Yakov Cohen, Yossi Herzog, Lee Elbaz, And Shalom Peretz*, No. 1:19-cv-05416 (N.D. Ill. filed Aug. 12, 2019); <https://www.cftc.gov/PressRoom/PressReleases/7995-19>.

¹¹ See <https://www.cftc.gov/LawRegulation/Enforcement/EnforcementManual.pdf>.

In the clearing space, the Commission brought its first action against a registered Derivatives Clearing Organization (DCO) charging violations of Core Principles involving financial risk management, operational requirements, and information-systems security.¹² The Commission also brought its first action against an exempt DCO for making a false statement to the Commission in connection with the DCO's risk management program.¹³

In the swap dealer space, the Commission brought its first action against a swap dealer for violating rules that require financial institutions to establish a governing body and internal policies to oversee data reporting for swap dealers.¹⁴

The goal of these cases is to ensure that the Commission—and market participants—are fulfilling their duties under Dodd Frank to appropriately address systemic risk in the derivatives markets. Thus, some of the cases required substantial remediation, including the imposition of an independent compliance consultant and regular reporting to the Commission, to ensure the relevant risks are properly managed going forward.

2. *Focusing on the adequacy of an entity's compliance program:* A number of the Commission's actions during the past Fiscal Year reflected the reality that, in many cases, consideration of the adequacy of an entity's compliance program may be relevant in evaluating the scope of harm, the nature of the violations, or the appropriate sanctions, undertakings, or remediation. That theme presented itself in cases where a Chief Compliance Officer was charged with engaging in fraud and making misleading statements,¹⁵ but also cases where failures in the compliance function either directly resulted in the underlying substantive misconduct,¹⁶ or led to failure to supervise charges.¹⁷ The Commission also took action against a swap dealer that failed to implement effective processes and controls around swap reporting and made misleading statements and material omissions to the Commission regarding the compliance inadequacies.¹⁸ Because companies stand as the first line of defense to prevent

¹² *In re The Options Clearing Corp.*, CFTC No. 19-19 (Sept. 4, 2019); <https://www.cftc.gov/PressRoom/PressReleases/8000-19>.

¹³ *In re Korea Exch., Inc.*, CFTC No. 19-10 (Jul. 12, 2019); <https://www.cftc.gov/PressRoom/PressReleases/7971-19>.

¹⁴ *In re HSBC Bank USA, N.A.*, CFTC No. 19-41 (Sept. 30, 2019); <https://www.cftc.gov/PressRoom/PressReleases/8033-19>.

¹⁵ *In re Marconato*, CFTC No. 19-23 (Sept. 12, 2019); <https://www.cftc.gov/PressRoom/PressReleases/8007-19>.

¹⁶ *In re RBC Capital Mkts., LLC*, CFTC No. 19-47 (Sept. 30, 2019), <https://www.cftc.gov/PressRoom/PressReleases/8034-19>; *In re Phillip Capital Inc.*, CFTC No. 19-22 (Sept. 12, 2019), <https://www.cftc.gov/PressRoom/PressReleases/8008-19>.

¹⁷ *In re Société Générale Int'l Ltd.*, CFTC No. 19-38 (Sept. 30, 2019), <https://www.cftc.gov/PressRoom/PressReleases/8033-19>; *In re The Northern Trust Co.*, CFTC No. 19-39 (Sept. 30, 2019), <https://www.cftc.gov/PressRoom/PressReleases/8033-19>.

¹⁸ *In re Commerzbank AG*, CFTC No. 19-03 (Nov. 8, 2018); <https://www.cftc.gov/PressRoom/PressReleases/7837-18>.

misconduct, we expect their compliance function to serve as a meaningful check—and to ensure proper systems are in place to detect misconduct when it occurs, and make sure it does not happen again.

3. *Digital assets*: In conjunction with the Division’s Task Force focused on these issues, the Division continued to aggressively prosecute misconduct involving digital assets that fit within the Act’s definition of commodities. Among other cases, the Commission charged the principal of a cryptocurrency escrow fund with a multi-million dollar Bitcoin fraud.¹⁹ The Commission also charged a Bitcoin trading firm and its principal with a \$147 million-dollar fraud.²⁰ And the Commission charged a virtual currency trader with carrying out a fraudulent scheme involving Bitcoin.²¹

At the same time, the Division successfully litigated the cases involving digital assets it had previously charged, obtaining, among other things, rulings affirming the Commission’s authority to prosecute fraud and manipulation involving digital assets that satisfy the statutory definition of a commodity.²²

4. *Misappropriation of confidential information*: Illegal use of confidential information can significantly undermine market integrity and harm customers in our markets. This type of misconduct can include misappropriating confidential information, improperly disclosing a client’s trading information, front running, or using confidential information to unlawfully prearrange trades. Recognizing the harms imposed by this type of misconduct, the Division, in connection with its Task Force in this area, charged an energy broker and its owner with misappropriating confidential customer information, which the owner used to take the other side of the customer’s trades in his own proprietary trading account, benefiting the owner to the tune of hundreds of thousands of dollars.²³

¹⁹ *CFTC v. Jon Barry Thompson*, No. 1:19-cv-09052 (S.D.N.Y. filed Sept. 30, 2019); <https://www.cftc.gov/PressRoom/PressReleases/8023-19>.

²⁰ *CFTC v. Control-Finance Ltd., and Benjamin Reynolds*, No. 1:19-cv-05631 (S.D.N.Y. filed Jun. 17, 2019); <https://www.cftc.gov/PressRoom/PressReleases/7938-19>.

²¹ *In re Kim*, CFTC No. 19-02 (Oct. 29, 2018); <https://www.cftc.gov/PressRoom/PressReleases/7839-18>.

²² *CFTC v. Randall Crater, Mark Gillespie and My Big Coin Pay, Inc.*, No. 1:18-cv-10077-RWZ, Memorandum of Decision (D. Mass. filed Sept. 26, 2018), <https://www.cftc.gov/PressRoom/PressReleases/7820-18>; *CFTC v. Patrick K. McDonnell and CabbageTech, Corp. d/b/a Coin Drop Markets*, No. 1:18-cv-00361, Final Judgment and Order (E.D.N.Y. filed Aug. 23, 2019), <https://www.cftc.gov/PressRoom/PressReleases/7774-18>.

²³ *In re Classic Energy LLC and Mathew D. Webb*, CFTC No. 19-50 (Sept. 30, 2019); <https://www.cftc.gov/PressRoom/PressReleases/8030-19>.

The Commission also continues to litigate its previously filed cases in this space, having obtained favorable rulings in matters involving allegations of this type of misconduct.²⁴

5. *Cooperation and self-reporting, while protecting the integrity of our investigations:* Over the past several years, a consensus has developed that a robust cooperation and self-reporting program serves as a powerful tool to pursue individual and entity accountability. The CFTC has stood at the forefront of this development. This is a tool that originated in organized crime and gang prosecutions, and has been employed aggressively and with success in white-collar cases as well.

A number of the CFTC's actions in FY 2019 demonstrate this point. Several of the most significant matters filed this Fiscal Year were developed with the assistance of cooperating witnesses or corporate cooperation.

And the program continues to grow. In certain cases this Fiscal Year, the Commission bifurcated a cooperating witness's case—deciding liability in an initial order, but leaving the amount of the penalty to be determined at a later date, when the cooperation is substantially complete. This bifurcation mirrors the criminal process, where the guilty plea comes first, and sentencing later. And bifurcation allows the Commission to consider the entire range of cooperation when determining the appropriate penalty.²⁵

In addition, the Commission filed three cases that arose out of self-reports.²⁶ In each, the penalty imposed was substantially reduced on account of the self-report, cooperation, and remediation.

It bears emphasizing here, however, that there is a flip-side to the benefits that can come from cooperation and self-reporting. That is, if respondents take affirmative steps to undermine the integrity of CFTC investigations or do not properly disclose required information, that could result in an enforcement action, additional charges, or more severe sanctions. In this vein, during the last Fiscal Year, the Commission brought several cases involving false statements to the

²⁴ *CFTC v. William Byrnes, Christopher Curtin, and The New York Mercantile Exchange, Inc.*, No. 13-cv-1174 (VSB), Opinion and Order (S.D.N.Y. filed Sept. 19, 2019) (granting in part and denying in part CFTC motion for partial summary judgment; denying defendants' motions for summary judgment); *CFTC v. EOX Holdings LLC and Andrew Gizienski*, No. 4:19-cv-02901, Memorandum Opinion and Order (S.D. Tex. filed Sept. 29, 2019) (defendant's motion to dismiss and for summary judgment denied).

²⁵ See, e.g., *In re Kamaldeep Gandhi*, CFTC No. 19-01 (Oct. 11, 2018), <https://www.cftc.gov/PressRoom/PressReleases/7827-18>; *In re Krishna Mohan*, CFTC No. 19-06 (Feb. 25, 2019), <https://www.cftc.gov/PressRoom/PressReleases/7877-19>; *In re John Edmonds*, CFTC No. 19-16 (Jul. 25, 2019), <https://www.cftc.gov/PressRoom/PressReleases/7983-19>; *In re Christian Trunz*, CFTC No. 19-26 (Sept. 16, 2019), <https://www.cftc.gov/PressRoom/PressReleases/8014-19>.

²⁶ *In re Société Générale Int'l Ltd.*, CFTC No. 19-38 (Sept. 30, 2019), <https://www.cftc.gov/PressRoom/PressReleases/8033-19>; *In re PNC Bank, N.A.*, CFTC No. 19-43 (Sept. 30, 2019), <https://www.cftc.gov/PressRoom/PressReleases/8033-19>; *In re CHS, Inc.*, CFTC No. 19-52 (Sept. 30, 2019), <https://www.cftc.gov/PressRoom/PressReleases/8029-19>.

Commission or its staff,²⁷ or to the National Futures Association.²⁸ The Commission also brought an action against an entity for failing to promptly produce audit trail data.²⁹ And the Commission brought actions that included charges based on the failure to properly disclose material issues of non-compliance in Chief Compliance Officer reports.³⁰ The lesson of these cases is that a respondent that truly cooperates with a Division investigation will receive concrete benefits; but at the same time, a respondent that fails to disclose required information, or that takes steps to undermine a Division investigation, will face additional consequences.

6. *Data analytics:* As our markets continue to develop, data analytics will only become more important to our day-to-day work as regulators. Recognizing this reality, we have engaged in a multi-year project to enhance our ability to detect misconduct through the use of data analytics. As part of this effort, we have developed an ability to identify, in the trading data, forms of misconduct that we might otherwise have been unable to detect. The significant increase in the number of cases involving manipulative conduct, and the significant increase in the percentage of the overall docket involving charges of manipulative conduct and commodities fraud, is directly tied to these data analytical efforts.

Whistleblower Program. Our whistleblower program continued to experience significant advancement and growth during the past Fiscal Year.³¹

During FY 2019, the whistleblower program received 117 claims for award—roughly the same amount as received during FY 2018. While not all claims will result in an award, the Division recognizes the assistance that a whistleblower can provide. And the Division, working through its Whistleblower Office, is committed to rewarding the critical assistance provided by qualified whistleblowers—and, at the same time, working to encourage other potential whistleblowers to come forward.

In the FY 2019, the Commission continued to recognize and award meritorious whistleblowers. Coming into that Fiscal Year, the Commission had issued a total of nine whistleblower awards. The Commission issued five more awards amounting to \$15,384,664. Notably, the whistleblower program has now awarded a total of over \$100 million to deserving

²⁷ *In re Tullett Prebon Americas Inc.*, CFTC No. 19-24 (Sept. 13, 2019), <https://www.cftc.gov/PressRoom/PressReleases/8012-19>; *In re Rafael Novales*, CFTC No. 19-35 (Sept. 30, 2019), <https://www.cftc.gov/PressRoom/PressReleases/8026-19>.

²⁸ *In re Marconato*, CFTC No. 19-23 (Sept. 12, 2019); <https://www.cftc.gov/PressRoom/PressReleases/8007-19>.

²⁹ *In re Merrill Lynch, Pierce, Fenner & Smith Inc.*, CFTC No. 19-21 (Sept. 10, 2019); <https://www.cftc.gov/PressRoom/PressReleases/8005-19>.

³⁰ *See, e.g., In re RBC Capital Mkts., LLC*, CFTC No. 19-47 (Sept. 30, 2019), <https://www.cftc.gov/PressRoom/PressReleases/8034-19>.

³¹ The CFTC's Whistleblower Program was established in 2011 under the Dodd Frank Act. *See Dodd-Frank Wall Street Reform & Consumer Protection Act*, Pub L. No. 111-203, tit. VII, § 748, 124 Stat. 1376, 1739 (July 21, 2010) (codified at 7 U.S.C. § 26); Whistleblower Awards Process, 82 Fed. Reg. 24,487 (May 30, 2017); Whistleblower Incentives & Protection, 76 Fed. Reg. 53,171 (Aug. 25, 2011).

whistleblowers. Commission actions associated with those awards have resulted in judgments totaling more than \$800 million.

Number and Amount of Awards 2011 – 2019

| | Number of Whistleblower Awards | Amount of Whistleblower Awards |
|------|--------------------------------|--------------------------------|
| FY19 | 5 | \$15,384,664 |
| FY18 | 5 | \$75,575,113 |
| FY17 | 0 | \$0 |
| FY16 | 2 | \$11,551,320 |
| FY15 | 1 | \$300,000 |
| FY14 | 1 | \$246,000 |
| FY13 | 0 | \$0 |
| FY12 | 0 | \$0 |
| FY11 | 0 | \$0 |

Going forward, we expect the whistleblower program to continue to grow—and to continue to serve as an important part of the Commission’s broader enforcement efforts. Indeed, between 30 to 40% of the Division’s ongoing investigations now involve some whistleblower component. Thus, we expect the trend of an active and impactful whistleblower program to continue at the CFTC in the coming years.

IV. CONCLUSION

We close FY 2019 by reiterating a point we made in last year’s Annual Report—that is, with a note about the end goal of our enforcement efforts. The end goal of our enforcement program extends beyond the number of cases filed or the amount of penalties imposed; it even extends beyond simply protecting market participants, punishing bad actors, and deterring others.

The ultimate goal is to foster among our market participants a true culture of compliance. That is, a culture where a CEO will stand in front of a company’s new hires on their first day on the job, and tell the new staff about the various trainings to come—compliance, ethics, and human resources, to name a few. But then the CEO tells the new staff that, notwithstanding those various internal company regimes, if they break the law, their problems won’t stop with compliance, ethics, or human resources. Their problems will come from the CFTC (and perhaps even the DOJ and the FBI). They know this because, the CEO tells the staff, the company is committed to identifying any misconduct, and to reporting it to the relevant authorities. That’s the sort of behavior we’re seeking to foster. That’s the sort of commitment, we believe, that creates the culture of compliance we want to see in our market participants. And that’s the end goal at which our enforcement actions are aimed.



CFTC

U.S. COMMODITY FUTURES TRADING COMMISSION
DIVISION OF ENFORCEMENT
1155 21ST ST NW, WASHINGTON, DC 20581
202.418.5000