

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

RECEIVED CFTC



Office of Proceedings
Proceedings Clerk

4:46 pm, Mar 19, 2021

In the Matter of:

COINBASE INC.,

Respondent.

)
)
)
)
) **CFTC Docket No. 21-03**
)
)
)

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT, MAKING
FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I. INTRODUCTION

The Commodity Futures Trading Commission (“Commission”) has reason to believe that from January 2015 to September 2018, Respondent Coinbase Inc. (hereinafter “Respondent” or “Coinbase”) violated Section 6(c)(1)(A) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 9(1)(A) (2018), and Regulation 180.1(a)(4), 17 C.F.R. § 180.1(a)(4) (2020), and in addition is liable as a principal for conduct of an agent employee from August to September 2016 which independently violated Section 6(c)(1) of the Act and Regulation 180.1(a)(1). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”), and acknowledges service of this Order.¹

¹ Respondent consents to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership;

II. FINDINGS

The Commission finds the following:

A. SUMMARY

Between January 2015 and September 2018, Coinbase violated Section 6(c)(1)(A) of the Act, 7 U.S.C. § 9(1)(A) (2018), and Regulation 180.1(a)(4), 17 C.F.R. § 180.1(a)(4) (2020), by recklessly delivering false, misleading or inaccurate reports concerning transactions in digital assets, including Bitcoin, on the electronic trading platform it operated, GDAX. During this period, Coinbase operated at least two trading programs which generated orders that, at times, matched with one another. Coinbase included the transactional information for these transactions, such as price and volume data, on its website and provided that information to reporting services, either directly or through access to its website, resulting in a perceived volume and level of liquidity of digital assets, including Bitcoin, on GDAX that was false, misleading or inaccurate.

Additionally, between August and September 2016, a former Coinbase employee (“Employee A”) intentionally placed buy and sell orders in the Litecoin/Bitcoin trading pair on GDAX, which he intended to match with one another and result in no loss or gain while creating the appearance of liquidity and trading interest in Litecoin. Ultimately, the transactions resulted in wash transactions that depicted a misleading picture of the Litecoin/Bitcoin market.

By knowingly engaging in these wash transactions, Employee A employed a manipulative or deceptive device in violation of Section 6(c)(1) of the Act, and Regulation 180.1(a)(1). Coinbase is vicariously liable as a principal for its agent employee’s conduct pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2018), and Regulation 1.2, 17 C.F.R. § 1.2 (2020).

B. RESPONDENT

Defendant **Coinbase Inc.** is a digital asset company founded in 2012 that is based in San Francisco, CA. Coinbase operates a brokerage business in which it buys and sells digital assets directly from and to the public. Coinbase also owned and operated an online digital exchange (“Global Digital Asset Exchange” or “GDAX”) during the relevant periods, where participants could buy and sell digital currencies directly from or to other trading participants on a trading platform which operated as a price-time priority digital order book. Coinbase is not registered with the Commission.

or a proceeding to enforce the terms of this Order. Respondent does not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

C. FACTS

1. Coinbase Operated Multiple Trading Programs

Between January 2015 and September 2018, Coinbase operated two automated trading programs on GDAX—one that was called the “Hedger” and another that was called the “Replicator”. Despite their independent purposes, in practice these programs, at times, matched orders with one another in certain trading pairs, resulting in trades between accounts owned by Coinbase. The GDAX Trading Rules specifically disclosed that Coinbase was trading on GDAX, but omitted that Coinbase was operating more than one trading program and that it was trading through more than one trading account. The Hedger operated to maintain a sufficient inventory for Coinbase’s brokerage business by periodically buying or selling digital assets on GDAX in response to net consumer brokerage demand. The Replicator operated to maintain liquidity on GDAX and was programmed to replicate third-party orders by market participants in relatively liquid “source” books and then replicate those orders into less liquid “destination” books.

2. Coinbase Reported Transactions Resulting from Matches Between Hedger and Replicator

During this period, Coinbase reported Bitcoin and other digital asset transaction volume and price information, both as the transactions occurred in real time and as part of aggregated totals for the previous twenty-four-hour period on its Coinbase corporate website and either directly or indirectly to reporting services. The reported information included third party market participant transactions as well as certain Coinbase transactions resulting from the matches between Hedger and Replicator.

Reporting firms, such as Crypto Facilities Ltd., which publishes the CME Bitcoin Real Time Index, and CoinMarketCap OpCo, LLC, which posts such transactional information on its website, received access to Coinbase’s transactional information via Coinbase’s Application Programming Interface (“API”), or in the case of the NYSE Bitcoin Index, received it directly in transmissions from Coinbase. Transactional information of this type is used by market participants for price discovery related to trading or owning digital assets. As a result of Coinbase recklessly reporting the transactions that resulted from its programs matching orders with one another, Coinbase reported false, misleading or inaccurate market information about the volume and liquidity of trading on GDAX.

3. Coinbase “Employee A” Engaged in Wash Trades in the Litecoin/Bitcoin Trading Pair

Over a period of six weeks between August and September 2016, former Coinbase “Employee A” employed a manipulative and deceptive device by intentionally engaging in wash sales in Litecoin/Bitcoin trading pairs on GDAX between trading accounts associated with his own personal email addresses, that he personally owned and controlled. This created the appearance of trading interest in the Litecoin/Bitcoin trading pair during the first two months the contract was listed on GDAX. Through these wash trades, Employee A sought to create a

perception of increased liquidity and to make it appear that the trading pair was successfully trading on GDAX.

On some days, Employee A’s wash trades in the Litecoin/Bitcoin trading pair between accounts he owned and controlled, made up a substantial percentage of the trading volume in the contract, ranging from as little as 0.62% to as much as 99.0% of the daily trading volume.

III. LEGAL DISCUSSION

A. **By Recklessly Reporting False, Misleading or Inaccurate Transaction Information, Coinbase Violated Section 6(c)(1)(A) of the Act and Regulation 180.1(a)(4)**

Taken together, Section 6(c)(1)(A) of the Act, 7 U.S.C. § 9(1)(A) (2018), and Regulation 180.1(a)(4), 17 C.F.R. § 180.1(a)(4) (2020), prohibit “delivering, or causing to be delivered for transmission through the mails or interstate commerce, by any means of communication whatsoever, a false or misleading or inaccurate report concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, knowing or acting in reckless disregard of the fact that such report is false, misleading or inaccurate.” Respondent violated Section 6(c)(1)(A) and Regulation 180.1(a)(4) when it recklessly delivered or caused to be delivered false, misleading, or inaccurate transaction information that included transactions between accounts it owned and controlled. Transaction information affects or tends to affect the price of digital assets, including Bitcoin, which is a commodity in interstate commerce.²

B. **Coinbase is Vicariously Liable as Principal, pursuant to Section 2(a)(1)(B) and Regulation 1.2, for its Agent Employee’s Conduct Which Violated Section 6(c)(1) and Regulation § 180.1(a)(1)**

Section 6(c)(1) and Regulation 180.1(a)(1) prohibit the use or employment of a manipulative or deceptive device or contrivance in connection with a contract of sale of a commodity in interstate commerce. Employee A’s placement of orders which were intended to match with one another constituted “wash trading” or “a simultaneous purchase and sale designed to negate each other so that there is no change in financial position.” *Reddy v. CFTC*, 191 F.3d 109, 115 (2d Cir. 1999). This wash trading violated Section 6(c)(1) and Regulation 180.1(a)(1). *See In re: Natural Gas Commodity Lit.*, 337 F.Supp.2d 498, 504 (S.D.N.Y. 2004) (“Wash trading can create a false impression of greater trading activity and thus greater liquidity for a given item.”). Respondent is vicariously liable for this conduct because Employee A undertook these actions within the scope of his employment.³

² Bitcoin is encompassed within the broad definition of “commodity” under Section 1a(9) of the Act, 7 U.S.C. § 1a(9) (2018), and is therefore subject to applicable provisions of the Act and Regulations, which includes Section 6(c)(1) of the Act and Regulation 180.1(a). *See, e.g., CFTC v. My Big Coin Pay, Inc.*, 334 F. Supp. 3d 492, 498 (D. Mass. 2018) (“Here, the amended complaint alleges that My Big Coin is a virtual currency and it is undisputed that there is futures trading in virtual currencies (specifically involving Bitcoin). That is sufficient, especially at the pleading stage, for plaintiff to allege that My Big Coin is a ‘commodity’ under the Act.”); *CFTC v. McDonnell*, 287 F. Supp. 3d 213, 226 (E.D.N.Y. 2018) (“Virtual currencies can be regulated by CFTC as a commodity.”), *mot. for reconsideration denied*, 321 F. Supp. 3d 366 (E.D.N.Y. 2018).

³ Under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2018) and Regulation 1.2, 17 C.F.R. § 1.2 (2020), the act, omission, or failure of any official, agent, or other person acting for any individual,

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the relevant periods, Coinbase violated Section 6(c)(1)(A) of the Act, 7 U.S.C. § 9(1)(A) (2018), and Regulation § 180.1(a)(4), 17 C.F.R. § 180.1(a)(4) (2020), and was vicariously liable pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2018), and Regulation 1.2, 17 C.F.R. § 1.2 (2020), as a principal for its agent employee's conduct which violated Section 6(c)(1) of the Act, 7 U.S.C. § 9(c)(1) (2018) and Regulation 180.1(a)(1), 17 C.F.R. § 180.1(a)(1) (2020).

V. OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it, without admitting or denying the findings and conclusions herein:

- A. Acknowledges service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waives:
 - 1. The filing and service of a complaint and notice of hearing;
 - 2. A hearing;
 - 3. All post-hearing procedures;
 - 4. Judicial review by any court;
 - 5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 - 6. Any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2018), and 28 U.S.C. § 2412 (2018), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2019), relating to, or arising from, this proceeding;
 - 7. Any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–253, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered

association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust.

sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding;
and

8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including this Order.
- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer;
- E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. Makes findings by the Commission that Respondent violated Section 6(c)(1)(A) of the Act, 7 U.S.C. § 9(1)(A) (2018), and Regulation 180.1(a)(4), 17 C.F.R. § 180.1(a)(4) (2020), and was vicariously liable pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2018), and Regulation 1.2, 17 C.F.R. § 1.2 (2020) as a principal for its agent employee's conduct which violated Section 6(c)(1) of the Act and Regulation 180.1(a)(1);
 2. Orders Respondents to cease and desist from violating Section 6(c)(1)(A) of the Act and Regulation 180.1(a)(4);
 3. Orders Respondent to pay a civil monetary penalty in the amount of six million, five hundred dollars (\$6,500,000), plus any post-judgment interest within ten days of the date of entry of this Order; and
 4. Orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order.

Upon consideration, the Commission has determined to accept the Offer.

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

1. Respondent and its successors and assigns shall cease and desist from violating Section 6(c)(1)(A) of the Act, 7 U.S.C. § 9(1)(A) (2018), and Regulation 180.1(a)(4), 17 C.F.R. § 180.1(a)(4) (2020).
2. Respondent shall pay a civil monetary penalty in the amount of six million, five hundred thousand dollars (\$6,500,000) (the "CMP Obligation"), within ten days of the date of the entry of this Order. If the CMP Obligation is not paid in full within ten days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2018).

Respondent shall pay the CMP Obligation and any post-judgment interest by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
Division of Enforcement
6500 S. MacArthur Blvd.
HQ Room 181
Oklahoma City, OK 73169
(405) 954-6569 office
(405) 954-1620 fax
9-AMC-AR-CFTC@faa.gov

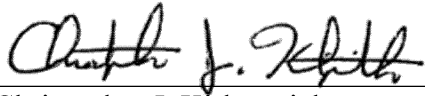
If payment is to be made by electronic funds transfer, Respondent shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

3. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
 1. Public Statements: Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and its successors and assigns shall comply with this agreement, and shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.
 2. Cooperation, in General: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, in this action, and in any current or future Commission investigation or action related thereto. Respondent shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, this action.

3. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's Restitution Obligation, Disgorgement Obligation, or CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
4. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP Obligation as set forth in this Consent Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten calendar days of the change.

The provisions of this Order shall be effective as of this date.

By the Commission.



Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: March 19, 2021