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Client Alert

White Collar Criminal Defense

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DOJ Ups the Ante on Spoofing Prosecutions

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In an indictment unsealed on September 16, 2019, federal prosecutors charged current and former traders at JPMorgan Chase & Co. in connection with an alleged eight-year conspiracy intended to manipulate commodities markets. The indictment is remarkable because, among other charges, prosecutors alleged violations of the Racketeer Influenced and Corrupt Organization (RICO) Act, which carries the potential of severe penalties.

This case marks an escalation in the trend of criminal spoofing cases brought by the U.S. Department of Justice (DOJ) and parallel civil actions brought by the Commodity Futures Trading Commission. Spoofing is the illegal practice of manipulating trade markets through placing orders to buy or sell with the intent to cancel those orders before execution, thereby influencing the pricing of securities or commodities.

Bringing charges under the RICO Act suggests that, despite recent losses at trial, the DOJ is not abandoning spoofing prosecutions and instead is upping the ante. Prosecutors likely expect the presentation of this alleged misconduct under the RICO framework to be more accessible to jurors than have been tactics they have previously employed–tactics which have not resulted in convictions. Of particular concern to potential defendants and their current or former employers should be that evidence of a pervasive spoofing scheme at a company–a scheme in which supervisors engaged or of which they had knowledge–could become relevant in RICO cases. Expanding relevant conduct beyond particular traders charged with wrongdoing may impact a financial institution's ability to gain a favorable settlement through cooperation with federal agencies.

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