



Commodity Futures Trading Commission

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Case Background Information

CFTC Press Release 5521-08, July 24, 2008, *CFTC v. Optiver US, LLC, et al.*

The Manipulative Scheme

The defendants' scheme involved trading a large volume of Crude Oil, Heating Oil, and New York Harbor Gasoline futures contracts to manipulate the settlement price for these contracts. In each of the 19 instances charged, the defendants accumulated a large net TAS position in Crude Oil, Heating Oil, or New York Harbor Gasoline. The manipulative scheme involved trading a significant volume of futures contracts in the opposite direction of the TAS position, before and during the close of the contracts. The defendants' goal in trading the large volume of futures was to improperly influence and affect the price of futures contracts in Crude Oil, Heating Oil, and New York Harbor Gasoline.

Specifically, the defendants' strategy was to execute approximately 20 to 30 percent of Optiver's futures trades just before the close and the remainder during the close. Because the futures contracts traded offset the TAS contracts, Optiver would profit if it could trade 20 to 30 percent of its futures contracts before the close for a price better than the settlement price and trade the remaining 70 to 80 percent of its futures contracts during the close, for a weighted average price close to the settlement price.

"The Hammer" and VWAP Control

Optiver's NYMEX trading, as described in the complaint, was conducted on the Globex electronic trading platform on which certain NYMEX products are traded. Globex operates on a "first in, first out" system. Bids and offers quoted at the same price are executed based on the order in which they are entered into the system.

To ensure that its orders were first in the queue, defendants designed and refined a software program they referred to as the "Hammer," which was created to rapidly enter a series of orders into Globex.

Throughout the early part of the trading day, defendant Dowson or other traders under his direction would adjust Optiver's orders, often increasing Optiver's net long or short TAS position. Later in the day, defendant Dowson or other traders under his direction would adjust Optiver's bids and offers—cancelling or modifying existing orders and

placing new ones – in a manner that often resulted in Optiver accumulating a net long or short TAS position.

Defendants developed and regularly refined another software program which processed information about prices and quantities of trades being executed and showed a running calculation of the VWAP during the close to facilitate the manipulative scheme.

The Manipulative Scheme in Defendants' Own Words

On March 8, defendant Dowson explained to defendant Meijer exactly how Optiver traded to maximize the influence of its trades on the market. He advised defendant Meijer that, in his opinion, because there is less liquidity in the market prior to the time in which the settlement price will be determined, trading during this period should be used to push prices in the desired direction for the start of the close. According to defendant Dowson, trading during the close should be used to “defend” or control the price enough to ensure that it doesn’t move back in the other direction. Dowson also cautioned defendant Meijer against “running out of power” to control the price through the end of the settlement period.

In defendant Dowson’s words:

do the pushing as much as you can in the minute before . . .
in the [close] don’t try and push it too much harder . . .
just try and defend it let’s say . . .
the idea of it is to attract the liquidity. . .
so you have more chance to sort of bully in the minute before.

Defendant Dowson cautioned that “the worst thing that can happen is running out of power.”

For example, on March 14, defendants Dowson and Meijer discussed their power in the New York Harbor Gasoline market. Defendant Dowson stated that with 1,000 contracts, you could, in his words, “really bully” the market. Defendant Meijer added that “you can bully around more with more.”

On March 19, defendant van Kempen had a conversation with an Optiver trader during which the trader reported the results of the day’s TAS and futures trading. The trader also discussed his plan to accumulate a TAS position of approximately 2,000 to 2,500 contracts the following day. Defendant van Kempen advised the trader to trade no more than 25 percent of Optiver’s future contracts before the close and told the trader:

You should milk it for right now because you never know how long it’s going to last.

The trader replied:

I think the Crudes are the most advanced markets and that’s where we made most of our money anyway. How much can the others develop? I think at some point we’ll be hammering in all three of them.

Planning the Cover-Up: The “Fairy Story”

Less than a week into the manipulative scheme, defendants Dowson and Meijer discussed the cover story they planned to use if, in defendant Dowson’s words, “people come... with stories about why you manipulated the market.” They agreed that if they bid TAS at 99 and offered at 101, they could claim that their intent was really to buy low and sell high. Even bidding at even, they said that they could claim that they believed they could trade futures contracts for better than the VWAP and get an “edge.” In the conversation, defendant Dowson acknowledged that this explanation of Optiver’s trading was, in his words, a “fairy story.”

NYMEX Intervenes and Stops the Manipulative Scheme in Its Tracks

As a result of its proactive surveillance program, NYMEX discovered and brought to a halt the defendants’ manipulative scheme.

On October 19, 2006, months before the manipulative conduct alleged in the CFTC complaint, NYMEX issued a compliance advisory discussing precisely the sort of manipulative conduct engaged in by the defendants:

. . . [Exchange] investigation of suspected manipulative pricing involving TAS will focus on the percentage of TAS positions acquired by a trader, group or traders or customer(s) and whether the offset of that position during the close was disruptive, collusive, and or caused or attempted to cause aberrant price movement in the close.

The October 19, 2006 NYMEX Compliance Advisory was available to the public on NYMEX’s website at all relevant times.

In response to an inquiry by NYMEX compliance on March 26, 2007, defendant van Kempen falsely stated to NYMEX that “what we’re trying to do is just make markets in the TAS contract and hedge ourselves as well as possible during that closing period and maybe slightly before. But you gotta do it before 1:30 ’cause otherwise liquidity dries up completely.”

Van Kempen concealed Optiver’s real profit motive from trading the futures and instead falsely stated that its profit motive is “the spread, capturing the spread” and that “anywhere where we trade, we make a bid and an ask spread and we believe we get paid on buying on the bid and selling on the offer.”

Profits

The complaint alleges that as a result of its manipulative trading scheme, Optiver reaped profits of over \$1 million.

The scheme ultimately permitted defendants to profit regardless of the direction of the market move. If Optiver’s net TAS position was long, defendants schemed to profit by forcing the market down before and during the close. If Optiver’s net TAS position was

short, defendants schemed to profit by forcing the market up shortly before and during the close.

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