



Traders Should Stop Running from Risk in CFTC Investigations

Regulators such as the U.S. Commodity Futures Trading Commission (CFTC) are ramping up policing of digital currency markets, but traders - who succeed by strategically taking risks - often reflexively capitulate. Kobre & Kim's Government Enforcement Defense team explains how deploying aggressive counteroffensive and defensive measures can drive more successful outcomes.

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The U.S. Commodity Futures Trading Commission (CFTC) is quietly advancing a new wave of government enforcement activity focused on spoofing, threatening traders with skyrocketing monetary settlements and criminal charges.

Successful traders do not run from risk: instead, they use aggressive and defensive measures to manage it within a broader strategy. Before responding to CFTC inquiries, investigation targets should consider the following:

1. Know Your Foe

When the CFTC is targeting you in an investigation, it is time to take stock of your adversary's strengths and weaknesses. For example, while persuading regulators that they face significant trial risk can reveal too much, fewer details may be necessary to dissuade the CFTC and other regulators less accustomed to taking cases to trial.

2. Carefully Consider the Consequences of Cooperation.

Trading firms often reflexively cooperate at the outset of CFTC investigations, hoping to drive a better outcome. However, cooperative traders nowadays are hit with rounds of invasive and costly information demands that still lead to outsized financial penalties and criminal exposure.

Good traders don't forfeit their edge without a clear commercial justification. The same logic applies to an investigation.

3. Go On Offense

In trading, successful risk management sometimes requires acting with speed and aggression. Managing the risk of a CFTC investigation is no different.

For example, the CFTC often leads information demands with overly broad requests, so targets should file (or threaten) a cost-shifting application in court rather than cooperate. In cross-border matters, targets should look for jurisdictional flaws in subpoena demands. Targets should also examine whether CFTC enforcers improperly induced former employees to disclose privileged information. Leveraging mistakes is crucial to achieving favorable outcomes.

In sum, traders that find themselves in the crosshairs of new CFTC investigations and enforcement actions against alleged spoofing and other misconduct need to maintain the flexibility to take aggressive measures as necessary to drive successful outcomes.

For more details on this strategy, click [here](#). To subscribe to more insights like this, click [here](#).

About Kobre & Kim's Government Enforcement Defense Team

Kobre & Kim is an Am Law 200 firm focused exclusively on disputes and investigations that prides itself on serving as zealous and independent advocates in disputes involving government authorities or virtually any private litigant.

Our team, which includes more than twenty former U.S. government lawyers based globally, has served as lead counsel in the most prominent enforcement actions of recent times in the digital currency, futures and derivatives space, with particular experience defending against allegations of market manipulation and disruptive trading brought by agencies such as the U.S. Securities and Exchange Commission and U.S. Commodity Futures Trading Commission.