

Securities Regulation Daily Wrap Up, TOP STORY—S.D.N.Y.: BitMEX crypto platform to pay \$100M for registration, AML violations, (Aug 10, 2021)

By [Anne Sherry, J.D.](#)

Along with agreeing to pay a \$100 million penalty that is likely to be split between the CFTC and FinCEN, the BitMEX defendants appointed a Chief Compliance Officer and engaged an outside consultant to test the platform's newly enhanced internal controls.

The operators of the BitMEX crypto trading platform agreed to pay \$100 million for violating the commodities laws and regulations, including registration requirements and know-your-customer procedures. The CFTC had charged the BitMEX entities and founders with allowing U.S. customers to trade derivatives on bitcoin, ether, and litecoin. Under the order issued by the Southern District of New York, up to half of the penalty will be offset by payments the entities make under a separate agreement with FinCEN ([CFTC v. HDR Global Trading Limited](#), August 10, 2021, Vyskocil, M.).



In its [complaint](#), the CFTC alleged that BitMEX facilitated cryptocurrency derivatives transactions valued at trillions of dollars since 2014, garnering fees of over \$1 billion. Nevertheless, BitMEX did not seek or obtain CFTC approval to operate as a designated contract market or swap execution facility and failed to implement know-your-customer (KYC) and anti-money-laundering (AML) procedures. In a parallel criminal action, the Department of Justice [charged](#) BitMEX's owners with violating or conspiring to violate the Bank Secrecy Act.

BitMEX's offerings included a "perpetual bitcoin U.S. dollar leveraged swap product," which BitMEX described as similar to a traditional futures contract, along with other "perpetual swaps" or "perpetual contracts" on bitcoin, ether, and litecoin. Along with the registration violations, the order finds that BitMEX failed to implement an adequate supervisory system or perform its supervisory duties diligently. The platform lacked a customer identification program (including KYC procedures) that would enable it to identify U.S. users, and failed to implement an adequate AML program.

However, the CFTC also recognized the measures that BitMEX took to remediate these deficiencies. BitMEX developed an AML program and user verification program; implemented enhanced internal controls; verified the identities of all active users of its platform; appointed a Chief Compliance Officer; hired staff dedicated to AML compliance; and engaged an outside consultant to review and test the policies and procedures.

At the time the CFTC filed its complaint, then-Chairman Heath Tarbert and Commissioner Brian Quintenz issued statements stressing the importance of "[root\[ing\] out illegal activity](#)" that "[brazenly flout\[s\] our rules](#)." Alongside the settlement, Commissioner Dan Berkovitz [said](#) the order aligns with the CFTC's mission to promote market integrity, avoid systemic risk, and protect market participants. "The CEA does not carve out cryptocurrency products or markets," he explained. While the agency also has a mission to promote responsible innovation and fair competition, "for innovation to be responsible and competition to be fair, it must comply with the CEA and our regulations."

Acting Chairman Rostin Behnam [said](#) the case "reinforces the expectation that the digital assets industry ... takes seriously its responsibilities in the regulated financial industry and its duties to develop and adhere to a culture of compliance." Acting Director of Enforcement Vincent McGonagle added that "the registration requirements and core consumer protections Congress established for our traditional derivatives market apply equally in the growing digital asset market."

The case is [No. 20-cv-08132](#).

Attorneys: Elizabeth N. Pendleton, for the CFTC. Kenneth M. Raisler (Sullivan & Cromwell LLP) for HDR Global Trading Ltd., ABS Global Trading Ltd., Shine Effort Inc. Ltd. and HDR Global Services (Bermuda) Ltd.

Companies: HDR Global Trading Ltd.; ABS Global Trading Ltd.; Shine Effort Inc. Ltd.; HDR Global Services (Bermuda) Ltd.

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