



The CFTC Cracks Down On Crypto Exchange Binance Amid Increasing Regulatory Pressure on Cryptocurrency Sector

On March 27, 2023, the Commodity Futures and Trading Commission (“CFTC”) filed a complaint in an Illinois federal court against the world’s largest crypto exchange, Binance, its CEO, Changpeng Zhao (commonly referred to as “CZ”), and its former compliance officer, Samuel Lim, which alleges that Binance violated the Commodity Exchange Act and CFTC rules. [1]

The CFTC regulates derivatives trading in the United States where, generally, trading of crypto derivatives is prohibited. Binance operates an offshore exchange where crypto derivatives are traded and a more limited exchange in this country known as “Binance.US” (which, incidentally, does not have a Bit License and therefore is unavailable in New York). Although Binance claims that it has adequate protocols in place to prevent Americans from trading crypto derivatives through its offshore platform, the CFTC’s complaint alleges, among other things, that this is untrue.

According to the CFTC, Binance, at Zhao’s direction, “instructed its employees and customers to circumvent compliance controls in order to maximize corporate profits.” The CFTC claims that Binance did not require its customer to provide any identity-verifying information before trading on its platform, and that its personnel instructed “VIP” U.S.-based customers, including institutions, on best methods to evade compliance controls in order to trade crypto derivatives, such as Bitcoin futures. The CFTC’s complaint further alleges that Binance’s VIPs were offered special privileges, such as reduced rates for transaction fees, as well as “prompt notification of any law enforcement inquiry concerning their account.”

How can Americans access Binance’s offshore platform if it is not technically “available” in the United States? By using virtual private networks or VPNs, which essentially obscure a user’s IP address and location. While VPNs can be legitimately used as an added layer of security in digital communications, they can also allow a user to access content that is otherwise blocked or unavailable based on location (e.g., websites that are “geofenced”). The CFTC claims that Binance not only knew that Americans were using VPNs to trade crypto derivatives through its offshore platform, but that they went so far as to instruct users on how to do so.

[1] A virtual copy of the CFTC’s complaint can be found at, https://storage.courtlistener.com/recap/gov.uscourts.ilnd.431767/gov.uscourts.ilnd.431767.1.0_1.pdf.

The CFTC's Enforcement Division Principal Deputy Director and Chief Counsel, Gretchen Lowe, stated, "Defendants' alleged willful evasion of U.S. law is at the core of the Commissioner's complaint against Binance. The defendants' own emails and chats reflect that Binance's compliance efforts have been a sham and Binance deliberately chose – over and over – to place profits over following the law." The CFTC is seeking disgorgement, civil monetary penalties, permanent trading and registration bans, and a permanent injunction against further violations of the Commodity Exchange Act and CFTC regulations.

According to a report by Bernstein Private Wealth Management, Binance may be forced to cease all operations in the United States in order to settle the CFTC lawsuit. The company's U.S. operations apparently make up less than 5% of the company's global footprint, and Bernstein posits that Binance might forego operations here in order to preserve their business abroad.

This lawsuit is just one of many in a string of broader and increasingly high-profile regulatory actions against cryptocurrency exchanges and companies in the digital asset space. It is also not the first indication of government action against Binance, as it has been reported that federal prosecutors have subpoenaed institutions to obtain their communications with Binance. Given the increasing regulatory pressure on Binance and the uncertainty of its future operations in the United States, users of Binance.US should consider the risk involved in leaving their cryptocurrency on-chain and in their Binance wallets at this point.

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