

Settlements in brief – EU banks and individuals charged for “spoofing”

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As part of the first joint enforcement action by the US Department of Justice, the FBI's Criminal Investigative Division, and the US Commodity Futures Trading Commission (CFTC), three European banks reached a USD 46.6 million settlement with US authorities. These banks were charged with spoofing in the US commodity market. In addition, the DOJ and the CFTC also charged eight individuals with the same alleged illegal trading practices under US federal law.

On 29 January 2018, Deutsche Bank AG & Deutsche Bank Securities Inc., UBS AG and HSBC Securities Inc. were charged with spoofing in the US commodity market. According to the Commodity Exchange Act, spoofing is an illegal trading practice. It entails traders taking advantage of sophisticated computer algorithms by placing orders on the commodity market and then quickly cancelling these bids before they can be executed. This allows traders to manipulate the price for their own benefit.

The CFTC, in conjunction with the FBI and the DOJ, levied civil penalties of USD 30 million, USD 15 million and USD 1.6 million on [Deutsche Bank](#), [UBS](#) and [HSBC](#) respectively. These orders were part of a combined enforcement action by the three US authorities. The USD 30 million settlement of Deutsche Bank is the [largest penalty](#) (to date) that the CFTC has imposed on a bank for this type of wrongdoing. Noteworthy in this case, [six individuals and one technology consulting company](#) were also charged by the CFTC, and [eight individuals](#) were charged by the DOJ. The individuals were charged for allegedly engaging in spoofing and manipulating the market as traders, teaching their subordinates to spoof, or building a spoofing-programme.

In addition to the civil penalties, all three banks had to undertake remedial relief aimed at preventing spoofing in the future. As the banks cooperated throughout the investigation, and proactively undertook remedial measures, they received a substantial reduction of the fine. [According](#) to James McDonald, the director of the CFTC's enforcement division, UBS received a “substantially reduced” penalty because of its self-reporting. “Today's enforcement action demonstrates the Commission's continued commitment to root out manipulation and spoofing in our markets. At the same time, this action shows that the CFTC will recognize and reward market participants who self-report misconduct, cooperate in the investigation, and remediate to fix the problems. The resolution in this case, and the substantially reduced penalty for UBS, should send a strong signal to the market that the Commission takes seriously the benefits of self-reporting and cooperation.”

Although not explicitly described, this form of price manipulation is also covered by European legislation, namely the Market Abuse Regulation ([MAR](#)). This Regulation has had direct effect in the EU

Member States since July 2016 (see [In context March 2017](#)) and replaced the Market Abuse Directive and related implementing national legislation. The MAR applies to issuers with financial instruments admitted to trading on an EU regulated market (for example the London Stock Exchange).

Nowadays, regulators are increasingly focusing on market abuse. The broad scope of the MAR and the above described settlement with the three banks emphasises that companies should have the appropriate compliance and supervision in place to detect and prevent this type of misconduct. It is essential for listed companies to understand the legal framework of the country where they are operating, including the relevant case law, in order to make a proper assessment of the situation at hand.