

## [Securities Regulation Daily Wrap Up, TOP STORY—S.D.N.Y.: BitMEX charged with operating an illegal crypto derivatives exchange, AML violations, \(Oct. 1, 2020\)](#)

Securities Regulation Daily Wrap Up

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The CFTC alleges that the cryptocurrency derivatives platform violated the Commodity Exchange Act's registration, KYC, and AML provisions, while the DOJ has indicted the owners for evading the Bank Secrecy Act.

The CFTC has charged three individuals and five entities that own and run the Bitcoin Mercantile Exchange ("BitMEX") cryptocurrency trading platform with operating an unregistered trading platform and violating multiple market integrity and customer protection regulations under the Commodity Exchange Act. In a civil complaint filed in federal district court in Manhattan, the CFTC claims that BitMEX has facilitated cryptocurrency derivatives transactions with an aggregate notional value of trillions of dollars since 2014, garnering fees of more than over \$1 billion. Nevertheless, BitMEX did not seek or obtain CFTC approval to operate as a designated contract market or swap execution facility and has failed to implement know-your-customer (KYC) and anti-money laundering (AML) procedures, the agency alleges ([CFTC v. HDR Global Trading Limited](#), October 1, 2020).

The CFTC has civilly charged BitMEX's owners, Arthur Hayes, Ben Delo, and Samuel Reed, who operate BitMEX's platform through a series of entities. The entities named as defendants in the complaint are HDR Global Trading Limited, 100x Holding Limited, ABS Global Trading Limited, Shine Effort Inc Limited, and HDR Global Services (Bermuda) Limited (BitMEX).

In a parallel criminal action, the Department of Justice has [charged](#) Hayes, Delo, Reed, and Gregory Dwyer with violating or conspiring to violate the Bank Secrecy Act by willfully failing to establish and maintain an adequate AML program at BitMEX. According to the DOJ's news release, each of the defendants knew of customers residing in the U.S. who continued to access BitMEX's trading platform through at least 2018. Despite this, the government alleges, the policies that BitMEX had nominally in place were toothless or easily overridden to serve BitMEX's goal of obtaining revenue. Moreover, the defendants took affirmative steps to avoid U.S. AML and KYC requirements, such as by incorporating BitMEX and its parent entities in the Seychelles, a jurisdiction from which they believed they could still serve U.S. customers by bribing local officials, if necessary ([U.S. v. Hayes](#), October 1, 2020).

**CFTC action.** According to the civil complaint, BitMEX, which touts itself as the world's largest cryptocurrency derivatives platform, has since November 2014 illegally offered leveraged retail commodity transactions, futures, options, and swaps on cryptocurrencies including bitcoin, ether, and litecoin. Although much of the purported billions of dollars' worth of the platform's daily trading volume derives from U.S. markets and customers, and is largely conducted from offices in the U.S., BitMEX has never registered with the CFTC as a futures commission merchant (FCM) and has never been designated or registered as a contract market (DCM). In addition, the defendants have operated a facility for the trading or processing of swaps without being registered as a DCM or a swap execution facility (SEF).

The CFTC seeks disgorgement of ill-gotten gains, civil monetary penalties, restitution, permanent registration and trading bans, and a permanent injunction from future violations of the Commodity Exchange Act

"Digital assets hold great promise for our derivatives markets and for our economy," said CFTC Chairman Heath Tarbert in a [news release](#). "For the United States to be a global leader in this space, it is imperative that we root out illegal activity like that alleged in this case. We can't allow bad actors that break the law to gain an advantage over exchanges that are doing the right thing by complying with our rules," Tarbert said.

"We will not stand for any participant brazenly flouting our rules," added Commissioner Brian Quintenz in a [separate statement](#). "I look forward to the successful resolution of this matter and the beneficial impact it will have in this market by holding those who deliberately ignore the law accountable."

The cases are [No. 20-cv-08132](#) (civil) and No. [20-cr-500](#) (criminal).

Attorneys: Carlin Metzger for the CFTC.

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