

INSIGHTS

District Court Denies Kraft's Motion to Dismiss Claims of Market Manipulation

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On June 27, 2016, a federal judge denied Kraft Foods Group Inc.'s ("Kraft") motion to dismiss a proposed class action against the company for allegedly manipulating the wheat futures market. [\[1\]](#) Harry Ploss, on behalf of himself and a proposed class ("Plaintiffs"), alleged that Kraft manipulated the wheat futures market with the intent to influence prices by engaging in two primary schemes: 1) the "long wheat futures scheme," whereby Kraft allegedly maintained an "enormous" long position in wheat futures, never intended to be used to meet its commercial needs, with the improper intent to push prices in the cash market down; and 2) the "wash trading scheme," whereby Kraft allegedly engaged in non bona-fide exchange for physical ("EFP") transactions between two of Kraft's own accounts and without a physical exchange of wheat, which were then reported to the public as legitimate transactions.

In the June 27 Order, U.S. District Judge Edmond E. Chang denied Kraft's motion to dismiss each of the manipulation claims related to the "long wheat futures scheme" and related antitrust, principal-agent liability and unjust enrichment claims, finding that Plaintiffs had adequately pled scienter and all the elements of a manipulation claim under both Section 6(c)(1) and Section 9(a)(2) of the Commodity Exchange Act ("CEA"). [\[2\]](#) Kraft argued that the Section 6(c)(1) manipulation claims should be dismissed because Plaintiffs failed to allege that the company made any misrepresentation or omission. However, relying heavily on a December 2015 district court ruling on a motion to dismiss in a parallel enforcement action against Kraft by the Commodity Futures Trading Commission ("CFTC"), [\[3\]](#) Judge Chang found that explicit misrepresentations are not required in analogous Section 10(b) securities actions and therefore are similarly not required in the commodities context. Judge Chang, quoting *CFTC v. Kraft*, held that plaintiffs may plead manipulation under Section 6(c)(1) "by alleging that a defendant had an improper motive in making its commodities transactions and that it 'misle[d] or cheat[ed] the market through [its] actions, rather than through [its] representations.'" Kraft similarly argued that the Section 9(a)(2) manipulation claims should be dismissed, but the court found that Plaintiffs had properly pled all four elements of a manipulation claim under that section: 1) ability to influence prices; 2) existence of an artificial price; 3) defendant caused artificial price, and 4) intent. Kraft argued that it did not have the ability to influence prices, because it did not disseminate any false information that would have affected market prices, but the Court found that a manipulation claim under Section 9(a)(2), similar to Section 6(c)(1), does not require a misstatement or omission, but instead can "be based on a trader's actions, not just her statements."

While the Court denied Kraft's motion to dismiss the Section 6(c)(1) and Section 9(a)(2) claims related to the "long wheat futures scheme," it dismissed all Plaintiffs' claims related to the "wash trading scheme," without prejudice. Because Plaintiffs' brought these claims pursuant to Sections 6(c)(1) and 9(a), instead of pursuant to the prohibition of wash trades in Section 4c,^[4] Kraft argued that Plaintiffs had to demonstrate how prices were artificial, how Plaintiffs were harmed as a result, and how Kraft benefitted from the scheme. According to Kraft, Plaintiffs failed to plead these facts with specificity and thus their allegations as to the "wash trading scheme" were merely "conclusory"—the Court agreed. Plaintiffs will have the opportunity to seek leave to amend their claims as to the "wash trading scheme," to fill in the gaps as to how the allegedly non bona-fide EFP transactions impacted prices and how Kraft may have benefited from any such price impact.

The Order only addressed Kraft's motion to dismiss, not the merits of the case, and thus accepted all of Plaintiffs' allegations as true for purposes of its ruling. Judge Chang noted that some of the evidence presented by Plaintiffs in support of their manipulation allegations could be interpreted instead as supporting Kraft's claim that the long wheat futures position was in fact legitimate.

The Order in its entirety can be viewed here:

<http://assets.law360news.com/0811000/811232/kraftwheat.pdf>

^[1] *Ploss v. Kraft Foods Group, Inc. et al*, 1:15-cv-02937, No. 15 C 2937 (N.D. Ill. June 27, 2016).

^[2] The Court addressed, but did not determine, whether the proper pleading standard for Section 6(c)(1) claims is Rule 8(a) or the heightened pleading standard for fraud found under Rule 9(b). The Court held that it did not need to decide which standard was applicable, because Plaintiffs' had met the tougher pleading requirements of Rule 9(b) and thus the claims could go forward under either standard.

^[3] *CFTC v. Kraft Foods Group, Inc. et al*, 2015 WL 9259885 (N.D. Ill. Dec. 18, 2015).

^[4] Private rights of action pursuant to Section 4c are not permitted.