

Securities Regulation Daily Wrap Up, ENFORCEMENT—S.D.N.Y.: Gemini to pay \$5 million over false statements to CFTC about bitcoin futures, (Jan 7, 2025)

By [Lene Powell, J.D.](#)

The crypto company's statements in connection with a proposed bitcoin futures product were inconsistent with facts.

Crypto operator Gemini Trust Company agreed to pay \$5 million to settle CFTC charges of making false statements to staff in connection with the self-certification of a bitcoin futures product. In a federal court order entered January 6, the CFTC detailed how Gemini personnel provided incorrect responses to staff questions about Gemini's bitcoin market auction underlying the proposed futures product ([CFTC v. Gemini Trust Company, LLC](#), No. 1:22-cv-04563-AKH (S.D.N.Y. Jan. 7, 2025)).

Gemini made the statements during a 2017 review as CFTC staff attempted to determine the vulnerability of the underlying spot market to manipulation.

The case highlights potential difficulties for the CFTC in relying in industry self-certifications where an underlying market is not highly regulated.

Bitcoin futures. In 2017, Gemini proposed to list a bitcoin futures contract on a designated contract market (DCM), according to the order. The contract was to be cash settled based on a spot bitcoin price determined by the Gemini Bitcoin Auction.

CFTC staff asked Gemini specific factual questions in reviewing whether the underlying market would be readily susceptible to manipulation.

The CFTC [said](#) Gemini gave misleading responses on four topics:

- **Prefunding:** Gemini told CFTC staff that trading on the Gemini Trust Exchange was fully pre-funded, i.e. market participants could not place an order unless they had enough funds in their account. This was supposed to reduce the potential for market manipulation by making it costly. However, Gemini did not disclose that market-maker customers could and did obtain loans of digital assets from a Gemini Trust affiliate and an exchange representative—effectively allowing customers to place orders without prefunding.
- **Self-trading:** Gemini said that self-trading was not possible on its exchange due to a technological mechanism designed to prevent it. However, Gemini did not disclose that it did not have any means to prevent self-trading prior to May 2017, and even after that, there were instances in which a single market participant was on both sides of a trade in a Gemini Trust Auction.
- **Trading fee rebates:** Gemini made misleading statements about its rebates program, including that it had no specific market maker program and a trading fee program was available to all Gemini Trust market participants, and that the public fee schedule on Gemini Trust's website at the time reflected the details of the program available to all Gemini Trust customers. In fact, however, Gemini entered into undisclosed bespoke fee arrangements with certain market participants, including market makers, that were not available to all customers and not disclosed on Gemini Trust's website, at more favorable terms than those listed on the website and designed to promote trading in the Gemini Trust Auction. Gemini also did not disclose that two Gemini Trust customers engaged in fraudulent or collusive trading that took advantage of bespoke fee arrangements, and that Gemini had suspended those customer accounts and terminated two employees who facilitated the

scheme.

- Trading volume: Gemini's statements about trading volume and liquidity did not disclose that a portion of historical trading volume was executed by recipients of loans and bespoke rebates, and included self-trading and fraudulent or collusive trading.

False statements violation. The statements were found to have violated Section 6(c)(2) of the Commodity Exchange Act, which prohibits knowingly making a false or misleading statement of a material fact to the CFTC, including in any registration application or report filed with the CFTC.

The court imposed a \$5 million civil monetary penalty and enjoined Gemini from making false or misleading statements or omitting to state material facts to the CFTC.

Gemini consented to the order without admitting or denying the allegations.

The case is [No. 1:22-cv-04563-AKH](#).

Judge: Hellerstein, A.

Attorneys: Alejandra de Urioste for the CFTC. Elizabeth Jooyoung Lee (Baughman Kroup Bosse PLLC) for Gemini Trust Co., LLC.

Companies: Gemini Trust Co., LLC

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