

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

vs.

MICHAEL COSCIA

No. 14 CR 551

Judge Harry D. Leinenweber

NOTICE OF INTENT TO NARROW PROOF

The UNITED STATES OF AMERICA, by and through its attorney, ZACHARY T. FARDON, United States Attorney for the Northern District of Illinois, hereby provides notice to the defendant and the Court of its intent to narrow proof.

DISCUSSION

I. THE GOVERNMENT INTENDS TO PROVE A VIOLATION OF § 18 U.S.C. 1348(1), NOT A VIOLATION OF 18 U.S.C. § 1348(2).

On October 1, 2014, a federal grand jury returned an indictment against defendant Michael Coscia, charging him with commodities fraud, in violation of 18 U.S.C. § 1348 (Counts One through Six) and violations of the anti-spoofing statute, 7 U.S.C. §§ 6c(a)(5)(C) and 13(a)(2) (Counts Seven through Twelve). Count One of the indictment alleges that defendant “participated in a scheme to defraud other participants in the CME Group markets and ICE Futures Europe market in connection with a commodity for future delivery, and to obtain by means of materially false and fraudulent pretenses, representations, and promises, money and property in connection with the purchase and sale of a commodity for future delivery[.]”

The charged offense, 18 U.S.C. § 1348, contains two means of violating the statute, by either engaging in a (1) scheme to defraud; or (2) a scheme to obtain money or property through the use of false and fraudulent statements and pretenses. *See* 18 U.S.C. § 1348(1) and (2). The government intends to prove a violation of 18 U.S.C. § 1348(1), that defendant participated in a scheme to defraud, and not prove a violation of 18 U.S.C § 1348(2), which involves a scheme to obtain, by means of materially false and fraudulent pretenses, representations and promises, money and property.

The indictment currently alleges two different means of violating the commodities fraud statute, and the government charged them in the conjunctive. *See United States v. Mahaffy*, 693 F.3d 113, 125 (7th Cir. 2012) (noting that Section 1348 contains two means by which the statute can be violated). It is well-settled that the government can indict in the conjunctive but prove in the disjunctive, and this is no different for Section 1348. *See United States v. Hatfield*, 06 CR 550, 2009 WL 2182593 at *3 (E.D.N.Y. Jul 22, 2009) (holding that Section 1348 can be charged in one count conjunctively, but proven disjunctively).

In order to streamline the trial, the government has chosen to proceed only under Section 1348(1)—the scheme to defraud provision—and not both subsections of Section 1348. There is no prejudice to the defendant because he was plainly on notice that both subsections were alleged in the indictment, and that under well-settled law the government could prove them disjunctively. The fact that the

government has chosen to narrow its proof from what is alleged in the indictment can in no way prejudice the defendant.

II. THE GOVERNMENT INTENDS TO PROVE THAT DEFENDANT ENGAGED IN CONDUCT THAT “IS” SPOOFING, NOT “OF THE CHARACTER OF” OR “KNOWN TO THE TRADE AS” SPOOFING.

The anti-spoofing law identifies several ways in which a trade can violate the statute, specifically, that the trade “is, is of the character of, or known to the trade as ‘spoofing.’” 7 U.S.C. § 6c(a)(5)(C). In the indictment, the government alleged this violation in the conjunctive using the word “and,” but now chooses to proceed under the first means of proving a violation of the statute. Specifically, the government intends to prove that the trade identified in each count “is” spoofing, which is defined in the statute as “bidding or offering with the intent to cancel the bid or offer before execution.” *Id.*

This decision will streamline the trial and avoid the need for any litigation as to whether defendant’s trades are “of the character” of spoofing or were “commonly known in the industry” as spoofing. Evidence on these matters, including the industry’s understanding of the term “spoofing,” will be irrelevant.

III. CONCLUSION

Accordingly, the government hereby notifies the defendant and the Court regarding its intent to narrow proof, as set forth above.

Dated: October 5, 2015

Respectfully submitted,

ZACHARY T. FARDON
United States Attorney

By: /s/ Renato Mariotti
RENATO MARIOTTI
SUNIL R. HARJANI
Assistant United States Attorneys
219 South Dearborn Street, 5th Floor
Chicago, Illinois 60604
(312) 886-7855