

Zhao's Spoofing Plea Deal Telegraphs More To Come In 2019

By Lanny Breuer and Laura Brookover

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While the nation's attention was on the government shutdown, the U.S. Department of Justice quietly secured its latest guilty plea to criminal spoofing charges.

On Dec. 26, 2018, Jiongsheng "Jim" Zhao pleaded guilty to one count of spoofing in the U.S. District Court for the Northern District of Illinois as part of a deal with the DOJ.[1]

Zhao, a proprietary firm trader who resides in Australia, was charged in January 2018 as part of a dual-agency "spoofing takedown" that saw criminal and civil charges filed against three banks, a trading software company, and a host of individuals. The U.S. Commodity Futures Trading Commission's civil case against Zhao, part of that same takedown, has been stayed several times and remains pending.[2]

In the DOJ's criminal complaint, Zhao was charged with wire fraud, commodity fraud, spoofing, and false statements to a registered entity. The latter two charges are based on provisions of the Commodity Exchange Act. The CEA is primarily enforced by the CFTC, but the DOJ can also charge violations as crimes.

In the plea deal, the government dropped all charges against Zhao but one: spoofing. Zhao admitted to placing thousands of orders on a Chicago-based futures exchange that he intended to cancel before execution. He also admitted that his intent was to trick other market participants into believing that he actually wanted to trade the orders, so as to move price to his advantage.

And, even though the false statements charge was dropped, Zhao admitted to the charge's underlying conduct. According to his plea agreement, in 2016 the futures exchange began investigating Zhao's trading activity. Zhao admitted to giving false and misleading explanations to the futures exchange to try to cover up his spoofing. Those explanations were the basis for the DOJ's false statements charge.

The government and Zhao are jointly recommending to U.S. District Judge John Tharp a sentence of 12 months and one day, with credit for time served in Australia (while Zhao awaited extradition) and in the United States.



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As part of his plea deal, Zhao agrees to cooperate with the government “in any criminal, civil, or administrative proceeding.” Sentencing is postponed until the conclusion of Zhao’s cooperation — an indication that his cooperation is ongoing.

According to news reports, at the Dec. 26 guilty plea hearing Zhao’s attorney told Judge Tharp that his client made only \$21,000 from the illegal conduct.

This guilty plea by Zhao, along with other case developments last year, telegraph what may be in store for spoofing enforcement in 2019.

Cases Arising From Cooperation

First, Zhao’s plea deal indicates that the government is taking a systematic approach, securing cooperators to continue to build and bring cases. Zhao is only the latest. In October 2018, trader John Edmond also pleaded guilty to spoofing-related crimes as part of a deal involving cooperation.[3] And in June 2017, trader David Liew did the same.[4] (Liew’s deal has already apparently borne fruit: In July 2018, the DOJ charged two traders, James Vorley and Cedric Chanu, with spoofing crimes, and alleged that they had coordinated their illegal conduct with Liew.)[5]

It’s fair to assume that we’ll see new spoofing cases based on information provided by Zhao, Edmond and others. Something else to look out for in 2019: So far, the DOJ has charged only individuals. Will this year bring charges against institutional actors for crimes relating to spoofing?

Cases Involving Relatively Modest Financial Impact

Second, Zhao’s lawyer told Judge Tharp that his client earned profits of just \$21,000 from spoofing. If so, then the relatively small financial impact in Zhao’s case shows that posting modest profits offers no protection against criminal charges — or jail time.

It also underscores the breadth of the government’s efforts. Zhao’s criminal case was part of the January 2018 spoofing takedown. On the CFTC side, that takedown resulted in multimillion-dollar settlements with global financial institutions. It’s hard to glean a common thread between the defendants being charged with spoofing — aside from the charges themselves. Instead, all signs point to the absence of any particular profile for spoofing defendants.

Enhanced Enforcement as a Result of Interagency Coordination

Finally, until there are signs to the contrary, it can be assumed that coordination between the DOJ and CFTC, first evident in January 2018, will continue. We may soon be able to trace direct benefits to the agencies’ enforcement work from that coordination.

Recall that Zhao’s CFTC case remains pending. The terms of Zhao’s plea deal require him to cooperate in civil matters. That could include CFTC actions — both the case against Zhao himself, and others. By collectively ramping up their spoofing efforts and bringing cases against the same actors, the DOJ and CFTC are poised to maximize their enforcement firepower.

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Disclosure: While on the CFTC's Spoofing Task Force, Laura Brookover worked on CFTC v. Zhao, discussed herein. All information and insights in this article are based on public sources.

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[1] See *United States v. Zhao*, No. 1:18-cr-00024 (N.D. Ill.).

[2] See *CFTC v. Zhao*, No. 1:18-cv-00620 (N.D. Ill.).

[3] See *United States v. Edmonds*, No. 3:18-cr-00239 (D. Conn.).

[4] See *United States v. Liew*, No. 1:17-cr-00001 (N.D. Ill.).

[5] See *United States v. Vorley*, No. 1:18-cr-00035 (N.D. Ill.).