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Katten Attorneys Examine the Coscia Spoofing Conviction and the Questions It Creates

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Co-head of Katten's Financial Services Litigation practice Christian Kemnitz and Litigation attorneys Peter Wilson and Hannah Koesterer co-authored an article for Bloomberg Law's *Securities Regulation & Law Report* that takes a closer look at the impact of the recent US Court of Appeals' affirmance of the conviction and sentencing of Michael Coscia, the first person criminally prosecuted under the provision of the Commodity Exchange Act prohibiting conduct known as "spoofing." The team examined exactly what spoofing is and the flurry of regulation enforcement activity the statutory provision has unleashed.

The final question is, however, how far will regulators be permitted to push their authority moving forward in cases where the evidence is far less clear? If regulators attempt to prosecute spoofing cases without the kind of overwhelming evidence of orders "specifically designed to be cancelled" that were present in *Coscia*, or if they seek to prosecute conduct "of the character of" or "commonly known to the trade as" spoofing, they will need to persuade courts that they have a principled basis on which to distinguish criminal conduct from legitimate market activity. On that point, *Coscia* is simply the start of a debate, not its conclusion. (Read "*United States v. Coscia*: First Spoofing Conviction Leaves Hard Questions for Another Day," September 4, 2017)

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