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Second Circuit Clarifies the Standard for Aiding and Abetting Liability under the Commodities Exchange Act

On September 23, 2013, the United States Court of Appeals for the Second Circuit issued a decision clarifying the standard for aiding and abetting liability under the Commodities Exchange Act ("CEA"). The decision, in *In re Amaranth Natural Gas Commodities Litigation*, No. 12-2075-cv (2d Cir. Sept. 23, 2013), affirmed a judgment of the United States District Court for the Southern District of New York, which dismissed a putative class action filed by purchasers of natural gas futures contracts against J.P. Morgan Chase & Co., J.P. Morgan Chase Bank, Inc. and J.P. Morgan Futures, Inc. ("JPMorgan"). The purchaser plaintiffs claimed that Amaranth, a hedge fund for which JPMorgan provided clearing broker services, manipulated natural gas futures prices on the NYMEX commodities exchange, and that JPMorgan aided and abetted Amaranth's manipulation.

Noting that it "has yet to articulate a precise standard for aiding and abetting liability under the CEA," the Second Circuit observed that the aiding and abetting language of the CEA was modeled on the federal statute for criminal aiding and abetting, and that other courts, as well as the Commodity Futures Trading Commission, have previously determined that the standard for aiding and abetting liability under the CEA is the same as that for aiding and abetting under federal criminal law. The Second Circuit agreed with this approach, and held that Judge Learned Hand's formulation of criminal aiding and abetting liability in *United States* v. *Peoni*, 100 F.2d 401, 402 (2d Cir. 1938), "most properly states the standard for aiding and abetting under the CEA." In particular, the Court stated that it would "follow Judge Hand's statement in *Peoni* that aiding and abetting requires the defendant to 'in some sort associate himself with the venture, that he participate in it as in something that he wishes to bring about, [and] that he seek by his action to make it succeed.'" The Court further held that, "in evaluating a complaint alleging aiding and abetting of a violation of the CEA, allegations about the defendant's knowledge, intent, and actions should not be evaluated in isolation, but rather in light of the complaint as a whole."

Applying this standard, the Court noted that the purchaser plaintiffs had alleged that Amaranth manipulated futures contract prices in two ways: (1) by accumulating large open positions that artificially propped up natural gas calendar spreads, and (2) by making trades on NYMEX during the last half hour of trading in the final trading day of a month (referred to by the plaintiffs as "slamming the close"), which allowed Amaranth to profit from separate short positions it held on the ICE exchange. Plaintiffs alleged that JPMorgan had knowledge of these manipulative schemes because it had information on Amaranth's daily trading activity and open positions on NYMEX and ICE, and that JPMorgan participated in the alleged manipulation by clearing the trades, which resulted in commissions and related fees earned by JPMorgan.

The Second Circuit affirmed the district court's ruling that plaintiffs' allegations, considered in connection with the routine clearing services that JPMorgan provided to Amaranth, did not state a claim for aiding and abetting manipulation under the CEA. The Court noted that although JPMorgan may have known about Amaranth's large positions, such holdings did not necessarily imply manipulation. Nor was there any allegation from which the court could conclude that a clearing broker like JPMorgan would know the goal of any particular large position held by its client. And with respect to the "slamming the close" trades, the Court found that JPMorgan did nothing more to assist in those trades than to provide routine clearing firm services, which was not enough to state a claim for aiding and abetting under the CEA.

In affirming the dismissal of plaintiffs' claims, the Second Circuit declined to decide whether the allegations in the complaint were subject to the heightened pleading standard of Rule 9(b), because the Court concluded that plaintiffs' complaint failed to state a claim against JPMorgan even under the more relaxed standard of Rule 8(a)(2).

Paul, Weiss represented JPMorgan in the appeal.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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