

THE REVIEW OF  
**SECURITIES & COMMODITIES  
REGULATION**

AN ANALYSIS OF CURRENT LAWS AND REGULATIONS  
AFFECTING THE SECURITIES AND FUTURES INDUSTRIES

Vol. 55 No. 3 February 9, 2022

## THE EVOLUTION OF SPOOFING ENFORCEMENT AND . . . AVOIDANCE

*In this article, the authors begin by describing spoofing prohibitions in federal law and exchange rules. They then describe how regulators differentiate between spoofing and legitimate trading activity. Next, they turn to common types of spoofing identified in the cases and regulators' tools and practices for dealing with them. They conclude with the surveillance and supervisory processes firms will need to monitor trading by internal reviews to protect against possible inferences of spoofing activity.*

By James G. Lundy, Nicholas A.J. Wendland, and David Yoshimura \*

In recent years, the regulatory scrutiny over the prohibited type of conduct in derivatives markets commonly known as “spoofing” has resulted in the types of activities included in this definition to be more varied, more visible, and more likely to be the target of regulatory enforcement actions that can result in significant penalties for market participants. It is therefore imperative to keep apprised of developments in this regulatory enforcement arena to fully understand what does and does not constitute spoofing, and how to attempt to avoid conduct that may be deemed to be spoofing and the potential unnecessary exposure to the risk of enforcement actions.

“Spoofing” is a term used to describe a form of market manipulation that involves the submission of orders that the trader did not intend to execute at the time of order entry. Spoofing orders often form a pattern of deceptive order activity that leads to visible

increases or decreases in the volume displayed on the order book and are intended to impact how other participants behave. This behavior undermines the integrity of the market and unfairly impacts unsuspecting market participants that rely on bona fide order activity to accurately reflect current market conditions and asset prices.

Civil and criminal legal ramifications of spoofing activities can be severe. These may include imprisonment, significant fines, and loss of trading privileges, among other civil and criminal penalties. The reputational harm to a trader or firm civilly charged with, or criminally convicted of, spoofing behavior is significantly detrimental.

In the regulatory sphere, while spoofing enforcement has evolved, it is still developing. This article summarizes guidance from recent cases to identify steps that market participants can take to avoid activity that

---

\* JAMES G. LUNDY is a partner at Faegre Drinker Biddle & Reath LLP. NICHOLAS A.J. WENDLAND is counsel and DAVID YOSHIMURA is an associate at the firm. Their e-mail addresses are james.lundy@faegredrinker.com, nicholas.wendland@faegredrinker.com, and david.yoshimura@faegredrinker.com. Mr. Lundy, Mr. Wendland, and Mr. Yoshimura represent clients in CFTC, SEC, and self-regulatory organization enforcement investigations and litigation.

---

### FORTHCOMING

- SPAC LITIGATION: CURRENT STATE AND BEYOND