# FINANCIAL LITIGATION INSIGHT

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**Welcome**

**Welcome to *Financial Litigation Insight,* a periodic newsletter that is designed to highlight current key issues and cases in the financial litigation area.**

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**Contributing Writers**

Thomas B. Hatch
Thomas C. Mahlum
Stacey P. Slaughter
Mahesha P. Subbaraman

## China's Forbidden Investment: Emerging Legal Risks for Investors Who Deal with Chinese Variable Interest Entity (VIE) Structures

Thomas B. Hatch, Stacey P. Slaughter & Mahesha P. Subbaraman

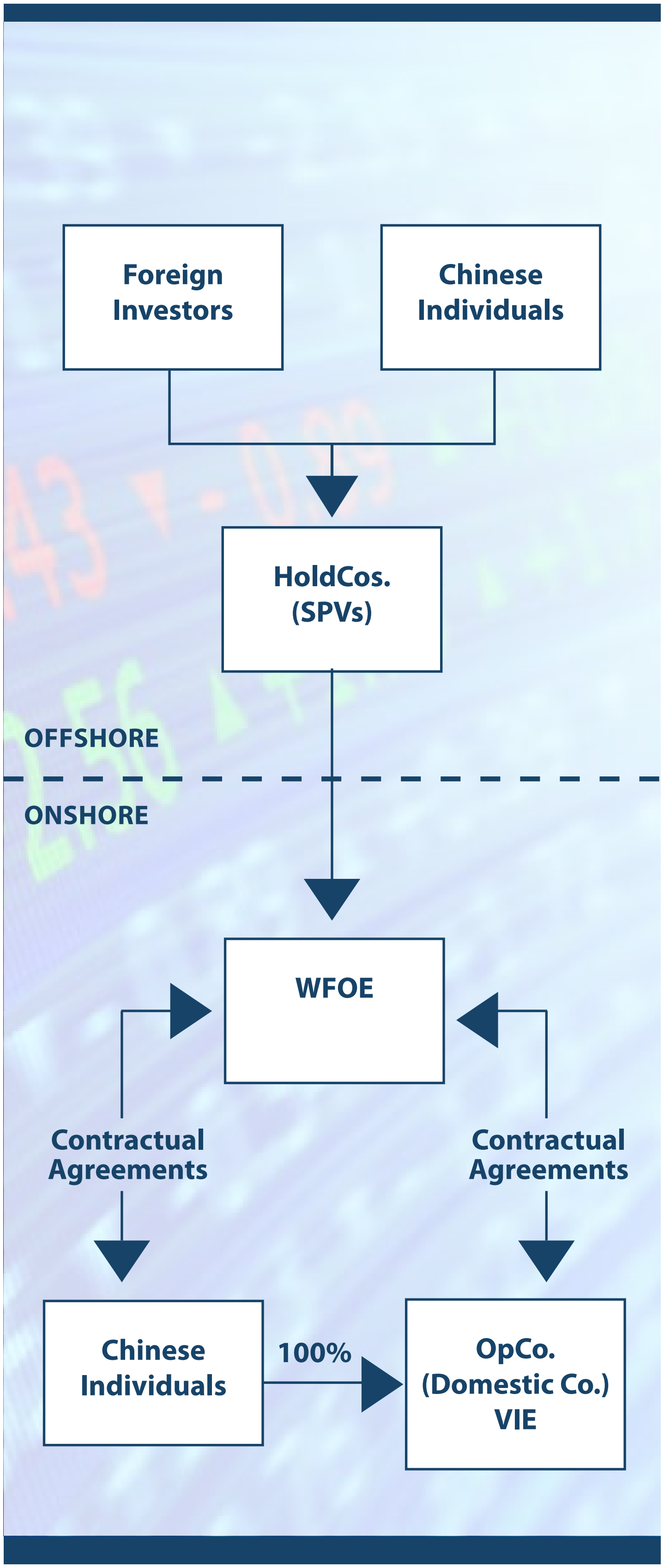
Over the last decade, the number of Chinese companies listed on American stock exchanges has exploded. In 2010 alone, 38 Chinese companies went public in the U.S.—nearly a quarter of the IPOs in the U.S. that year. American stock exchanges are now home to some of the most influential companies in China today, like Baidu (NASDAQ: BIDU), a Chinese language search engine that outranks Google as the most popular website in China; Youku (NYSE: YOKU), a leading Chinese Internet video provider that attracts 200 million unique visitors a month; and RenRen (NASDAQ: RENN), a social networking site widely hailed as the "Facebook of China." Investors worldwide have embraced these U.S.-listed Chinese companies as a critical gateway into China's rapidly developing economy and untapped market of more than 1.4 billion consumers.

This gateway owes its existence to an unusual legal structure forged under U.S. accounting rules called the "variable interest entity" (or VIE) structure. Under the VIE structure, Chinese companies like Baidu are able to merge their financial "on the books" existence with U.S.-listed offshore holding corporations or shell corporations owned by foreign investors. About 42% of U.S.-listed Chinese companies use the VIE structure. But this arrangement comes with a big catch: it violates Chinese prohibitions on foreign investment, thus exposing foreign investors to great financial and legal risk.

This article examines: (1) the VIE structure and its pervasive use among Chinese companies; (2) recent developments indicating the doubtful legal viability of the VIE structure; and (3) how investors worldwide are using litigation to redress this reality.

### The VIE Structure and How It Enables Foreign Investment in Chinese Companies

The "variable interest entity" (VIE) structure officially emerged in January 2003, when the Financial Accounting Standards Board (FASB) issued accounting guideline FIN 46R. The purpose of FIN 46R was to end the kind of fraud that Enron committed during the early 2000s by using off-"balance sheet" legal entities to hide




Enron's many financial liabilities. FIN 46R therefore required American companies to consolidate into their financial statements the net assets, liabilities, and activities of all their "variable interest entities"—that is, any legal entity whose business conduct put most of its returns or most of its risk-of-loss into the hands of an American company, even if the American company did not control the entity through a majority voting interest. In short, under FIN 46R, American companies could no longer pretend they did not own the financial liabilities of their VIEs. At the same time, FIN 46R also meant American companies could take financial credit for VIE assets they did not actually own.

FIN 46R thus opened the door to a flood of Chinese companies that wanted to list on American stock exchanges but could not without violating the strict ban imposed by China on foreign ownership in certain economic sectors such as telecommunications and the Internet. Under the VIE structure, companies like Baidu could now enter U.S. exchanges as the sum of: (1) a wholly Chinese-owned operating company licensed to do business in China ("OpCo"); and (2) an offshore holding company or shell company ("HoldCo") subsidized by foreign investors. While Chinese law prohibited the HoldCo from directly owning shares of the OpCo, the HoldCo could nevertheless contract with the OpCo in a way that gave the HoldCo near total control over the OpCo. Such *virtual* ownership could be conveyed through loan agreements, equity pledge agreements, call option agreements, technical support agreements, and power-of-attorney agreements between the OpCo and either the HoldCo or a "Wholly Foreign Owned Enterprise" (WFOE) created by the HoldCo under Chinese law. Then, since these legal agreements put a majority of the OpCo's revenues and losses into the HoldCo's hands, the HoldCo could treat the OpCo as a VIE and consolidate the OpCo's assets (e.g., licenses, facilities, etc.) onto the HoldCo's balance sheets. The HoldCo could also effect a "reverse merger" with the VIE for IPO purposes (i.e., a shell company consuming its parent).

U.S.-listed Chinese companies have since reaped huge benefits by using the VIE structure to list on American exchanges—and not just in terms of gaining access to billions in foreign capital. IPOs that involve "reverse mergers" require no formal underwriting and the prospectuses for such IPOs are not reviewed by the SEC. Accordingly, a U.S. "reverse merger" can occur in just three months and cost less than $1 million. This translates to the reality that in 2010, about 42% of U.S.-listed Chinese companies were using the VIE structure, and between January 2007 and March 2010, 159 of the 215 Chinese companies that listed in the U.S. did so via reverse mergers.

**Recent Developments Indicate the Doubtful Legal Viability of Chinese VIEs**

While U.S.-listed Chinese companies have benefited significantly from their use of the VIE structure in recent years, they have also exposed investors to major (and often undisclosed) legal and financial risks. These risks derive from the basic reality that when investors buy shares of U.S.-listed Chinese companies using the VIE structure, they are not assuming direct ownership of a value-generating Chinese operating company—instead, they only control an offshore holding company or shell company whose entire value hinges on the validity of its contracts with its Chinese counterpart under the VIE structure. As the following recent developments indicate, however, these VIE contracts may not be worth even the paper they are written on.

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**1. Unenforceable Contracts.** Article 52 of China's Contract Law states that a contract is void when "a lawful form is used to conceal an unlawful purpose." The VIE structure thus appears to violate Chinese law since Chinese companies are using it to conceal foreign investment in forbidden sectors. This has exposed foreign investors to the risk that Chinese VIEs may readily breach their contracts with their U.S.-listed counterparts because Chinese courts will not enforce "illegal" VIE contracts. This is the situation faced by Gigamedia, a U.S.-listed Taiwanese video game company that acquired control of T2CN, an online game company. T2CN, in turn, controlled two Chinese VIEs. In early 2010, Gigamedia fired the Chinese executive who ran T2CN, but the executive refused to surrender his personal ownership of the operating licenses for the VIEs—licenses vital to Gigamedia's business in China. Gigamedia has yet to recover the licenses despite suing the executive in multiple jurisdictions including China.

**2. Chinese Clampdown.** Even if a Chinese VIE faithfully honors all of the legal agreements it has made with its U.S.-listed counterpart, foreign investors are not off the hook. Given the essential invalidity of the VIE structure under Chinese law, foreign investors are still faced with the reality that Chinese regulators can at any time decide to shut down a particular VIE or ban all VIEs. Of course, China has generally acquiesced to the proliferation of the VIE structure within its economy over the last decade, with Chinese authorities not reviewing or requiring approval of VIE arrangements.

Several recent government actions, however, indicate that foreign investors can no longer take such acquiescence for granted. In March 2011, local authorities in the Heibei Province scuttled Buddha Steel's plans to go public in the U.S. through a "reverse merger" with its Chinese VIE, a steel plant in the province. The local officials told Buddha Steel that Buddha's VIE contracts with the plant violated Chinese law, leading Buddha to terminate the contracts and the IPO. China's Ministry of Commerce (MOFCOM) recently voiced the same conclusion through its adoption of a new national security review policy on mergers and acquisitions, banning the use of "contractual controls" as a means of bypassing China's bar on foreign investment in certain sectors. Finally, a leaked memo from the China Securities Regulatory Commission (CSRC) indicates the desire of the CSRC to mandate that Chinese companies first get MOFCOM and CSRC approval before using the VIE structure to list overseas.

**3. American Clampdown.** Chinese officials are not alone in their doubts about the viability of the VIE structure. Consider the case of China MediaExpress ("CME"), China's largest TV mobile-advertising operator whose listing on NASDAQ in 2009 occurred through a "reverse merger" that received no formal underwriting or SEC review. In January 2011, *Forbes China* ranked CME the #1 small-to-mid-sized company in China with "the most potential." In February 2011, allegations surfaced that CME was fraudulently inflating its revenues, causing CME's stock price to drop 48%. In March 2011, CME's outside auditor Deloitte Touche Tohmatsu resigned, stating "it was no longer able to rely on the representations of management." NASDAQ suspended CME from trading in April 2011 and finally delisted CME in December 2011.

Unfortunately, the story of CME is not unique: since February 2011, more than 40 U.S.-listed Chinese companies have reported accounting irregularities or have been forced to halt trading due to suspected irregularities. This trend ultimately prompted the SEC in June 2011 to issue a bulletin to investors about "instances of fraud and other abuses involving reverse merger companies." The SEC has also sent comment letters over the last two years to several major U.S.-listed Chinese companies attempting to learn more about these companies' VIE structures. Taken together, these efforts tend to reflect SEC Commissioner Luis Aguilar's recent declaration that "[w]hile the vast majority of [U.S.-listed Chinese companies] may be legitimate businesses, a growing number of them have accounting deficiencies or are outright vessels of fraud."

Of the 188 federal securities class action lawsuits filed in 2011, 33 involved suits against U.S.-listed Chinese companies.

**Litigation Strategies Enabling Investors to Redress the Risks of Chinese VIEs**

Given the multitude of frequently undisclosed—if not financially devastating—risks prevailing among U.S.-listed Chinese companies of late, investors are increasingly turning to the courts for relief. Of the 188 federal securities class action lawsuits filed in 2011, 33 involved suits against U.S.-listed Chinese companies. And with each passing day, these suits are gaining more and more traction in federal district courts.

**1. Bringing Suit.** In filing securities class action suits against U.S.-listed Chinese companies in American courts, investors are primarily raising claims under Section 10(b)—and its implementing regulation, SEC Rule 10b-5—of the Securities Exchange Act of 1934, Sections 11 and Section 12(a)(2) of the Securities Act of 1933, and their corresponding "control person" liability sections (Section 15 or Section 20(a)).

Section 10(b) claims may be seen in cases like *Henning v. Orient Paper, Inc.,* No. 2:10-cv-06887-VBF-AJW (C.D. Cal. 2011), where shareholders sued a Chinese paper company, Orient Paper, that obtained its NYSE listing through a reverse merger. Taking aim at Orient Paper's use of the VIE structure, the shareholders alleged that Orient Paper used its 2008 10-K statement to mislead investors into believing that Orient Paper owned its Chinese VIE counterpart. In fact, the VIE was really owned by Orient Paper's CEO and Orient Paper only had a contractual right to 80% of the VIE's profits.

Section 11 and 12(a)(2) claims may be seen in cases like *In re Agria Corp. Securities Litigation*, No. 1:08-cv-03536-WHP (S.D.N.Y. 2009), which involved claims against Agria, a U.S.-listed Chinese holding company (NYSE: GRO) that sought to advance farming in China through a Chinese VIE called Primalights III Agricultural Development Co. ("P3A"). Agria conducted its IPO in November 2007, raising over $282 million. But in April 2008, Agria publicly reported that it likely would not be able to file its 10-K Annual Report on time, due in part to the sudden resignation of its Chief Operating Officer (COO). Agria's share price collapsed and Agria's shareholders sued, alleging that Agria's IPO Registration Statement mislead investors by representing that Agria's VIE structure allowed Agria to "exercise effective control over P3A." But Agria's control over P3A rested entirely on the goodwill of P3A's four shareholders, one of whom was Agria's COO—and Agria never disclosed that Agria's CEO and COO were fighting over executive pay issues, thus gutting Agria's ability to effectively control P3A.

Finally, control person liability claims are being asserted against the directors and officers of failed U.S.-listed Chinese companies. But since many of these executives are Chinese citizens—and Chinese courts are unwilling to enforce U.S. judgments against Chinese citizens—investors are also suing the auditors and underwriters that enabled the proliferation of the VIE structure in the first place. For instance, in *Munoz v. China Expert Technology, Inc.*, No. 1:07-cv-10531-AKH (S.D.N.Y. 2007), shareholder-plaintiffs amended their Section 10(b) claims four times against a U.S.-listed Chinese company's outside auditors—PKF New York and BDO McCabe—before a federal judge found these claims plausible enough to survive the auditors' motion-to-dismiss.

Investors are also hoping to recover from American companies like Yahoo that have failed to fully disclose their close association with U.S.-listed Chinese companies with risky VIE structures. Indeed, in a securities class action filed in 2011, Yahoo shareholders alleged that Yahoo failed to disclose and to mitigate the risks posed by Yahoo's $1 billion stake in Alibaba Group Holdings—a Chinese investment holding company whose extensive use of the VIE structure enabled Alibaba's CEO to transfer Alibaba's most valuable asset—online payment processor Alipay—out of Yahoo's control, thus devaluing Yahoo's stake in Alibaba along with Yahoo's share price.

**2. Avoiding Dismissal.** The securities class actions that have been filed against U.S.-listed Chinese companies over the last few years are enjoying mixed success. Investors have faced setbacks in some cases, like *Katz v. China Century Dragon Media*, *Inc.*, No. 2:11-cv-02769-JAK (C.D. Cal. Nov. 30, 2011), where a federal district court dismissed (without prejudice) Section 11, 12, and 15 claims brought by shareholders against a U.S.-listed Chinese advertising media provider. While China Dragon's shareholders accused the company of inflating its revenues in its IPO while providing accurate figures to Chinese authorities, the court found these claims lacking, since the shareholders failed to explain why the difference in financial reporting was not simply the result of differences between Chinese and U.S. accounting principles.

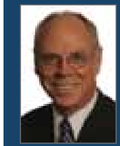
But cases like *China Century Dragon Media* are appearing more the exception than the rule, as federal courts green-light ever greater numbers of class actions against U.S.-listed Chinese companies and their outside auditors. Examples of this emerging trend include the cases of *China Expert Technology*, *Inc.* and *Orient Paper* discussed above. There is also *In re China Education Alliance Securities Litigation*, No. 2:10-cv-09239-CAS-JC (C.D. Cal. Oct. 11, 2011), where a federal district court let Section 10(b) claims proceed against a U.S.-listed Chinese company because the plaintiffs had "adequately allege[d] that [the company's] SEC filings are demonstrably higher than its Chinese filings."

**3. Brokering Settlements.** A track record of settlement is quickly beginning to develop among securities class actions against U.S.-listed Chinese companies. Consider *In re Agria Corp. Securities Litigation*, No. 1:08-cv-03536-WHP (S.D.N.Y. 2009), described above, where shareholder-plaintiffs have settled their Section 11 and 12(a)(2) claims for $3.75 million. Or consider *Murdeshwar v. SearchMedia Holdings Ltd.*, No. 1:11-cv-20549-KMW (S.D. Fla. 2010), where shareholders-plaintiffs raising Section 10(b) claims have reached a partial tentative settlement of $2.75 million with SearchMedia Holdings—a U.S.-listed Chinese advertising provider. Both the Agria and SearchMedia settlements are being paid for almost entirely by each company's D&O insurance policies.

Of course, shareholders still do face certain procedural difficulties in advancing their claims against U.S.-listed Chinese companies to the settlement stage—but such plaintiffs are also quickly overcoming these barriers. Consider *In re LDK Solar Securities Litigation*, No. 07-cv-05182 (N.D. Cal. 2008), where shareholders of the U.S.-listed Chinese solar panel manufacturer LDK Solar were initially unable to serve papers on those of LDK's directors and officers residing in China. The court ultimately allowed the suit to proceed, however, agreeing with the plaintiffs that LDK's officers could be served via papers delivered to LDK's U.S. office. The suit has since survived a motion to dismiss and produced a $16 million settlement for the shareholder-plaintiffs.

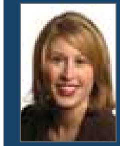
**Conclusion**

For Chinese companies looking to enter the U.S. economy without running afoul of Chinese bans on foreign investment, the VIE structure has proven a remarkable boon. But investors have since been stuck with the bill for this legal misadventure, and litigation may ultimately constitute their best hope for recovering from the present and ever-burgeoning risks now clearly posed by China's "forbidden investment."

**Thomas B. Hatch**

Thomas Hatch leads the firm's Financial Litigation Group. He represents clients in various types of financial litigation with an emphasis on representing institutional investors. He graduated *magna cum laude* from William Mitchell College of Law.



**Stacey P. Slaughter**

Stacey Slaughter received her J.D., *cum laude*, from the University of Minnesota Law School. She is a partner in the Business Litigation Group, with a focus on complex litigation, financial litigation, and antitrust litigation.

**Mahesha P. Subbaraman**

Mahesha Subbaraman is an associate in the Business Litigation Group. He attended the University of Minnesota Law School where he graduated *magna cum laude*, Order of the Coif, Dean's List.

FINANCIAL LITIGATION INSIGHT

# Beyond Supply & Demand: Manipulation in the Commodities Markets

Thomas B. Hatch and Thomas C. Mahlum



The Commodity Exchange Act (CEA) makes it unlawful for anyone to manipulate—or try to manipulate—the price of a nationally traded commodity. The Commodity Futures Trading Commission (CFTC), which regulates commodity futures and options markets, has significantly increased its enforcement filings and investigations of alleged instances of market manipulation in the last two years. For example, reports indicate that the CFTC is currently investigating the silver market and certain energy markets for potential manipulation.

Yet, individual claims for manipulation remain relatively uncommon. The CEA allows traders who suspect manipulation as the source of their losses to sue the person or group they think tried to influence market prices. To succeed, these claims need to show the creation of an artificial market price. Proving artificial price means demonstrating that something other than legitimate market forces affected a commodity's price during the period of alleged manipulation. Sometimes an otherwise legitimate transaction may run afoul of the CEA if it is combined with an improper motive.

**Understanding Manipulation**

The CEA prohibits the manipulation or attempted manipulation of the price of commodities and futures contracts and the prohibition may be enforced by the CFTC or a private party.[1] The CEA does not define the term "manipulate." The CFTC and federal courts agree that manipulation means the intentional creation of an artificial price by forces other than supply and demand, but no more definite a test exists.[2] Instead, manipulation cases tend to require a fact-specific, case-by-case analysis.[3] As stated by the Eighth Circuit Court of Appeals:

> [T]he test of manipulation must largely be a practical one if the purposes of the Commodity Exchange Act are to be accomplished. The methods and techniques of manipulation are limited only by the ingenuity of man. The aim must be therefore to discover whether conduct has been intentionally engaged in which has resulted in a price which does not reflect basic forces of supply and demand.[4]

The two most discussed forms of market manipulation are the market "squeeze" and the market "corner." A corner occurs, for example, when a dominant market player has a near monopoly holding of a cash commodity and also holds "long" futures contracts to buy in excess of the amount of the commodity actually available. The shorts—who must either provide the commodity or find off-setting long contracts to meet their future "sell" obligations—are then cornered into paying the price dictated by the dominant market player.[5] In a squeeze, there may not be an effort to obtain an actual monopoly of the cash commodity, but supplies are low for other reasons and open interests on the futures market considerably exceed that supply.[6]

Manipulation cases may also involve fraud, deceit, the use of false information or violation of exchange rules. For example, in *United States v. Reliant Energy Servs.*,[7] a criminal case, a trader/supplier was accused of using deceit and misinformation to manipulate the California electricity market. To avoid losses on a long position and increase the price of electricity, the trader/supplier sought to create the appearance of an electricity shortage. The claimed manipulation included unnecessary plant shut-downs and the withholding of available electricity as well as dissemination of false and misleading rumors and information about available electricity to market participants. The allegations were sufficient to sustain criminal indictments.

But actionable manipulation does not have to include fraud or a "corner" or "squeeze." Legitimate transactions coupled with illegitimate intent or improper motive can also constitute market manipulation under the CEA.[8] Improper motive can serve as the basis of a claim for manipulation because motive is directly related to the legitimacy of the signals regarding value or worth that are the heart of a true market price. Wrongful intent distorts the legitimate forces of supply and demand that are otherwise assumed to have created the market price. The court in *In re Amaranth Natural Gas Commodities Litigation* gave this explanation: "Because every transaction signals that the buyer and the seller have legitimate economic motives for the transaction, if either party lacks that motivation, the signal is inaccurate. *Thus a legitimate transaction combined with improper motive is commodities manipulation*."[9]

**Proving an Improper Motive Market Manipulation Claim**

Under the CEA a claim for market manipulation exists when (1) the defendant possessed an ability to influence market prices; (2) an artificial price existed; (3) the defendant caused the artificial price; and (4) the defendant specifically intended to cause the artificial price.[10] A manipulation claim involving a legitimate transaction combined with an improper motive must satisfy each of these elements.

Proof of intent and artificial price are interrelated—especially when the claimed manipulation rests on improper motive.

Proof of intent and artificial price are interrelated—especially when the claimed manipulation rests on improper motive. Artificial price is defined as one which does not reflect the basic forces of supply and demand, though there is no universally accepted measure or test of price artificiality.[11] Instead, courts look to:

> [T]he aggregate forces of supply and demand and search for those factors . . . which are not a legitimate part of the economic pricing of the commodity. . . . [W]hen a price is affected by a factor which is not legitimate, the resulting price is necessarily artificial. Thus, the focus should not be as much on the ultimate price as on the nature of the factors causing it.[12]

Wrongful intent can be a factor causing artificial price. For example, if a buyer on a commodities exchange intentionally pays more than required for the purpose of causing the price to be higher than it otherwise would, the resultant price has not been determined solely by the forces of supply and demand and is, consequently, artificial.[13] Proving intent requires demonstrating that "the accused acted . . . with the purpose or conscious object of causing or effecting a price or price trend in the market that did not reflect legitimate forces of supply and demand."[14] Intent is generally established inferentially from the conduct surrounding the alleged manipulation, most often through circumstantial evidence.[15] The intent to influence market price at an amount other than what would normally prevail is intent to create an artificial price.[16]

The link between improper motive and artificial price has been discussed in a number of manipulation cases involving otherwise legitimate market transactions. In *In re Henner*,[17] a trader bought eggs right before the closing bell on a particular day and, for the purpose of increasing the closing price, bid at a price substantially above where the previous transactions had occurred. The reviewing judicial officer deemed that the trader's intent resulted in an artificial price.[18] In *CFTC v. Enron*,[19] the CFTC alleged a scheme among Enron traders to manipulate the natural gas market. The court refused to dismiss the CFTC's complaint finding the "buying spree" at the heart of the manipulation allegation helped establish both artificial price and intent to cause the price. In *Anderson v. Daily Famers of America*,[20] a dairy collective allegedly bought cheese in effort to shore up prices and protect a long position in a related market. The *Anderson* court found that to determine the existence of an artificial price for the purposes of a CEA manipulation claim, the appropriate inquiry "is whether the specific facts of a case support a finding that the commodity price was determined by forces other than legitimate supply and demand and whether a defendant intended to cause that artificial price."[21] Making the connection between an intention to cause an artificial price and the existence of an artificial price will necessarily require a fact-specific, case-by-case analysis, given the near limitless possible underlying reasons and methods and techniques of manipulation.[22]

Market manipulation claims involving improper motive also require proof of an ability to influence prices and causation of an artificial price. Like artificial price and intent, ability and causation are related.[23] Market control is not necessary. Buying or selling large amounts of a commodity, particularly in a concentrated time period, can show both an ability to influence price and causation of an artificial price, especially in thinly traded markets.[24] In *In re Amaranth*, a group of natural gas traders acquired a large number of long contracts and began a practice of selling off a significant number of them in the last half hour of trading in order to depress market prices to benefit a position held in another market. The court found that ability to control the market and causation of an artificial price had been adequately pled on allegations that the traders' scheme depressed the price of gas during the time the traders controlled 40% of the outstanding gas futures on the market during the relevant time period and executed 70% of the market's trades.[25]

## Conclusion

Market prices for commodities and futures should reflect the legitimate forces of supply and demand. Market manipulation occurs when traders leave genuine economic purpose behind and seek to distort a natural market price. Transactions involving actual risk to the buyer or seller are not spared from the market manipulation inquiry. When combined with an ability to influence prices, actual risk-taking transactions motivated by a wrongful intent that cause an artificial price may qualify as actionable manipulation under the CEA—potentially allowing recovery by individual traders harmed by the manipulation as well as civil and other penalties imposed by the CFTC.

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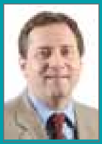
1. 7 U.S.C. §§ 13 (a)(2), 13(b), 25(a)(1). In addition, Section 753 of the Dodd-Frank Wall Street Reform and Consumer Protection Act amends the CEA to prohibit any person using or attempting to use any manipulative or deceptive device or contrivance in connection with any swap, contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity. The text of the new section is patterned after Section 10(b) of the Securities Exchange Act of 1934, which has been interpreted by courts to cover intentional or reckless conduct that deceives or defrauds market participants.
2. *See, e.g.*, *Frey v. CFTC*, 931 F.2d 1171, 1175 (7th Cir. 1991).
3. *See, e.g.*, *In re Soybean Futures Litig*., 892 F. Supp. 1025, 1044 (N.D. Ill. 1995).
4. *Cargill, Inc. v. Hardin*, 452 F.2d 1154 (8th Cir. 1971).
5. *Cargill*, 452 F.2d at 1162.
6. *CFTC v. Enron*, No. H-03-909, 2004 BL 2929, *7 (S.D. Tex. 3/9/04).
7. *United States v. Reliant Energy Servs*., 420 F. Supp. 2d 1043, 1058-60 (N.D. Cal. 2006).
8. *In re Amaranth Natural Gas Commodities Litig*., 587 F. Supp. 2d 513, 530 (S.D.N.Y 2008).
9. *Id*. at 534. (Emphasis added).
10. *Id*. at 530. *See also Anderson v. Dairy Farmers of America, Inc*., No. 08-4726 (D. Minn. 9/30/10).
11. *In re Soybean Futures Litig*., 892 F. Supp. 1025, 1047 (N.D. III 1995).
12. *In re Ind. Farm Bureau Coop Ass'n*, [1982-1984 Transfer Blinder] Comm. Fut. Law. Rep. (CCH) ¶21, 766 at 27,288 n.2.
13. *Enron*, No. H-03-909, 2004 BL 2929 at *10.
14. *Indiana Farm Bureau*, ¶ 21,796 at 27,283.
15. *Id*.
16. *Reliant Energy*, 420 F. Supp. at 1058-59.
17. *In re Henner*, 30 Agric. Dec. 1151 (1971).
18. *Id*. at 1198.
19. *Enron*, No. H-03-909, 2004 BL 2929 at *8-9.
20. *Anderson v. Dairy Farmers of America, Inc*., No. 08-4726 (D. Minn. 9/30/10).
21. *Id*. at 10-11.
22. *Cargill*, 452 F.2d at 1163.
23. *In re Amaranth*, 587 F. Supp. at 530.
24. *See Enron*, No. H-03-909, 2004 BL 2929 at *9.
25. *In re Amaranth*, 587 F. Supp. At 530.


**Thomas B. Hatch**

Thomas Hatch leads the firm's Financial Litigation Group. He represents clients in various types of financial litigation with an emphasis on representing institutional investors. He graduated *magna cum laude* from William Mitchell College of Law.



**Thomas C. Mahlum**

Thomas Mahlum is a partner at Robins, Kaplan, Miller & Ciresi L.L.P., practicing in the areas of business litigation, intellectual property litigation, trademark infringement litigation, and international arbitration. He attended the University of Minnesota Law School, *magna cum laude.*


**For more information:**


Thomas B. Hatch
800 LaSalle Avenue
2800 LaSalle Plaza
Minneapolis, MN 55402
612.349.8206 (phone)
612.339.4181 (fax)
tbhatch@rkmc.com

Christopher P. Sullivan
800 Boylston Street
25th Floor
Boston, MA 02199
617.859.2724 (phone)
617.267.8288 (fax)
cpsullivan@rkmc.com

Richard R. Zabel, C.P.A.
800 LaSalle Avenue
2800 LaSalle Plaza
Minneapolis, MN 55402
612.349.0669 (phone)
612.339.4181 (fax)
rrzabel@rkmc.com