

Securities Regulation Daily Wrap Up, ENFORCEMENT—Controversy looms as Coinbase agrees to pay CFTC \$6.5 million to settle charges for misdeeds in the cash cryptocurrency markets, (Mar. 22, 2021)

Securities Regulation Daily Wrap Up

<http://resource.stg.cch.com/resource/scion/document/default/sld01da4ba52c7dd510008a86000d3a8bba6b08?cfu=Legal&cpid=WKUS-Legal-Cheetah&uAppCtx=cheetah>

By [Brad Rosen, J.D.](#)

The agreed order, which found that Coinbase had engaged in false, misleading, and inaccurate reporting, as well as wash trading, prompted Commissioner Dawn Stump to issue a concurring statement raising serious concerns about the CFTC's appropriate role in the digital asset space.

At 4:46 pm this past Friday afternoon, the CFTC issued an order filing and settling charges against Coinbase Inc., a digital asset exchange operator, finding reckless false, misleading, or inaccurate reporting as well as wash trading by a former employee in the cash cryptocurrency markets. The order requires Coinbase to pay a civil monetary penalty of \$6.5 million and to cease and desist from any further violations of the Commodity Exchange Act or CFTC regulations, as charged. As the order notes, Coinbase is not registered with the CFTC ([In the Matter of Coinbase, Inc.](#), March 19, 2021).

A Commissioner's concerns about public misperceptions. Commissioner Dawn Stump, while concurring with the order's findings, issued [a strongly worded statement](#) expressing her serious concerns about the CFTC's dedication of resources to a matter that involved an exchange for cash transactions in digital assets such as Bitcoin and Litecoin. She stated, "I write separately, though, to ensure the public is not misled to believe that the CFTC regulates exchanges such as Coinbase. It does not."

The wrongful conduct charged. According to the order, [between January 2015 and September 2018](#), Coinbase recklessly delivered false, misleading, or inaccurate reports concerning transactions in digital assets, including Bitcoin, on the company's GDAX electronic trading platform. The order also found:

- Coinbase operated two automated trading programs, Hedger and Replicator, which generated orders that at times matched with one another. The GDAX Trading Rules specifically disclosed that Coinbase was trading on GDAX, but failed to disclose that Coinbase was operating more than one trading program and trading through multiple accounts;
- While Hedger and Replicator had independent purposes, in practice the programs matched orders with one another in certain trading pairs, resulting in trades between accounts owned by Coinbase;
- Coinbase included information for transactions on its website and provided that information to reporting services, either directly or through access to its website. The information provided, such as price and volume data, resulted in a perceived volume and level of liquidity of digital assets, including Bitcoin, on GDAX that was false, misleading or inaccurate; and,
- Over a six-week period—August through September 2016—a former Coinbase employee used a manipulative or deceptive device by intentionally placing buy and sell orders in the Litecoin/Bitcoin trading pair on GDAX that matched each other as wash trades. This created the misleading appearance of liquidity and trading interest in Litecoin. Coinbase was found to be vicariously liable as a principal for the employee's violative conduct.

A sharp concurrence. Commissioner Stump was troubled with the CFTC bringing the action against Coinbase and noted the following:

- Coinbase had not offered any futures contract, option, or swap (collectively, "derivatives products") regulated by the CFTC;

- Coinbase is not required to register with, and is not regulated by, the CFTC;
- Coinbase's activities concerning the digital assets at issue did not affect the trading of any listed derivatives product regulated by the CFTC because there were no listed derivatives products on digital assets traded at that time; and,
- The settled charges were based largely on conduct that is several years old, has not been repeated, and in the case of the charge of secondary liability, is based on conduct by an employee who left Coinbase years ago and who is not being charged.

The CFTC cannot be a full-time "Cop on the Beat" for cash digital asset exchanges. Stump observed that the CEA had always provided the CFTC with certain limited enforcement authorities with respect to cash commodity markets, and those authorities were expanded to some degree by the Dodd-Frank Act. Nonetheless, she underscored the need for the public to be aware that where cash commodity markets are concerned, this limited authority (anti-fraud/manipulation/false reporting, as opposed to day-to-day regulatory oversight) is bestowed upon the CFTC as a tool to assist in its primary function of regulating futures and other derivatives products.

As a result, the commissioner urged the Commission to (1) maintain its focus on its primary area of responsibility - the derivatives markets; and (2) be clear with the public that the CFTC does not regulate cash digital asset exchanges like Coinbase. Stump concluded, "I fear that today's settlement falls short on both objectives."

Upcoming IPO. The settlement comes as Coinbase Global looks to raise approximately \$943 million through its [upcoming public offering](#). Recent public stock sales have pegged the company's value in the vicinity of \$68 billion.

This is [CFTC Docket No. 21-3](#).

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