

Insights



Benjamin Sauter, Jonathan Cogan and Lydia Halpern on Standing Up to the CFTC's Wash Trading Theories in Traders Magazine

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The U.S. Commodity Futures Trading Commission (CFTC) has a [reputation of overreach](#), asserting aggressive legal theories in hopes of bulldozing companies into submission. Their target now is on wash trading but, as Kobre & Kim's Benjamin Sauter, Jonathan Cogan and Lydia Halpern write in *Traders Magazine*, their theories are just as dubious as before, and traders should not be afraid to push back.

The CFTC's authority over wash trading is not as broad as they would like companies to believe. For instance, the Commodity Exchange Act excludes spot commodity markets from its wash trading prohibitions, a deliberate choice by Congress. The CFTC attempts to get around this by charging wash trading as a different violation, such as market manipulation. This is another legal theory with no support in courts that is ripe for challenge.

In addition, not all trades that produce a wash result is prohibited. In derivative markets, wash trading requires specific intent, and good faith trading is allowed, yet the CFTC's new theories seem to cover even inadvertent wash trades. The authors conclude that, with the CFTC on shaky legal ground, traders can enhance outcomes by standing up to the regulator's overreach.

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