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Industry Update

CFTC's High-Profile Crypto Cases Lead to Massive Recoveries but Far Fewer Enforcement Actions

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The CFTC Division of Enforcement recently released its 2024 results, trumpeting its focus on large crypto matters that generated big headlines and even bigger recoveries, but resulted in a significant decline in total enforcement actions from the prior year. The division touted its record-setting monetary relief, nearly 75% of which came from its large digital asset cases. The division also resolved several high dollar off-channel communications actions, which accounted for a significant portion of the division's recoveries.

But the division's total enforcement actions dropped from 96 in 2023 to just 58 in 2024. The large digital assets cases required significant resources, which left fewer resources for the division's traditional docket. For example, the division brought no spoofing actions this year and only 11 fraud actions, compared to 59 last year.

Perhaps as a result of fewer investigatory resources, the division used its Whistleblower Program much more, doling out $42 million to 15 whistleblowers, the most ever in one year since the program issued its first award in 2014.

Looking Ahead to 2025: Out with (Some of) the Old, In with (Some of) the New

The Division of Enforcement's 2024 enforcement results demonstrate its desire to stake its claim to a role as a prominent crypto regulator, a role that many expect will grow in the upcoming administration. President-elect Donald Trump and his crypto-focused administration may task the CFTC with overseeing the digital assets industry. Based on our conversations with incoming administration officials, we do believe that the commission will at least be tasked with regulating cryptocurrency exchanges, as well as the spot markets, for digital assets deemed commodities.

But the CFTC's expanded role is unlikely to be coupled with an increased budget to match. Current CFTC Chairman Rostin Behnam only asked for $399 million for 2025, $12M less than 2024, and a Trump administration is unlikely to send additional resources the commission's way. The CFTC will be forced to balance competing priorities—bringing enforcement actions for violations of the CEA in its traditional markets and taking the laboring oar of regulating digital assets—with the reality of very limited resources. We believe that crypto enforcement actions will win out, which will lead to even fewer actions in the CFTC's traditional areas of enforcement.

In particular, we expect to see a decreased focus on enforcement actions for unauthorized channels of communication, and the continued downward trend of fraud and spoofing cases brought by the commission outside of the crypto space. We also anticipate that the change in administration will lead to a de-prioritization of seeking "admissions," an initiative spearheaded by outgoing Director of Enforcement Ian McGinley.

As the CFTC will be strapped for resources, market participants can expect an increased reliance on the commission's Whistleblower Program. The CFTC issued its first-ever whistleblower award to a compliance professional in 2024—a whopping $1.25 million—and we doubt it will be the last. All the more reason for companies to ensure that they design and implement a robust compliance program that detects misconduct and remediates it swiftly and thoroughly.

While there is always uncertainty when there is a change in administrations, one thing feels certain this time around: the CFTC will be asked to do more with less, and market participants should prepare accordingly. If you would like to discuss any of the CFTC enforcement actions in 2024 or what to expect in 2025, please do not hesitate to contact our team.

Below is a summary of many of the actions the Division of Enforcement highlighted in its year-end review.

2024 Settlements and Enforcement Actions:

Digital Assets

The CFTC continued to increase its enforcement role in the digital asset space, which we expect to continue in 2025 and beyond. Of the ten cases filed in 2024 that involved digital asset-related allegations, the commission only highlighted two of them, instead focusing on the massive settlements and one summary judgment victory in actions filed in 2023.

- Charged the former CEO of a digital asset platform with commodity pool fraud and registration failures in relation to the entity's bankruptcy. The complaint alleged that the former CEO and the entity misrepresented the safety and financial health of the digital asset platform before pooling customers' digital asset commodities together to make loans to high-risk third parties. The CFTC seeks restitution, disgorgement, penalties, permanent trading and registration bans, and a permanent injunction against future violations of the CEA.

- Charged Debiex with engaging in romance scam tactics (i.e., cultivating friendly or romantic relationships with potential customers to gain their trust) to then convince them to open and fund trading accounts with Debiex. The CFTC alleged that for almost two years, Debiex accepted and misappropriated $2.3 million in customer funds intended for digital asset commodity trading.

- Won an order granting summary judgment against Seneca Ventures LLC and related defendants for alleged misappropriation of funds through a carbon offset program and for fraudulently operating an illegal commodity pool. Defendants were ordered to pay $110.9 million in penalties, $83.7 million in restitution, and $36.9 million in disgorgement.

- Settled fraud claims filed in 2023 against FTX and Alameda Research for a $12.7 billion judgment, the largest recovery for victims and sanctions in CFTC history. The CFTC is still litigating against FTX and Alameda Research executives for alleged fraud and material misrepresentations.

- Settled charges filed against Binance, its founder Changpeng Zhao, and former CCO Samuel Lim in 2023. The CFTC imposed $150 million and $1.5 million penalties against Zhao and Lim, respectively, and required Binance to pay a $1.35 billion penalty and $1.35 billion in disgorgement.

Manipulative/Deceptive Conduct, Disruptive Trading, and False Reporting

- Settled charges against CQC Impact Investors LLC and its COO in the first-ever CFTC action for fraud and false reports in the voluntary carbon credit markets. Respondents admitted to fraudulently reporting false and misleading data to a carbon credit registry and others with the goal of obtaining carbon credits beyond what CQC was entitled to receive and significantly increasing the company's revenue. CQC paid $1 million in penalties.

- Settled charges against a global commodities merchant for trading on material nonpublic information, among other things. The company was also the first to be charged under regulations designed to protect whistleblowers related to non-disclosure provisions in their employment contracts that the CFTC said illegally prevented individuals from participating in the Whistleblower Program. Trafigura paid a $55 million penalty and implemented remedial measures as part of the settlement.

- Settled charges against a Swiss energy trader for "reckless" attempted manipulation of the market for EBOB-linked futures contracts. This order drew criticism from some who deemed the $48 million fine for "reckless attempt" an aggressive and questionable use of the division's expanded Dodd-Frank authority.

Reporting, Risk Management, Adequate Compliance Programs

- Settled charges against a large U.S. bank's FCM for failing to supervise its business, which the CFTC said resulted in its failure to capture billions of order messages in its surveillance system between 2014 and 2021. The bank admitted the facts in the order, paid a $200 million penalty, and implemented other remedial measures, including retaining a consultant to review its trade surveillance systems.

- Settled charges against another large bank for its alleged lack of effective oversight and failure to supervise its electronic communications system. The bank admitted that it failed to surveil communications for hundreds of its swap dealer personnel over a five-year period, and paid a $4 million dollar penalty.

- Filed and settled several charges against a number of CFTC registrants for failing to stop their employees, including senior-level staff, from using unapproved communications methods and for failing to preserve records as mandated by CFTC recordkeeping requirements. Settlements included significant penalties totaling over $110 million.

Swaps Data Reporting

- Settled charges against a large bank for failing to correctly report more than five million swap transactions and for failing to properly supervise its swap dealer business. The bank voluntarily retained an independent compliance consultant and paid a $5 million penalty as part of the settlement.

- Settled charges against SEFs BGC Derivative Markets, L.P. and GFI Swaps Exchange, LLC, for failure to report data on thousands of swap transactions and violating SEF Core Principles. GFI paid a $550,000 penalty, while BGC paid a $750,000 penalty and had to obtain an independent compliance consultant.

- Settled charges against a large bank after it admitted to failing to accurately report more than five million swap transactions between 2018 and 2023. The bank's reporting failures included incorrect reporting of primary economic terms, misreported time stamps, and late reporting, among others. The bank paid $4 million in penalties as part of the settlement.

- Settled charges against a Canadian bank for failing to timely report data on its swaps transactions to a registered swap data repository. The bank admitted to the facts in the order and paid a $1.25 million penalty as part of the settlement.

Protecting Customers

- Charged an entity and sixteen other defendants with allegedly making material fraudulent misrepresentations to their customers and misappropriating customer funds in a $283 million Ponzi scheme. The CFTC seeks disgorgement, penalties, restitution, trading and registration bans and a permanent injunction.

- Charged Agridime LLC and its co-founders Joshua Link and Jed Wood for allegedly engaging in a scheme to defraud customers through a Ponzi scheme. Agridime claimed that the funds would be used for purchase of cattle and instead allegedly used later customers' funds to pay profits to earlier customers. The CFTC seeks restitution to defrauded customers, penalties, trading bans and a permanent injunction.

- Filed several enforcement actions charging commodity pool fraud and commodity trading advisor fraud. Defendants were charged with retail foreign currency transactions, fraud by a commodity pool operator, commingling pool property, acting as an unregistered commodity pool operator and for deceitfully obtaining and misappropriating client funds.

Confidential Information

- Settled misappropriation-based fraud charges against a commodities merchant for alleging paying bribes to obtain material non-public information from a South American state-owned enterprise. The merchant paid $61 million in penalties and $30.5 million in disgorgement.

- Charged an associated person of a large IB for allegedly revealing confidential information from a customer to an individual proprietary trader who then traded based on this information. The CFTC seeks monetary penalties, disgorgement, restitution, registration and trading bans and a permanent injunction against future violations.

Trade Practice Violations

- Settled charges against a swap dealer branch of a large securities brokerage firm for exceeding federal and ICE Futures U.S. position limits in natural gas futures contracts and failing to monitor position limits and swap dealers. The swap dealer admitted to some of the facts in the order and paid $1.5 million in penalties.

- Settled charges against two related entities for engaging in wash sales and noncompetitive transactions. Both entities admitted to engaging in 44 noncompetitive transactions using accounts that were not independently controlled. They paid $750,000 total in penalties.

- Settled charges against an entity for exceeding CFTC position limits on aggregate positions held on multiple exchanges and exceeding position limits in live cattle futures contracts trade on CME. This was the first time the CFTC's enforced position limits on aggregate positions across multiple exchanges. The company paid $500,000 in penalties.

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If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings Chicago lawyers:

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