CFTC Enforcement Update:
2020 in Review and Outlook for 2021

21 January 2021

Upcoming Webinars



2020 annual trends in futures and options trading



The SEC’s new derivatives rule: practical implications for funds

Learn more and sign up at FIA.org/webinars



FIA TRAINING

Build a culture of compliance with online training developed by the industry for the industry

Learn more at FIA.org/training
or email training@fia.org





Educate your staff and clients on prohibited and disruptive practices in the industry with FIA Training online courses, which cover:

- Wash trades
- Spoofing
- Front Running
- Corners & Squeezes
- Marking or Banging the Close
- Misleading Statements & Rumors
- Insider Trading

RELEVANT COURSES

- Market Conduct Fundamentals
- Exchange Trading & Regulatory Fundamentals for Electronic Traders
- Key Regulatory & Trading Requirements for Eurex
- Key Features and Regulatory Framework of the London Metal Exchange
- Rules & Regulatory Guidance for CME Group Markets
- Rules & Regulatory Guidance for ICE Futures U.S.
- Trade Surveillance & Regulatory Guidance for the Singapore Exchange

Learn more at FIA.org/training or email training@fia.org

Reminders

The webinar will be recorded and posted to the FIA website following the conclusion of the live webinar.

Please use the “question” function on your webinar control panel to ask a question to the moderator or speakers.

CLE certificates will be emailed shortly after conclusion of the webinar.

Disclaimer: This webinar is intended for informational purposes only and is not intended to provide investment, tax, business, legal or professional advice. Neither FIA nor its members endorse, approve, recommend, or certify any information, opinion, product, or service referenced in this webinar. FIA makes no representations, warranties, or guarantees as to the webinar’s content.

Presenters



Natalie Tynan
MODERATOR
Associate General Counsel and Head of Technology Documentation Strategy, FIA



Uttara Dukkipati
Associate, Covington & Burling, LLP



B. Graves Lee
Associate, Covington & Burling, LLP

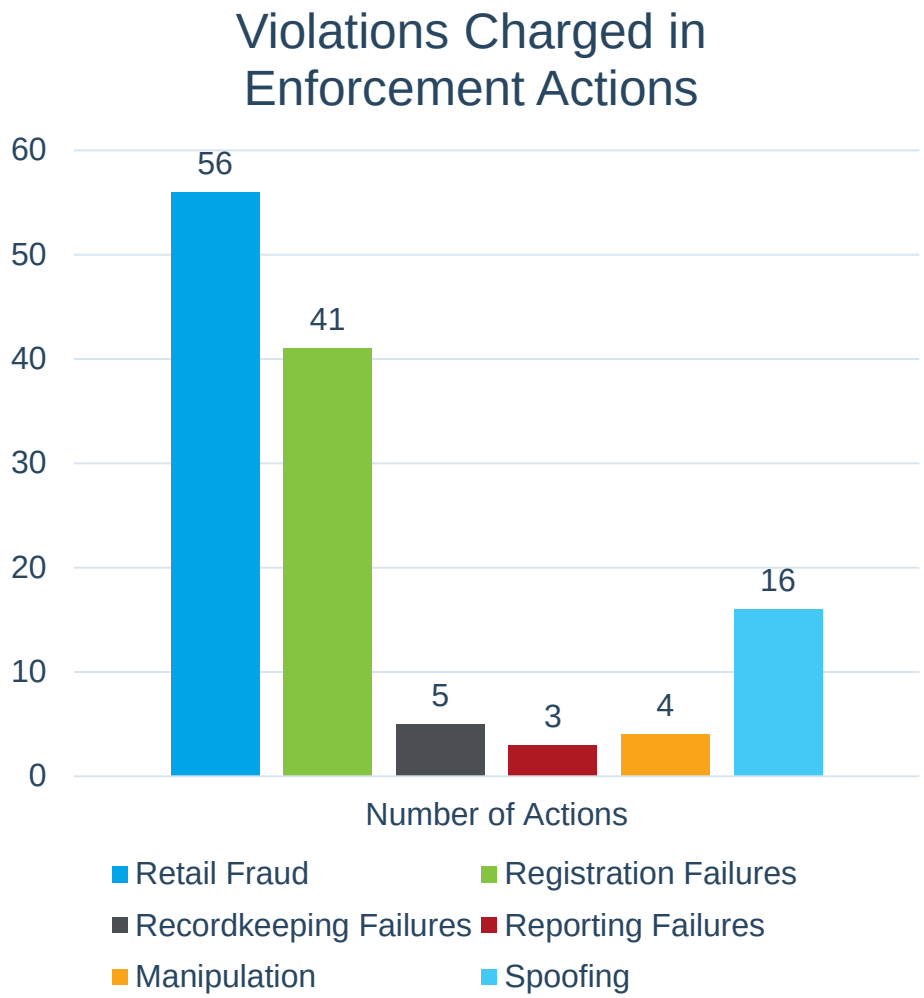


Anne M. Termine
Of Counsel, Covington & Burling, LLP

Overview of CFTC Enforcement Trends

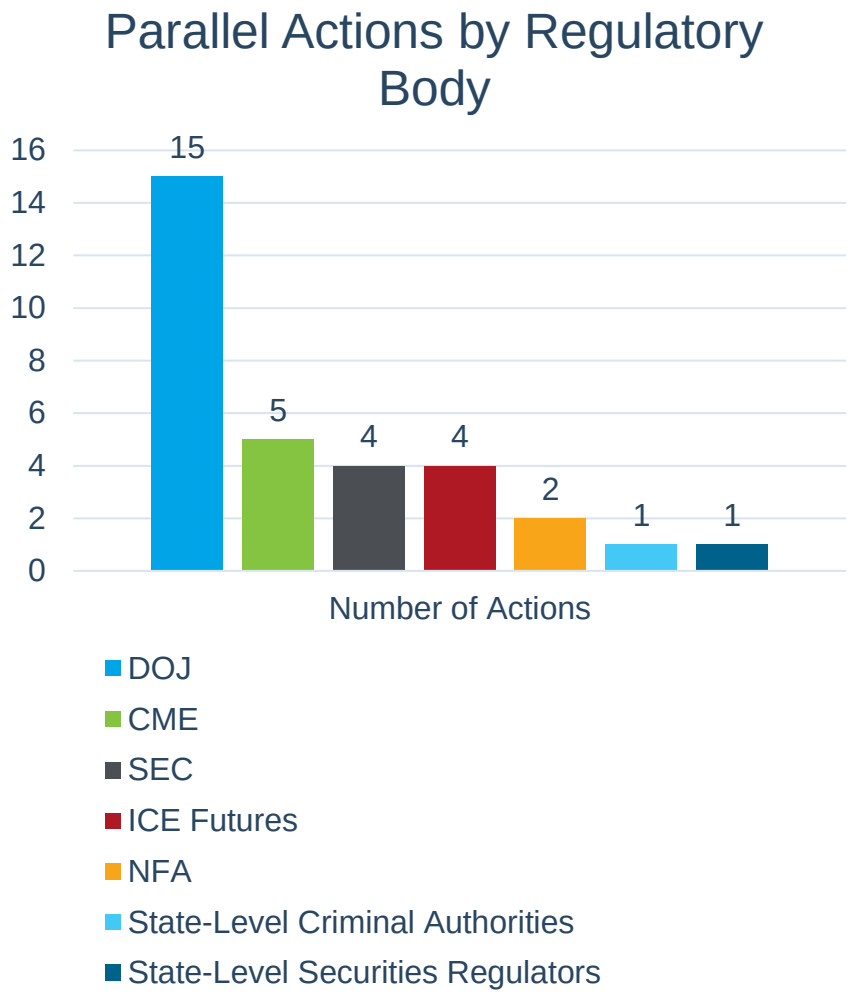
FY 2020 Enforcement Review

- 113 total actions
- Robust caseload of actions involving core CEA violations
- Monetary relief of over $1.3 billion



Operational Highlights from Enforcement

- Key Guidance Documents (Civil Monetary Penalty Guidance + Corporate Compliance Program Guidance)
- Consistent Cooperation with Other Agencies
- Use of Whistleblower Office to Solicit Tips
- Enhanced Market Surveillance and Data Analytics
- Increased Trend of Initiating Active Litigation



Highlights from Enforcement Caseload

- Increased Focus on Digital Assets
- First-Ever Foreign Corrupt Practice Action
- Insider Trading-Style Theories of Manipulation
- Attention to BSA/AML Enforcement
- Record High Volume in Retail Fraud Actions

CFTC Outlook under the Biden Administration

Leadership Changes

CFTC Organization – Commissioners



Chairman Heath P. Tarbert (former)
- Former Under Secretary for International Affairs at the U.S. Department of the Treasury
- Republican
- Term ends 2024



Brian D. Quintenz
- Former Managing Principal and Chief Investment Officer of Saeculum Capital Management
- Republican
- Term expired April 2020



Rostin Behnam
- Former senior counsel to Senator Debbie Stabenow (Dem.- MI), Ranking Member of Senate Ag Committee
- Democrat
- Term ends July 2021

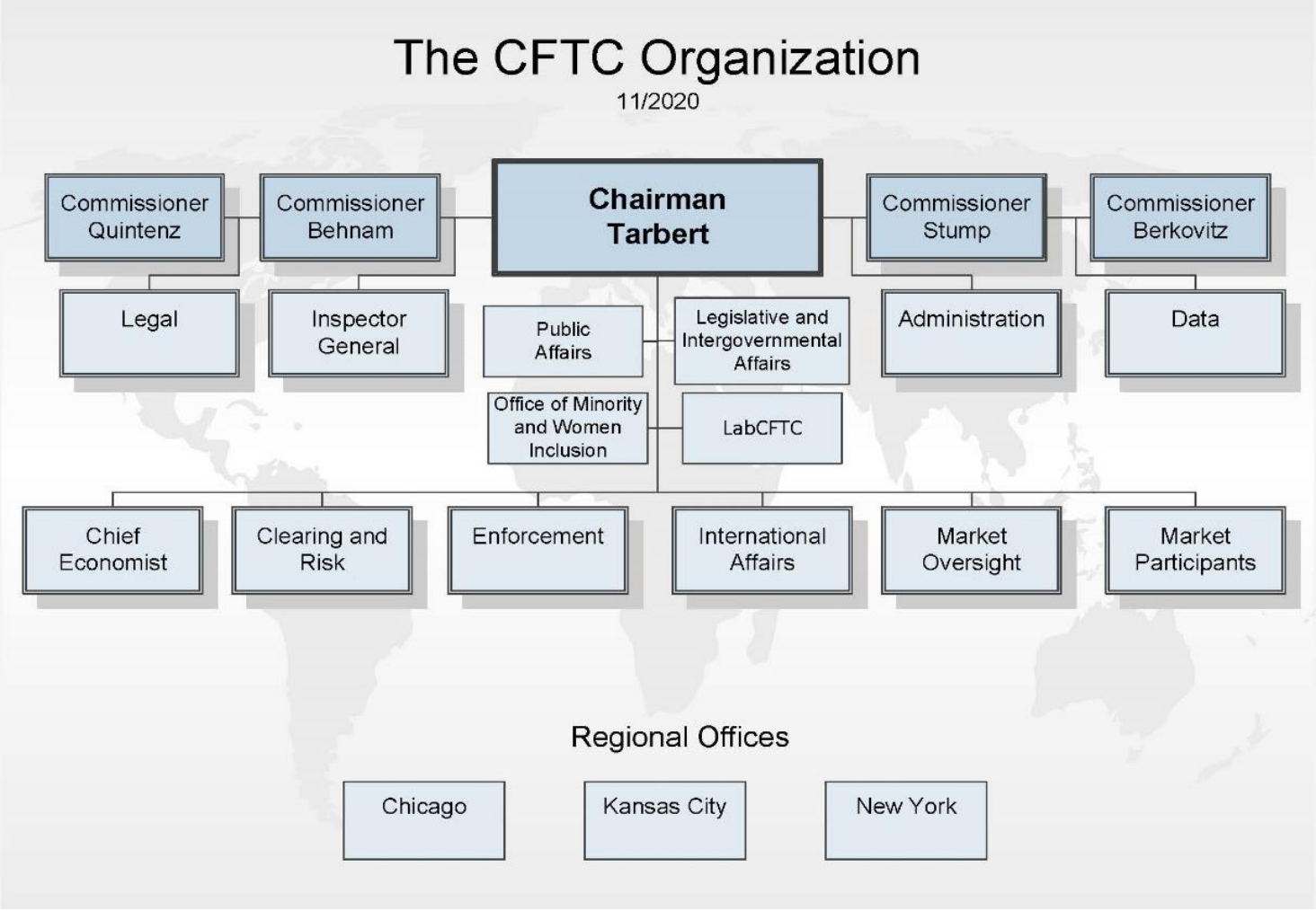


Dawn DeBerry Stump
- Former President of Stump Strategic, a consulting firm
- Former senior executive at the FIA and the NYSE
- Republican
- Term ends April 2022



Dan M. Berkovitz
- Former private practitioner
- Former General Counsel of CFTC
- Democrat
- Term ends April 2023

CFTC Current Organizational Structure



CFTC Organization – Impact of Election



Current Open Positions

- Division of Enforcement
- General Counsel
- Office of Legislative and Intergovernmental Affairs

Possible to Change

- Division of Market Participants
- Division of Market Oversight
- Office of International Affairs

CFTC Outlook under the Biden Administration

Regulatory and Enforcement Outlook

Possible Areas of Regulatory and Enforcement Focus



Regulatory Outlook

- Climate Risk
- Review of Controversial Tarbert-Era Rules, Including Position Limits

Enforcement Outlook

- Emphasis on Customer Protections
- Individual Accountability
- Elimination of Bad Actor Disqualification Waivers

CFTC Regulatory Agenda



2020 – Completion of Chairman Tarbert's Rulemaking Schedule

2021 – Development of New Agenda

2022 – Possible Review of Controversial Rules

CFTC Enforcement – Impact of Election



Resources

- Staff of Approx. 150
- Hampered by Volume of Recent Court Filings

Priorities

- DOJ-Like Aggressive Stance
- Emphasis on Cooperation and Corporate Compliance Programs
- Potential Emphasis on Individuals

Remedies

- High Penalty Amounts for Manipulation
- Recent Democratic Statements on Certain Settlements

Audience Questions

Thank you to our panelists!



Anne M. Termine is Of Counsel at Covington & Burling LLP. She leads the firm's Futures and Derivatives Practice in the Financial Institutions Group and is a member of the White Collar Defense and Investigations Practice. Prior to joining Covington, Anne held a senior role in the Division of Enforcement for the U.S. Commodity Futures Trading Commission (CFTC). While there, Anne notably designed and led the CFTC's landmark enforcement program involving the manipulation and false reporting of LIBOR, Euribor, and TIBOR.



Uttara Dukkipati is an Associate at Covington & Burling LLP. She is a member of the firm's Futures and Derivatives and its Financial Institutions practice groups.



B. Graves Lee is an Associate at Covington & Burling LLP. He is a member of the firm's Futures and Derivatives and its Financial Institutions practice groups.

COVINGTON

