Attorney General James Ends Virtual Currency Trading Platform Bitfinex's Illegal Activities in New York

Bitfinex and Tether Must Submit to Mandatory Reporting on Efforts to Stop New York Trading

Bitfinex and Tether Deceived Clients and Market by Overstating Reserves, Hiding Approximately $850 Million in Losses Around the Globe

NEW YORK – New York Attorney General Letitia James today continued her efforts to protect investors from fraudulent and deceptive virtual or "crypto" currency trading platforms by requiring Bitfinex and Tether to end all trading activity with New Yorkers. Millions around the country and the world today use virtual currencies as decentralized digital currencies — unlike real, regulated government currencies, including the U.S. dollar — to buy goods and services, often times anonymously, through secure online transactions. Stablecoins, specifically, are virtual currencies that are always supposed to have the same real-dollar value. In the case of Tether, the company represented that each of its stablecoins were backed one-to-one by U.S. dollars in reserve. However, an investigation by the Office of the Attorney General (OAG) found that iFinex — the operator of Bitfinex — and Tether made false statements about the backing of the "tether" stablecoin, and about the movement of hundreds of millions of dollars between the two companies to cover up the truth about massive losses by Bitfinex.
An **agreement with iFinex, Tether, and their related entities will require them to cease any further trading activity with New Yorkers, as well as force the companies to pay $18.5 million in penalties, in addition to requiring a number of steps to increase transparency**.

"Bitfinex and Tether recklessly and unlawfully covered-up massive financial losses to keep their scheme going and protect their bottom lines," said **Attorney General James**. "Tether's claims that its virtual currency was fully backed by U.S. dollars at all times was a lie. These companies obscured the true risk investors faced and were operated by unlicensed and unregulated individuals and entities dealing in the darkest corners of the financial system. This resolution makes clear that those trading virtual currencies in New York state who think they can avoid our laws cannot and will not. Last week, we sued to shut down Coinseed for its fraudulent conduct. This week, we're taking action to end Bitfinex and Tether's illegal activities in New York. These legal actions send a clear message that we will stand up to corporate greed whether it comes out of a traditional bank, a virtual currency trading platform, or any other type of financial institution."

A Stablecoin Without Stability – Tethers Weren't Fully Backed At All Times

The OAG's investigation found that, starting no later than mid-2017, Tether had no access to banking, anywhere in the world, and so for periods of time held no reserves to back tethers in circulation at the rate of one dollar for every tether, contrary to its representations. In the face of persistent questions about whether the company actually

held sufficient funds, Tether published a self-proclaimed ‘verification’ of its cash reserves, in 2017, that it characterized as “a good faith effort on our behalf to provide an interim analysis of our cash position.” In reality, however, the cash ostensibly backing tethers had only been placed in Tether’s account as of the very morning of the company’s ‘verification.’

On November 1, 2018, Tether publicized another self-proclaimed ‘verification’ of its cash reserve; this time at Deltec Bank & Trust Ltd. of the Bahamas. The announcement linked to a letter dated November 1, 2018, which stated that tethers were fully backed by cash, at one dollar for every one tether. However, the very next day, on November 2, 2018, Tether began to transfer funds out of its account, ultimately moving hundreds of millions of dollars from Tether’s bank accounts to Bitfinex’s accounts. And so, as of November 2, 2018 — one day after their latest ‘verification’ — tethers were again no longer backed one-to-one by U.S. dollars in a Tether bank account.

As of today, Tether represents that over 34 billion tethers have been issued and are outstanding and traded in the market.

When No Bank Backs You, Turn to Shady Entities — Bitfinex Hid Massive Losses

In 2017 and 2018, Bitfinex began to increasingly rely on third-party “payment processors” to handle customer deposits and withdrawals from the Bitfinex trading platform. In 2018, while attempting to “move money [more] efficiently,” Bitfinex suffered a massive and undisclosed loss of funds because of its relationship with a purportedly Panama-based entity known as “Crypto Capital Corp.” Bitfinex responded to pervasive public reports of liquidity problems by misleading the market and its own clients. On October 7, 2018, Bitfinex claimed to “not entirely understand the arguments that purport to show us insolvent,” when, for months, its executives had been pleading with Crypto Capital to return almost a billion dollars in assets.

On April 26, 2019 — after the OAG revealed in court documents that approximately $850 million had gone missing and that Bitfinex and Tether had been misleading their clients — the company issued a false statement that “we have been informed that these Crypto Capital amounts are not lost but have been, in fact, seized and safeguarded.” The reality, however, was that Bitfinex did not, in fact, know the whereabouts of all of the customer funds held by Crypto Capital, and so had no such assurance to make.

The OAG Investigation Shines a Light on Unlawful Trading in New York State

From the beginning of its interaction with the OAG, iFinex and Tether falsely claimed that they did not allow trading activity by New Yorkers. The OAG investigation determined that to be untrue and that the companies have operated for years as unlicensed and unregulated entities, illegally trading virtual currencies in the state of New York.

In April 2019, the OAG sought and obtained an injunction against further transfers of assets between and among Bitfinex and Tether, which are owned and controlled by the same small group of individuals. That action — under Section 354 of New York's Martin Act — ultimately led to a July 2020 decision by the New York State Appellate Division of the Supreme Court, First Department, holding that:

- Bitfinex and Tether — and other virtual currency trading platforms and cryptocurrencies operating from various locations around the world — are still subject to OAG jurisdiction if doing business in New York;
- The stablecoin "tether" and other virtual currencies were "commodities" under section 352 of the Martin Act, and noted that virtual currencies may also constitute securities under the act; and
- The OAG had established the factual predicate necessary to uphold the injunction and require production of documents and information relevant to its investigation in advance of the filing of a formal suit.

Bitfinex and Tether Banned from Continuing Illegal Activities in New York

Today's agreement requires Bitfinex and Tether to discontinue any trading activity with New Yorkers. In addition, these companies must submit regular reports to the OAG to ensure compliance with this prohibition.

Further, the companies must submit to mandatory reporting on core business functions. Specifically, both Bitfinex and Tether will need to report, on a quarterly basis, that they are properly segregating corporate and client accounts, including segregation of government-issued and virtual currency trading accounts by company executives, as well as submit to mandatory reporting regarding transfers of assets between and among Bitfinex and Tether entities. Additionally, Tether must offer public disclosures, by category, of the assets backing tethers, including disclosure of any loans or receivables to or from affiliated entities. The companies will also provide greater transparency and mandatory reporting regarding the use of non-bank "payment processors" or other entities used to transmit client funds.

Finally, Bitfinex and Tether will be required to pay $18.5 million in penalties to the state of New York.

In September 2018, the OAG issued its **Virtual Markets Integrity Initiative Report**, which highlighted the "substantial potential for conflicts between the interests" of virtual currency trading platforms, insiders, and issuers. Bitfinex was one of the trading platforms examined in the report.

This matter was handled by Senior Enforcement Counsel John D. Castiglione and Assistant Attorneys General Brian M. Whitehurst and Tanya Trakht of the Investor Protection Bureau; Assistant Attorneys General Ezra Sternstein and Johanna

Skrzypczyk of the Bureau of Internet and Technology; and Legal Assistant Charmaine Blake — all supervised by Bureau of Internet and Technology Chief Kim Berger and Senior Enforcement Counsel for Economic Justice Kevin Wallace. The Investor Protection Bureau is led by Chief Peter Pope. Both the Bureau of Internet and Technology and the Investor Protection Bureau are part of the Division for Economic Justice, which is overseen by Chief Deputy Attorney General Chris D'Angelo and First Deputy Attorney General Jennifer Levy.