

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL COSCIA,

Defendant.

No. 14 CR 551

Hon. Harry D. Leinenweber

ORDER

The Court denies Defendant Michael Coscia's Motion for Bail Pending Appeal [ECF No. 173].

STATEMENT

Defendant Michael Coscia ("Coscia") has moved for bail pending the outcome of his appeal on his convictions for the crimes of commodities fraud and "spoofing." The gist of both crimes was the manipulation of the commodities markets. Coscia's computer program placed large orders that were designed to cancel before execution, with the purpose of moving the market in a favorable direction such that he could reap benefits through small orders placed on the other side.

There is no evidence that Coscia poses a danger to the community or is a flight risk, and the Government does not argue otherwise. The only question is whether Coscia's appeal presents a substantial question of law or fact that likely would lead to the reversal of his conviction. *See United States v. Bilanzich*, 771 F.2d 292, 298 (7th Cir. 1985). If there is such a substantial question, the Court should grant Coscia's release pending his appeal.

Coscia makes much of the fact that his convictions for spoofing and commodities fraud were the first of their kind in the nation - no other criminal defendant has been convicted under those particular statutory provisions. But as the Government correctly points out, the question is not whether the issue on appeal is "novel," but instead whether the issue is "a

close one" that "very well could be decided the other way." *Bilanzich*, 771 F.2d at 298-99. The Court already has rejected Coscia's repeated arguments that the statutes in question are unconstitutionally vague, and it has no more doubt about those decisions now than before. See, e.g., *United States v. Coscia*, 2016 WL 1359370 at \*2 (N.D. Ill. April 6, 2016). Coscia's crimes were simply a high-tech form of market manipulation, and statutory prohibitions against various forms of market manipulation are nothing new. See 15 U.S.C. § 78i. Coscia has failed to differentiate meaningfully his conduct from other, similar prohibited activities. In short, the question of whether the statutes are constitutional as applied to his conduct does not appear to be a close one.

Coscia also argues that there is a substantial question of law as to whether the Court properly calculated the guidelines range in its application of a fourteen-point loss enhancement under Section 2B1.1 of the U.S. Sentencing Guidelines. Under Application Note 3(B) to Section 2B1.1, the Court may use the financial gain resulting from an offense as an alternative measure of loss when the loss amount reasonably cannot be determined. Evidence showed that Coscia had a roughly \$1.4 million gain during the few-week period in which he committed the underlying offenses, and market participants testified at trial to experiencing losses as a result of his conduct. Coscia offers no convincing reason for why the amount he gained is a bad proxy for the loss amount. His manipulation enabled him to make more off of trades than he otherwise would through artificially inflated prices; his gains necessarily corresponded to others' losses.

It is Coscia's burden to show that his appeal presents a substantial question of law, see *Bilanzich*, 771 F.2d at 298, and for the reasons stated above, he has failed to carry that burden. The Court therefore denies his Motion for Bail Pending Appeal.

**SO ORDERED.**

Dated: 9/8/2016



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HARRY D. LEINENWEBER  
United States District Judge