

[Securities Regulation Daily Wrap Up, COMMODITY FUTURES—Bitcoin exchange pays \\$75,000 to CFTC for off-exchange transactions, \(Jun. 2, 2016\)](#)

Securities Regulation Daily Wrap Up

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A Hong Kong-based bitcoin exchange settled CFTC charges that its operations violated the Commodity Exchange Act. Bitfinex allowed users to borrow funds from each other to trade bitcoins in off-exchange transactions. The firm also failed to register as a futures commission merchant. The order, which credits Bitfinex for voluntary adjustments to its model and significant cooperation in the investigation, imposes a \$75,000 penalty (*In the Matter of BFXNA Inc.*, June 2, 2016).

For several years, according to the order and [press release](#), Bitfinex allowed users to borrow funds from each other to trade bitcoins on a leveraged, margined, or financed basis. Bitfinex did not deliver the bitcoins to the traders, but rather held them in deposit wallets that it owned and controlled.

Dodd-Frank's amendments to the Commodity Exchange Act brought financed commodity transactions under the CFTC's jurisdiction, with an exception when actual delivery of the commodity takes place within 28 days. In the CFTC's interpretation, backed up by an Eleventh Circuit decision, determining if "actual delivery" has occurred requires going beyond the four corners of the documents. Here, there was no actual delivery because Bitfinex, rather than the traders, had control over the bitcoin wallets.

The transactions violated CEA Section 4(a), which requires that commodity futures contracts be conducted on an exchange. Bitfinex also violated CEA Section 4d(a) by accepting orders and receiving funds for retail commodity transactions without registering as an FCM.

The order is Docket [No. 16-19](#).

Companies: BFXNA Inc.; Bitfinex

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