BerkeleyLaw
UNIVERSITY OF CALIFORNIA
Berkeley Center for
Law and Business

Berkeley Center for Law and Business
University of California, Berkeley
School of Law
Boalt Hall #7200
Berkeley, CA 94720-7220

Spoofing – A New Form of Market Manipulation Means Work for the DOJ

By Lauren Strauss, J.D. Candidate 2021 | October 28, 2018

As evidenced by the large but temporary plummet in the U.S. stock market in 2010, later coined the "flash crash," market manipulation has taken on a new and adaptive form. Earlier this month, the Department of Justice filed a lawsuit against Yuchun Mao, Kamaldeep Gandhi, and Krishna Mohan for commodities fraud and futures-spoofing. This spoofing scheme allegedly resulted in a 60 million-dollar loss among various market participants between 2012 and 2014. These allegations come amidst a wide-spread and targeted effort by the DOJ to crack down on the relatively new illicit practice of futures-spoofing.

With the adoption of the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010, spoofing, a mechanism that is used to systematically manipulate market prices by making fraudulent offers or bids without the intention to execute them, was deemed illegal. Not only does spoofing skew market prices in a matter of seconds, it deceives other traders, particularly those engaged in high-frequency trading, and results in many unexpected losses. In terms of federal regulation, while there were initial technological barriers that made it difficult to isolate instances of spoofing, intent was difficult to prove as traders often cancel bids or offers. However, as technology has progressed, this illegal trading practice has picked up steam, and the DOJ has taken notice.

Notwithstanding the difficulty of isolating intent, the DOJ has directed its efforts towards market research to isolate instances of spoofing and, ultimately, protect investors. Earlier this year, eight individuals were charged with spoofing-related allegations. Unfortunately, this is just one example of how rapidly-changing technology in conjunction with a profit-driven industry can spin out of control. While fluctuations are frequent in the common stock exchange, coordinated spoofing efforts have the capacity to cripple the market and diminish investor confidence. This puts pressure on the DOJ to reign in market manipulation and continue to focus its efforts towards producing technology that can efficiently isolate market irregularities.

Moreover, this new age of market manipulation will likely continue to place pressure on investment firms. In order to better protect their investors' interests, investment firms should allocate resources towards internally regulating their trading practices in order to maintain trust and keep the DOJ at arms-length. Intentional efforts to keep traders from engaging in market manipulation will not only allow investment firms to escape potential liability but will aid in the DOJ's efforts of protecting consumers and investors alike.