3 Rulings Show Hurdles To Proving Market Manipulation Fraud

By **Matthew Beville and Alexandrea Rahill** (August 29, 2025)

Matthew Beville

Alexandrea Rahill

Establishing that criminal defendants engaged in market manipulation is extremely difficult, often due to the difficulty in establishing that they created prices that did not reflect legitimate sources of supply or demand.

These challenges are particularly acute in matters involving so-called micromanipulations, in which the artificial price impacts may be short-lived or confounded by other market activity, and open-market manipulations, which are accomplished solely through trading activity without allegedly fraudulent statements.

In response to these challenges, prosecutors have often sought alternative avenues to charge this activity, such as by imposing duties of confidence between arm's-length counterparties or suggesting that the defendant's activities constituted implicit misrepresentations. Three recent decisions from New York federal courts highlight the challenges of that approach.

District Court Overturns Jury Verdict in U.S. v. Eisenberg

The first is U.S. v. Eisenberg, a May decision from the U.S. District Court for the Southern District of New York overturning a jury verdict against a trader based, in part, on insufficient evidence to support a conviction of wire fraud.

On Jan. 9, 2023, the U.S. Department of Justice charged crypto asset trader Avraham Eisenberg with commodities fraud, commodities manipulation and wire fraud for allegedly stealing over $100 million in cryptocurrency by defrauding a decentralized crypto trading platform that offered a native crypto token, MNGO, and a derivative product called the MNGO perpetual, a perpetual future on the MNGO token.[1] As relevant to this matter, the platform also allowed participants to borrow against the value of their positions on the platform, secured only by the value of their on-platform positions.

As set forth in the court's order, in October 2022, Eisenberg created two accounts on the crypto trading platform and established offsetting positions in MNGO perpetuals. Eisenberg then bought large quantities of the spot MNGO token on three other trading platforms, which allegedly artificially inflated the value of his long MNGO perpetual position.[2]

He then borrowed against the long position on the original platform. After obtaining the loan, Eisenberg sold MNGO on the other three platforms, causing the MNGO price to fall and increasing the value of his short MNGO perpetual position. He then borrowed more from the platform, using his short position as collateral. In total, he borrowed — with no intent to repay — over $100 million in cryptocurrency, effectively all of the assets on the platform.[3]

Following a nine-day jury trial, Eisenberg was convicted of commodities fraud, commodities manipulation and wire fraud. In May, the court granted Eisenberg's motion under Rule 29 of the Federal Rules of Criminal Procedure, overturning the jury verdict and acquitting Eisenberg of the wire fraud charge and vacating his commodities fraud and commodities manipulation convictions.[4]

With respect to the manipulation claims, the court found that Eisenberg had manipulated the MNGO price to obtain loans based on the positions he had artificially inflated. However, the court overturned his commodities fraud and commodities manipulation convictions based on lack of venue because the prosecution did not introduce sufficient evidence that the offenses occurred in New York.[5]

With respect to the wire fraud charge, the court found that the government had not established a material misrepresentation. Eisenberg argued that his conduct was not prohibited by the platform, as it was a "permissionless and automatic" protocol, and accordingly, that what he represented to the platform could not influence the platform's decision to lend to him.[6]

The court agreed, holding that there was "insufficient evidence of falsity" to support a wire fraud charge because the platform had no "rules, instructions, or prohibitions about borrowing," no prohibition against manipulation, no formal requirement that a borrower repay, and no requirement to maintain sufficient collateral.[7]

In reaching this conclusion, the court rejected the government's argument that Eisenberg "implicitly represented" that his collateral had not been manipulated and was valuable because the platform did not have rules prohibiting such conduct or otherwise imposing conditions on loans to participants beyond the market price of the collateral.[8] Thus, while the court found that Eisenberg had engaged in manipulation — that was potentially chargeable in another district — he did not make a material misrepresentation sufficient to establish wire fraud.

Interestingly, this decision highlights the limits of Eisenberg's arguments that his actions were entirely lawful because they were permitted by the exchange's functionality. While a platform's code-enabled functionality can be relevant in determining whether conduct on the platform is fraudulent or manipulative — because the platform's functionality can define the expectations and conditions on which participants interact — the court did not find those factors relevant in assessing the lawfulness of conduct that occurred on, or otherwise affected, prices on other trading platforms.

That conduct, and specifically the alleged manipulation of MNGO tokens on other platforms, was judged based on its impact to the broader market, and not within the confines of the platform.

Second Circuit Voids Prior Conviction in Johnson v. U.S.

The second decision is the U.S. Court of Appeals for the Second Circuit's July 17 ruling in Johnson v. U.S. overturning the conviction of Mark Johnson, the former head of foreign exchange trading at a large international bank.

In 2017, Johnson was convicted of wire fraud and conspiracy to commit wire fraud by a jury in the U.S. District Court for the Eastern District of New York.[9] Johnson served a two-year prison sentence.

The underlying facts related to Johnson's alleged attempt to manipulate the 3 p.m. fix price for British pounds.[10]

The foreign exchange market does not have a closing price like the stock market; instead, vendors publish a fix price, which is a benchmark exchange rate for the pair of currencies being traded. In a fix transaction, the dealer agrees to sell currency to the client at a rate determined by the fix at a set future time. The dealer must first buy sufficient currency to fulfill the order, or fill it from the dealer's proprietary account.

For large transactions, market participants often accumulate currency prior to the fix through a practice known as prehedging, which can help protect the dealer against adverse price movements and the market impact that would result if it were forced to accumulate the entire position in the fixing window. If done appropriately, this practice can provide better execution costs to counterparties and reduce uncertainty for dealers.[11]

As stated in the Second Circuit's order, in October 2011, Johnson secured a mandate from a corporate client relating to its plan to sell a subsidiary for U.S. dollars, convert the dollars to British pounds and pay the proceeds to shareholders.[12] On Dec. 7, the client placed orders for approximately £2.25 billion at the 3 p.m. fix.[13]

Before the client placed the order, traders on Johnson's desk began accumulating inventory, ultimately acquiring more pounds than required to fill the client's order.[14] The bank bought £1.2 billion in the final six minutes before the 3 p.m. fix. The price of pounds reached the highest point of the day at the 3 p.m. fix, which caused the client to express concern about the price increase.[15] The bank thereafter sold the remaining pounds to third parties, resulting in earnings for the bank's proprietary books.[16]

In 2016, Johnson was indicted on 10 counts of wire fraud and one count of conspiracy to commit wire fraud.[17] At trial, the government advanced two theories of wire fraud.

First, under the misappropriation theory, [18] Johnson allegedly breached a duty by using the client's confidential information to trade for his proprietary account. Second, under the right-to-control theory, Johnson allegedly breached an implicit representation that the bank would not intentionally affect the price of spot pounds, depriving the company of pricing information central to the deal.[19] Johnson was convicted under both theories. On appeal in 2019, the Second Circuit upheld his conviction under the right-to-control theory and did not reach the misappropriation theory.[20]

In 2023, two months before Johnson completed his sentence, the U.S. Supreme Court invalidated the right-to-control theory of wire fraud in Ciminelli v. U.S.,[21] finding that wire fraud only applies to deprivations of traditional property interests. Shortly after the Supreme Court's ruling, Johnson filed a petition for a writ of coram nobis with the sentencing court, which was denied.[22]

On appeal, the Second Circuit overturned the conviction. Although not explicit, the court suggested that the "pricing information that went to the core of the deal," which the client was allegedly deprived of, was not a traditional property interest.[23]

The court also rejected the government's argument that the error was harmless because the jury also convicted Johnson on the misappropriation theory. The court found that the government's case under the misappropriation theory was "so weak" that it was "highly unlikely that a reasonable jury would have reached unanimous agreement on the more complicated and contestable misappropriation theory."[24]

To prevail on the misappropriation theory, the government was required to demonstrate that

> (1) the Defendant entered into a relationship of trust and confidence with [the client]; (2) [the client] provided the Defendant with confidential information in the course of such a relationship; (3) the defendant ... secretly used that information for his own benefit, under circumstances where that use could or did result in a tangible harm to [the client]; and (4) the defendant acted with knowledge and fraudulent intent.[25]

With regard to the first element, the court found it unlikely that a jury would have unanimously found that the element was met because the bank explicitly disclaimed any fiduciary duty to the client.[26] With regard to the third element, the court found that the government did not convincingly prove that Johnson actually misappropriated any information because the trader in charge of the execution testified that he did as he normally would, which was inconsistent with the government's theory that Johnson used the client's confidential information in a "knowingly impermissible way."[27]

As a result, the court found that the inclusion of the erroneous right-to-control theory was not harmless and that reversal was warranted.

Second Circuit Vacates Insider Trading Conviction in U.S. v. Chastain

Third, on July 31, 2025, the Second Circuit vacated a wire fraud and money laundering conviction for Nathaniel Chastain, the manager of a non-fungible token marketplace, who was accused of misappropriating confidential information to purchase NFTs that he knew would be featured on the marketplace's homepage and selling them after the price increased following the feature.[28]

At trial, Chastain argued that the selection of which NFTs to feature did not provide commercial value to the company. The Southern District of New York instructed the jury that it could still find the defendant guilty even if the allegedly misappropriated information lacked commercial value to his employer.[29]

On appeal, the Second Circuit agreed with the defendant that "confidential business information must have commercial value to a company to qualify as its property under the wire fraud statute."[30] Under this standard, "Information cannot qualify as a traditional property interest if its holder has no economic interest in its exclusive use or in otherwise keeping the information confidential."[31]

While this does not require a showing of actual economic loss, it does require proof that the defendant's actions "deprived [the information's owner] of its right to exclusive [use] of its proprietary information" and that the defendant did more than "depart[] from traditional notions of fundamental honesty and fair play."[32] Because the evidence did not conclusively establish that the marketplace treated information about its NFT selections as having commercial value, the court vacated the conviction and remanded for further proceedings.

U.S. Circuit Judge José Cabranes dissented in part, finding that the court "devise[d] a new requirement" that the government show that "the information possesses commercial value."[33] Judge Cabranes said he would have affirmed the conviction, writing that the decision ignores Second Circuit and Supreme Court precedent holding that confidential business information on its own can be considered property for purposes of a wire fraud conviction.[34]

Takeaways

These decisions highlight the challenges that prosecutors face in establishing fraud and market manipulation and suggest that courts are becoming increasingly reluctant to apply novel theories to find criminal fraud liability for alleged market manipulation.[35]

Together, these matters suggest that prosecutors may face continued difficulty in bringing novel fraud or manipulation cases, such as where, like in Eisenberg, there were no express violations of platform rules; or like in Johnson, the distinction between illegitimate front-running and legitimate prehedging risk is hard to define.

They also suggest that prosecutors will be required to establish that the allegedly misappropriated information had demonstrable commercial value. As a result, prosecutors may be more reluctant to charge conduct, like prehedging and inaccurate trader talk, that could be viewed as commercial matters between arm's length counterparties.

For defense counsel, these matters also provide a framework for rebutting allegations of market misconduct. Having a deep understanding of market conventions and expectations can be crucial for advancing arguments that alleged misconduct was, in fact, accepted practice and would not have been viewed as misleading or inconsistent with the terms of participating on the relevant venue.

Similarly, understanding the economic rationale and necessary market impact of trading strategies is extremely important for establishing that the conduct had a legitimate purpose and did not result in artificial prices. More fundamentally, these matters provide a foundation for resisting attempts to expand the scope of criminal liability in market conduct cases, particularly in cases that may be difficult to prove under traditional concepts of fraud and manipulation.

Matthew Beville is a partner and Alexandrea Rahill is counsel at WilmerHale.

[1] United States v. Eisenberg, No. 23-CR-10 (AS), 2025 WL 1489248 (S.D.N.Y. May 23, 2025).

[2] Id. at *3.

[3] Id. Notably, four days after this activity, Eisenberg posted a statement on Twitter admitting to engaging in the conduct, which he called a "highly profitable trading strategy," but asserted his actions were "legal open market actions."

[4] Id. at *27.

[5] In particular, the court noted that Eisenberg was not in New York when the offense occurred and that there were no allegations that Mango Markets or the other third-party trading platforms were located in New York. While the government alleged that one of Mango Markets' users was in New York and that one of the trading platforms relied on a

New York-based technology vendor, the court found that these contacts were insufficient to support the convictions.

[6] Id. at *23.

[7] Id. at *24-25.

[8] Id. at *25.

[9] United States v. Johnson, No. 1:16-CR-00457-NGG, 2018 WL 10517628, at *1 (E.D.N.Y. May 10, 2018).

[10] Johnson v. United States, No. 24-1221, 2025 WL 1966390 (2d Cir. July 17, 2025).

[11] The FX Global Code, which has been adopted by most major FX market participants, provides guidance for when pre-hedging is appropriate. See FX Global Code, Principle 11: A Market Participant should only Pre-Hedge Client orders when acting as a Principal, and should do so fairly and with transparency (Dec. 2024), available at https://www.globalfxc.org/uploads/fx_global.pdf. Principle 11 states that market participants may pre-hedge "in a manner that is not meant to disadvantage the Client or disrupt the market" and should communicate pre-hedging practices to clients "in a manner meant to enable Clients to understand their choices as to execution." Id. In July 2023, the European Securities and Markets Authority (ESMA) published a report warning of the risks of pre-hedging but finding that the practice should remain legal. See ESMA Report on the Call for Evidence on pre-hedging (July 12, 2023), available at https://www.esma.europa.eu/sites/default/files/2023-07/ESMA70-449-748_Feedback_report_on_pre-hedging.pdf.

[12] 2025 WL 1966390 at *2.

[13] Id. at *4.

[14] Before the transaction, Johnson also allegedly purchased pounds in his proprietary trading account.

[15] Id. at *5.

[16] Id.

[17] Id.

[18] The misappropriation theory is based on insider trading prosecutions under Section 10(b) of the Securities Exchange Act of 1934.

[19] Id. at 6. In support of this theory, the government alleged that Johnson implicitly represented that he would not intentionally impact the fixing price when he warned one of the client's advisors that other banks could trade in such a way that it inflates the fix.

[20] United States v. Johnson, 945 F.3d 606, 608 (2d Cir. 2019).

[21] 598 U.S. 306 (2023).

[22] Coram nobis is a common law writ used to correct errors after a final conviction. The

Second Circuit has found that a writ of coram nobis should issue "when a petitioner shows '1) there are circumstances compelling such action to achieve justice, 2) sound reasons exist for failure to seek appropriate earlier relief, and 3) the petitioner continues to suffer legal consequences from his conviction that may be remedied by granting of the writ.'" Johnson v. United States, 2025 WL 1966390 at *6.

[23] Id.

[24] Id. at *7, *10.

[25] Id. at *7 (citations omitted).

[26] Id. at *9.

[27] Id.

[28] United States v. Chastain, No. 23-7038, 2025 WL 2165839, at *1 (2d Cir. July 31, 2025).

[29] Id.

[30] Id. at *5.

[31] Id. at *17.

[32] Id. at *19-21.

[33] Id. at *13.

[34] Id. at *13-14.

[35] These setbacks are compounded by prior decisions that rejected prosecutors' attempts to impute duties of confidence between arms-length counterparties. In United States v. Litvak, 889 F.3d 56 (2d Cir. 2018), the Second Circuit overturned the conviction of a former trader under Section 10(b) of the Securities Exchange Act of 1934 for alleged misstatements to a counterparty regarding his profit on a transaction, finding that the district court improperly admitted testimony that the counterparty believed Litvak was acting as a fiduciary agent when such relationship did not exist. Similarly, in United States v. Bogucki, No. 18-CR-00021-CRB-1, 2019 WL 1024959 (N.D. Cal. Mar. 4, 2019), the District Court for the Northern District of California granted a directed verdict in favor of the defendant, the former Head of FX Trading at a large bank, in an alleged frontrunning scheme to manipulate the FX options market prior to a corporate client's transaction. The court found that the government had not satisfied the materiality element of wire fraud, because the operative agreement disclaimed any fiduciary relationship, and "no reasonable jury could conclude beyond a reasonable doubt that it was objectively reasonable for [the client] to be influenced by the [defendant's] statements." Id. at *7.