



Exchange Act (“Act”), 7 U.S.C. §§ 6c(a)(5)(C), 9(1) (2012), and CFTC Regulation 180.1, 17 C.F.R. § 180.1 (2014). (Doc. # 1.)

2. On November 9, 2015, the CFTC filed a motion for preliminary injunction and memorandum in support of that motion identifying an additional 9 days of trading activity consistent with the pattern of illegal trading set forth in the Complaint in one of the same five markets identified in the Complaint from September 2014 and April and May 2015. (Doc. #20.)

3. The parties exchanged Rule 26(a) disclosures and have engaged in discovery in this matter pursuant to the scheduling order entered by this Court on December 22, 2015 (Doc. #54) and the parties’ subsequent discussions and agreements.

4. In the past few days, the CFTC became aware of market participant complaints concerning Defendants’ recent trading activity in another futures market, the Ten Year T-Note Treasury Futures (“ZN”). Specifically, on February 2, 2016, one market participant complained to the Chicago Mercantile Exchange (“CME”) and the CFTC that on February 1, 2016, it had to shut down its algorithms operating in ZN as a result of certain trading that the market participant identified as spoofing.

5. The CFTC spoke with the CME on February 9 and 10 at which times the CME confirmed that it had traced the complained of activity to the account assigned to Mr. Oystacher. The CME further represented that the activity appeared to reflect a flipping pattern. The CFTC has sought additional information to independently analyze the trading activity of Mr. Oystacher on February 1, 2016 and received that information today.

6. Plaintiff has tendered a copy of the February 2, 2016 complaint to Defendants and further notes that, according to the CME, the CME itself notified Defendants (through counsel) about that complaint orally on or before February 9, 2016. Plaintiff has also produced an

anonymized form of the ZN order message and market data that the CME produced for February 1, 2016.

7. In addition, on February 2, 2016, a market participant contacted an investigator at the CFTC outside of the litigation team in this matter (“JG”)<sup>1</sup> and complained about “gaming” in the ZN that same day. That market participant subsequently filed a formal complaint with the CFTC’s Whistleblower Office.

8. As part of his duties as an investigator with the CFTC, JG followed up on the complaint by obtaining order message and market data for ZN on February 2, 2016 and beginning to prepare a preliminary analysis of the trading activity. Through that preliminary review, JG discovered on or about February 8, 2016 that the complained-of activity traced to Mr. Oystacher’s user identification (his “Tag 50”) and that the trading appeared to reflect flipping activity.

9. On February 3, 2016, the CFTC’s Whistleblower Office received a complaint from another individual concerning trading activity in the ZN on February 2, 2016. The complaint identified a “clear pattern of market manipulation (spoofing)” as follows:

multiple 111 lot sized orders [were] being placed in the limit order book at the same price level as to misrepresent the current supply and demand of these contracts. These orders were placed over a span of multiple seconds. The 111 lots would all cancel at the same time (under 1 ms) right ahead of a large trade that happened at the same price level ... The market participant is entering non-bona fide orders. The market participant is manipulating the supply and demand of the market with these non-bona fide orders. And this market participant is using this misinformation to trade in the opposite direction of the orders at a speed that honest market participants can not react to.

10. On February 9, 2016, the CFTC litigation team in this matter became aware of both of these market participant complaints concerning ZN activity on February 2, 2016 and began

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<sup>1</sup> Plaintiff has previously identified JG in its Rule 26(a) disclosures. To the extent Defendants would like to speak with him in connection with his work as a CFTC employee they may contact the undersigned attorney.

immediately working on collecting and analyzing the information. Plaintiff has produced the whistleblower complaints<sup>2</sup> and an anonymized form of the ZN order message and market data from February 2, 2016 to Defendants.

11. Despite the fact that the CFTC's analysis is ongoing, Plaintiff wanted to make the Court and Defendants aware that, to the extent Plaintiff confirms that the complained-of conduct by Mr. Oystacher in ZN on February 1 and 2, 2016 constitutes spoofing and/or employment of a manipulative or deceptive device in contravention of the Commodity Exchange Act, Plaintiff intends to present evidence of this trading at the Preliminary Injunction hearing scheduled for April 25, 2016 as further evidence of Defendants' continued pattern of illegal trading. Plaintiff also intends to seek a preliminary injunction barring Defendants from trading in ZN during the pendency of this action.

12. Plaintiff's analysis of the ZN trading data is ongoing, but if Plaintiff can confirm that the complained of conduct in ZN constitutes evidence of Defendants' continued illegal pattern of trading before the notice date for this motion (February 17, 2016), the CFTC intends to renew its request to expedite the Preliminary Injunction hearing based upon this new evidence of ongoing violations.

WHEREFORE, the Commission respectfully requests that the Court and Defendants take notice of Plaintiff's intent to present additional evidence at the Preliminary Injunction Hearing and consider the CFTC's request to expedite the Preliminary Injunction Hearing based on new evidence.

Dated: February 11, 2016

Respectfully Submitted,

/s/ Allison V. Passman

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<sup>2</sup> The whistleblower complainants have not consented to disclosure of their identities and the CFTC does not intend to call them as witnesses at the Preliminary Injunction hearing as a result.

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 11, 2016, I electronically filed Plaintiff's Motion for Entry of Agreed Proposed Confidentiality Order with the Clerk of Court using the CM/ECF system which sent notification of such filing to all counsel who have appeared in this matter as follows:

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