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Founders Of Cryptocurrency Exchange Plead Guilty To Bank Secrecy Act Violations

Arthur Hayes and Benjamin Delo Designed BitMex as a Platform to Flout U.S. Anti-Money Laundering Rules

Damian Williams, the United States Attorney for the Southern District of New York, announced that Arthur Hayes and BENJAMIN DELO, founders and executives of purportedly "off-shore" cryptocurrency derivatives exchange the Bitcoin Mercantile Exchange or "BitMEX," pled guilty today to violating the Bank Secrecy Act (the "BSA") by willfully failing to establish, implement, and maintain an anti-money laundering ("AML") program at BitMEX. Under the terms of their respective plea agreements, HAYES and DELO each agreed to separately pay a $10 million criminal fine representing pecuniary gain derived from the offense. HAYES and DELO pled guilty today before U.S. District Judge John G. Koeltl.

U.S. Attorney Damian Williams said: "As cryptocurrencies and technologies designed to facilitate their trade proliferate, companies engaged in the virtual currency economy have become critical gatekeepers in efforts to ensure that U.S. markets are fair, efficient, and secure. The opportunities and advantages of operating in the United States are legion, but they carry with them the obligation for those businesses to do their part to help in driving out crime and corruption. Arthur Hayes and Benjamin Delo built a company designed to flout those obligations; they willfully failed to implement and maintain even basic anti-money laundering policies. They allowed BitMEX to operate as a platform in the shadows of the financial markets. Today's guilty pleas reflect this Office's continued commitment to the investigation and prosecution of money laundering in the cryptocurrency sector."

According to the Indictment, public court filings, and statements made in court:[1]

HAYES, together with DELO and indicted co-defendant Sam Reed, was one of the three co-founders and the long-time CEO of BitMEX. DELO was both a co-founder and, during the period from September 2015 up to and including September 2020, held various executive roles at BitMEX, including Chief Operating Officer. BitMEX is an online cryptocurrency derivatives exchange that, during the relevant time period, had U.S.-based operations and served thousands of U.S. customers, notwithstanding false representations to the contrary by the company. From at least September 2015, and continuing at least through the time of the Indictment in September 2020, HAYES and DELO willfully caused BitMEX to fail to establish and maintain an AML program, including a program for verifying the identify of BitMEX's customers (or a "know your

customer" or "KYC" program). As a result of its willful failure to implement AML and KYC programs, BitMEX was in effect a money laundering platform. For example, in May 2018, HAYES was notified of allegations that BitMEX was being used to launder the proceeds of a cryptocurrency hack. Neither HAYES, DELO, nor their company filed a suspicious activity report thereafter (indeed, BitMEX filed no suspicious activity reports at all between 2014 and September 2020), nor did they implement an AML or KYC program in response. Unsurprisingly, BitMEX was also a vehicle for sanctions violations: HAYES and DELO both communicated directly with BitMEX customers who self-identified as being based in Iran, an OFAC-sanctioned jurisdiction, but did nothing to implement an AML or KYC program after doing so.

HAYES and DELO failed to institute AML or KYC programs at BitMEX despite closely following U.S. regulatory developments that made clear their legal obligation to do so if BitMEX operated in the United States, which it did. Despite repeatedly stating that BitMEX did not serve U.S. customers, including to members of the press and others outside of BitMEX, HAYES and DELO both knew that BitMEX's purported withdrawal from the U.S. market in or about September 2015 was a sham, and that purported "controls" BitMEX put in place to prevent U.S. trading were an ineffective facade that did not, in fact, prevent users from accessing or trading on BitMEX from the United States. HAYES and DELO not only understood that U.S. customers continued to trade on BitMEX, but derived substantial profits from BitMEX as a result of U.S.-based trading. HAYES and DELO actively sought out U.S. customers by using U.S.-based cryptocurrency "influencers" to market to new customers through BitMEX's so-called "Affiliate Program." HAYES also conducted U.S. television appearances and marketing stunts that promoted BitMEX's products in the United States. DELO allowed a customer to continue to access a BitMEX trading account despite this customer explicitly being "US based," merely because that customer was "famous in Bitcoin." DELO falsely changed internal tracking information to reflect that customer's country of residence as being other than the United States, despite knowing that to be false.

* * *

HAYES, 36, of Miami, Florida, and DELO, 38, of the United Kingdom and Hong Kong, pled guilty to one count each of violating the Bank Secrecy Act, which carries a maximum penalty of 5 years in prison. The maximum potential sentence in this case is prescribed by Congress and is provided here for informational purposes only, as any sentencing of the defendant will be determined by the judge.

Mr. Williams praised the outstanding investigative work of the FBI's New York Money Laundering Investigation Squad, and thanked the attorneys and investigators at the Commodity Futures Trading Commission whose expertise and diligence were integral to the development of this investigation.

The prosecution is being handled by the Office's Money Laundering and Transnational Criminal Enterprises Unit. Assistant U.S. Attorneys Jessica Greenwood, Samuel Raymond, and Thane Rehn are in charge of the prosecution.

[1] As to HAYES' and DELO's co-defendants, the entirety of the text of the Indictment, and the description of the Indictment set forth herein, constitute only allegations, and every fact described should be treated as an allegation.

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