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Insights

U.S. Federal Judge Sides with Kobre & Kim in Potentially Far-Reaching Spoofing Decision

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Kobre & Kim successfully persuaded a U.S. federal judge to dismiss a spoofing charge against a former Merrill Lynch trader on October 16, *Reuters* reported, a decision that may affect how prosecutors decide to charge violations of the anti-spoofing statute in the future.

The U.S. Department of Justice accused John Pacilio of engaging in a scheme of five instances of spoofing, making fake orders to manipulate the precious metals futures markets. However, agreeing with arguments by Kobre & Kim's case team, led by David McGill, Jonathan Cogan and Matthew Menchel, the judge ruled that the anti-spoofing statute does not criminalize schemes involving spoofing. Rather, prosecutors need to point to discrete instances of alleged spoofing.

The issue with charging spoofing as a scheme, besides the statute not authorizing it, is that it could lead to a jury convicting Pacilio of spoofing even if they did not unanimously agree which particular transaction was illegal. Even if the jury did unanimously agree on a particular transaction, the charge's loose language might allow prosecutors to charge Pacilio again on other transactions, opening the door to double jeopardy concerns.

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