

OCC Dismisses Multimillion Dollar Enforcement Actions Against Two Forex Traders - One Trader Sues His Former Employer; the Other Sues the OCC/CFTC/DOJ

By: Lisa Weingarten Richards

On Wednesday, July 7, 2021, the OCC voluntarily dismissed two individual agency administrative enforcement actions it had brought against two foreign exchange traders, Richard Usher and Rohan Ramchandani, who worked for JPMC and Citigroup, respectively. The OCC had alleged that Usher and Ramchandani had, along with others, conspired together in a chat room (called “the Cartel”) from 2007 through 2013, to manipulate prices in the spot forex market. Usher and Ramchandani both asserted that their behavior was accepted industry practice at the time they performed the acts in question.

Both men had also been previously charged of conspiring to violate the Sherman Act, due to market manipulation, by the U.S. Department of Justice (DOJ) in the Southern District of New York (SDNY) for those actions. However, both individuals were ultimately cleared of all charges by a federal jury in the SDNY in 2018.

The OCC’s two administrative enforcement actions, based upon the same underlying forex market activities, were issued January 9, 2017, and initially each enforcement action included a claim for a 5 million-dollar fine pursuant to 12 U.S.C. § 1818(i) along with a permanent ban from working for any U.S. insured depository institution (called an “order of prohibition”) pursuant to 12 U.S.C. § 1818(e).¹ These enforcement actions had been stayed pending the SDNY criminal trial.

On August 11, 2020, approximately two years after Usher and Ramchandani prevailed at the SDNY, the OCC issued amended orders for each man which reduced these claimed fines to 1.5 million dollars each and which again also sought to prohibit both men from working for any insured U.S. depository institution.²

As a notable twist, after prevailing in the SDNY criminal trial, Ramchandani brought a collateral lawsuit against Citigroup alleging malicious prosecution for a “secret scheme to dirty up Ramchandani and suggest that he is a wrongdoer,” and for implicating him “without probable cause” in order to appease regulators after being fined billions of dollars.³ In March 2021, the SDNY denied Citigroup’s motion to dismiss Ramchandani’s lawsuit. It will be interesting to see how Ramchandani’s action against Citi unfolds.

¹ In the Matter of Rohan Ramchandani, Former Head of European Fx Spot Trading Citibank, N.a. Sioux Falls, South Dakota, 2017 WL 3017344; In the Matter of Richard Usher, Former Head of Emea Fx Spot Trading Jpmorgan Chase Bank, N.a. Columbus, Ohio, 2017 WL 3017345.

² In the Matter of Rohan Ramchandani, Former Head of European Fx Spot Trading Citibank, N.a. Sioux Falls, South Dakota, 2020 WL 8185107; In the Matter of Richard Usher, Former Head of Emea Fx Spot Trading Jpmorgan Chase Bank, N.a. Columbus, Ohio, 2020 WL 8185106.

³ Ramchandani v. Citigroup, Inc., No. 1:19-cv-9124 (SDNY); Ramchandani v. Citigroup, Inc., No. 19 CIV. 9124 (VM), 2021 WL 930627, (S.D.N.Y. Mar. 11, 2021).

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For more information

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Meanwhile Usher also brought two related actions, one against the DOJ,⁴ March 11, 2021 and one against the CFTC,⁵ March 19, 2021, due to withholding “exculpatory evidence” from him for use in his defense against the OCC. On July 16, 2021, shortly after the OCC’s July 7, 2021 dismissal of its administrative actions against the two traders, Usher indicated an intent to file suit against the OCC seeking “post-dismissal relief” due to, in part, “constitutional and civil rights violations.” He is “evaluating his options” for pursuing relief against the OCC including under the Equal Access to Justice Act, Federal Tort Claims Act, and *Bivens*, as well as for equitable relief. After providing notice to the court that he intended to seek relief against the OCC, he requested stays in his lawsuits against the DOJ and the CFTC. The DC District Court granted the stays for a 30-day period and required the parties to provide a joint status report of the next steps in litigation at that time.

The OCC has not explained if there is or is not any connection between the various lawsuits brought by Usher and Ramchandani and the OCC’s decision to drop the agency administrative actions against the two men. Now it appears that shortly after the OCC dropped the action against the two men, actions will be taken against the OCC by at least one of the men. Taken together, this chain of events certainly creates an interesting timeline. Given this obviously unfavorable result for the OCC, which took years to unfold, it is worth considering the elements of the OCC’s decision-making processes when it chooses to pursue an enforcement action.

OCC’s General Enforcement Action Process against Institution-Affiliated Parties

The OCC is authorized under 12 U.S.C. § 1818 to bring actions against OCC-regulated institutions or institution-affiliated parties (IAPs) (a term which generally refers to individuals employed by those institutions). The OCC often brings approximately 50 formal enforcement actions against IAPs each year. Often the IAPs have already been terminated from their employment at the OCC-regulated institution at which they have performed the act(s) at issue.

The OCC follows a prescribed process when bringing an enforcement action against an IAP or an OCC-regulated institution. The process begins with the bank examiner, who has noted a potential issue, contacting the appropriate OCC supervisory office along with appropriate OCC legal staff. Such consultation continues as the OCC staff investigates and researches the concern to determine whether an action is warranted and legally supportable. At times, this investigation culminates in an internal, confidential, alternative supervisory response, which may include the issuance of a reprimand or supervisory letter to an IAP. At other times, the investigation culminates in a formal action, such as it did with Usher and Ramchandani. The OCC is permitted to use discretion; although there is an OCC matrix with guidelines in determining when to bring an enforcement action, the OCC also says it is not bound by these guidelines.

Ultimately, a decision to pursue an enforcement action is made by the OCC’s upper management, consisting of the relevant supervisory review committee: 1) such as the Washington Supervisory Review Committee (WSRC), at times coupled with the Major Matters Supervisory Review Committee (MMSRC); or 2) one of the District Supervisory Review Committees (DSRC) or Midsized Supervisory Review Committee (MSRC).

The more significant enforcement matters are handled by Enforcement and Compliance (E&C) (a subgroup of the OCC’s Law Department in the Washington, DC, Headquarters office) coupled with a first-level formal decision made by Washington Supervision Review Committee (WSRC). The WSRC reviews enforcement action recommendations

⁴ [Usher v. U.S. Department of Justice et al.](#), No. 1:21-cv-00654 (D.D.C.).

⁵ [Usher v. U.S. Commodity Futures Trading Commission](#), No. 1:21-cv-00736 (D.D.C.).






within its authority and serves as an advisory committee for the appropriate Senior Deputy Comptroller, who makes the final decision for his or her cases and/or decides whether to refer the case to the MMSRC. The less significant matters are handled by District Legal Counsel (legal counsel based in one of the District offices, rather than Headquarters) along with DSRC or MSRC. Additionally, in certain cases, Senior Deputy Comptrollers re-delegate authority to initiate, negotiate, execute, modify, or terminate enforcement actions-- including IAP enforcement actions -- to other OCC officers.

In the Usher and Ramchandani matters, the initial 2017 OCC enforcement actions which included claims for fines of \$5 million each were approved by a Deputy Comptroller of Large Bank Supervision (currently, there are four Deputy Comptrollers of Large Bank Supervision). The 2020 amended enforcement actions, issued after Usher and Ramchandani prevailed in the underlying criminal case in SDNY, were also approved by a Deputy Comptroller of Large Bank Supervision (though each by a different Deputy than the single Deputy who approved both the 2017 enforcement actions, possibly due to a change in staffing at the OCC that had occurred between the time the two actions occurred).

The timeline is clearly interesting, but because the OCC has several possible options for deciding such matters; and there is a committee that makes the determination; and there have been staffing changes over the years, including a new Acting Comptroller; it is unclear who made the decision to withdraw the case or exactly why the decision was made.

It is also surprising, given the number of levels of review and the outcomes in the collateral matters, that the OCC continued to pursue these actions against the traders as long as they did. One might think the OCC would have dropped the cases based upon the developments that occurred after the OCC filed the actions. It is instructive for those clients who need to deal with the OCC that its processes sometimes seem to get derailed by a determination to pursue a matter even in the face of negative developments.

Murphy & McGonigle's attorneys have decades of experience in dealing with the OCC both internally and externally and can assist in the defense of enforcement actions and the analysis of and responses to other matters coming from that Agency.

				
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