

CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony

# Trends in CFTC Virtual Currency Enforcement Actions

2015–Q2 2020

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# Executive Summary

As one of the regulators engaged in the cryptocurrency space, the U.S. Commodity Futures Trading Commission (CFTC) has been bringing enforcement actions against virtual currency market participants, including traders, issuers, exchanges, and service providers. From January 1, 2015, to June 30, 2020, the CFTC brought 19 such actions.

- Of the 19 actions between 2015 and Q2 2020, 14 were litigated in U.S. district courts. The other five were resolved within the CFTC as orders and simultaneous settlements.
- The majority of actions involved an allegedly fraudulent scheme, with 14 out of the 19 involving allegedly misleading investors in the trading of commodities.
- Eight of the 19 actions involved alleged failure to register with the CFTC, while four of the actions involved allegedly illegal off-exchange commodity transactions.
- Of the 14 cases litigated in U.S. courts, most occurred in the state of New York.
- As of June 30, 2020, six of the 14 litigated cases reached a resolution.

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*The year 2018 had the highest number of enforcement actions by the newly formed CFTC Division of Enforcement's Virtual Currency Task Force.*

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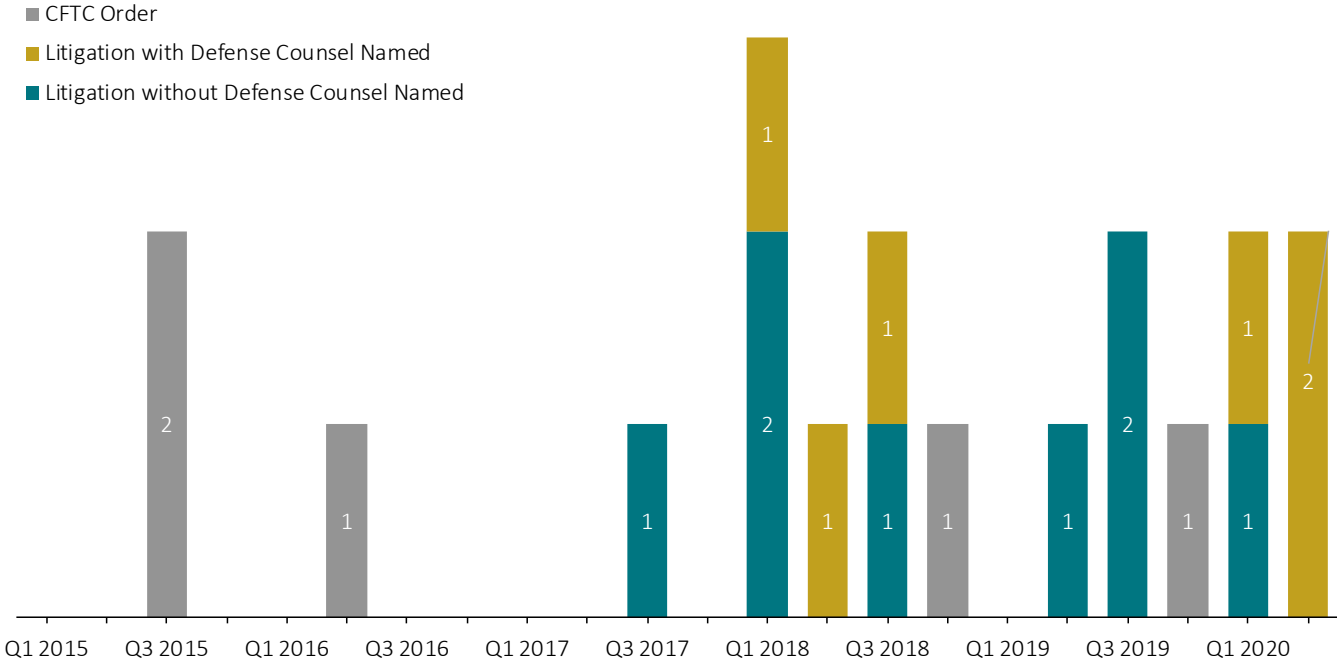
- From the date of the complaint filing to the case resolution, the average case was outstanding for 292 days.
- Among other actions filed from 2019 to 2020 Q2, the CFTC brought five actions with alleged fraud that exceeded \$5 million each.

# Virtual Currency Enforcement Action Overview

- Of the 19 actions between 2015 and Q2 2020, 14 were litigated in U.S. district courts. The other five were resolved within the CFTC as orders and simultaneous settlements.
- Almost all actions involved transactions in Bitcoin alone or in combination with Litecoin. Three actions involved other currencies, My Big Coin, ATM Coin, and Compcoin.<sup>1</sup>

*Of the 14 cases litigated in U.S. courts, six of these have identified defense counsel.*

Figure 1: Number of CFTC Virtual Currency Enforcement Actions 2015–Q2 2020



Source: cftc.gov

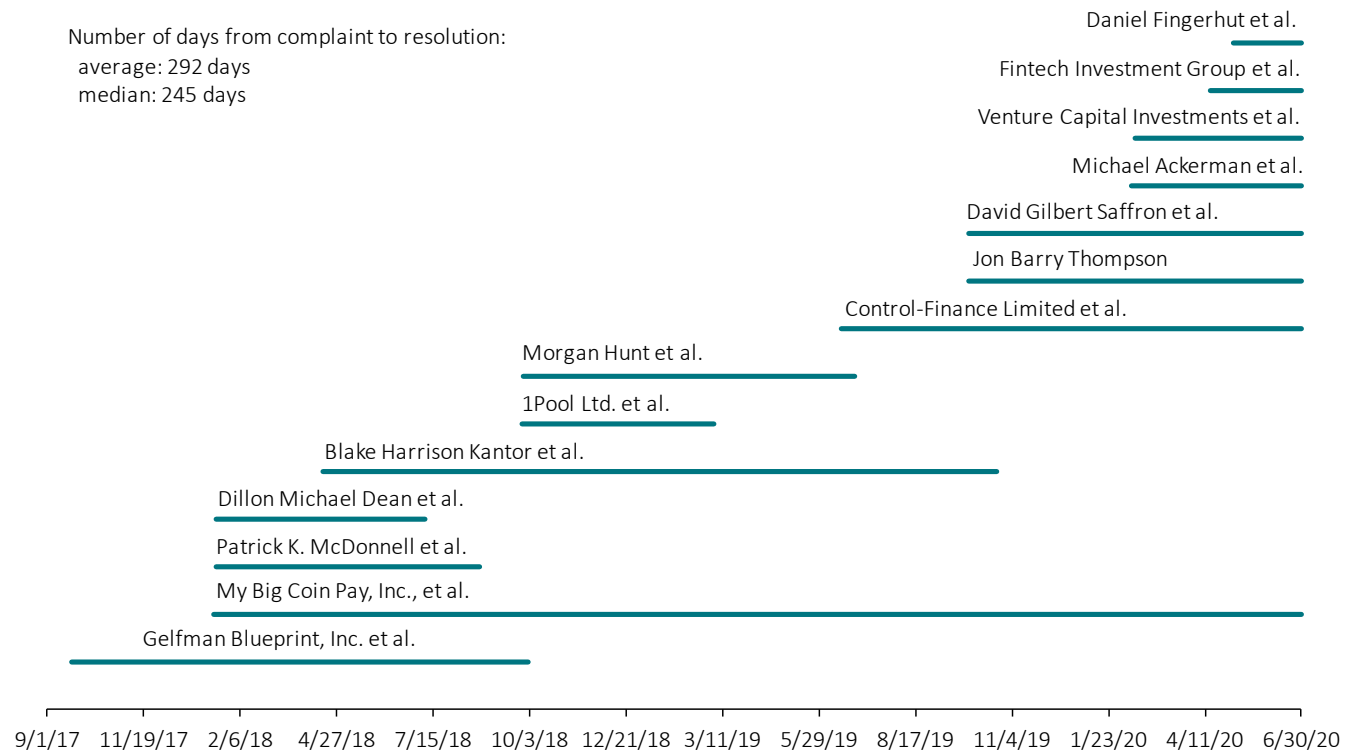
Note: Dates for CFTC orders represent the date of the final order of settlement or action, while dates for litigation actions represent the date of complaint filing.

# Case Duration

- As of June 30, 2020, six of the 14 actions litigated in U.S. courts had reached a resolution.
- The average time from the date of the complaint filing to the case resolution was 292 days.
- The eight actions for which no resolution has been reached have an average time outstanding of 279 days as of June 30, 2020.

*Between Q3 2017 and Q2 2020, the median number of days from complaint to resolution was 245 days.*

**Figure 2: Time from Complaint to Resolution of CFTC Virtual Currency Enforcement Actions Q3 2017–Q2 2020**



Source: cftc.gov

Note: Out of 14 litigations, eight actions are outstanding as of 6/30/20 and have been excluded from the calculation of average number of days from complaint to resolution. As of 6/30/20, these outstanding actions had an average time outstanding of 279 days with a median time outstanding of 274 days.

# Venue

- Of the 14 actions litigated in U.S. courts, most occurred in the state of New York, with four in the Southern District of New York and three in the Eastern District of New York.
- The 14 litigations were presided over by 13 different judges. The Honorable Sandra J. Feuerstein of the Eastern District of New York presided over two cases.

*The majority of the actions litigated in U.S. courts occurred in the state of New York.*

**Figure 3: Courts and Presiding Judges of CFTC Virtual Currency Enforcement Actions 2015–Q2 2020**

United States District Court	Number of Actions	Actions Resolved	Judges
Southern District of New York	4	1	P. Kevin Castel, John G. Koeltl, Naomi Reice Buchwald, Loretta A. Preska
Eastern District of New York	3	3	Jack B. Weinstein, Sandra J. Feuerstein (2 Cases)
District of Massachusetts	1	–	Rya W. Zobel
District of Columbia	1	1	Trevor N. McFadden
District of Nevada	1	–	Jennifer A. Dorsey
Northern District of Texas	1	1	Reed C. O'Connor
District of Colorado	1	–	Michael E. Hegarty
Middle District of Florida	1	–	Wendy W. Berger
Southern District of Florida	1	–	Darrin P. Gayles
Not Applicable	5	–	
<b>Total</b>	<b>19</b>	<b>6</b>	

Source: cftc.gov

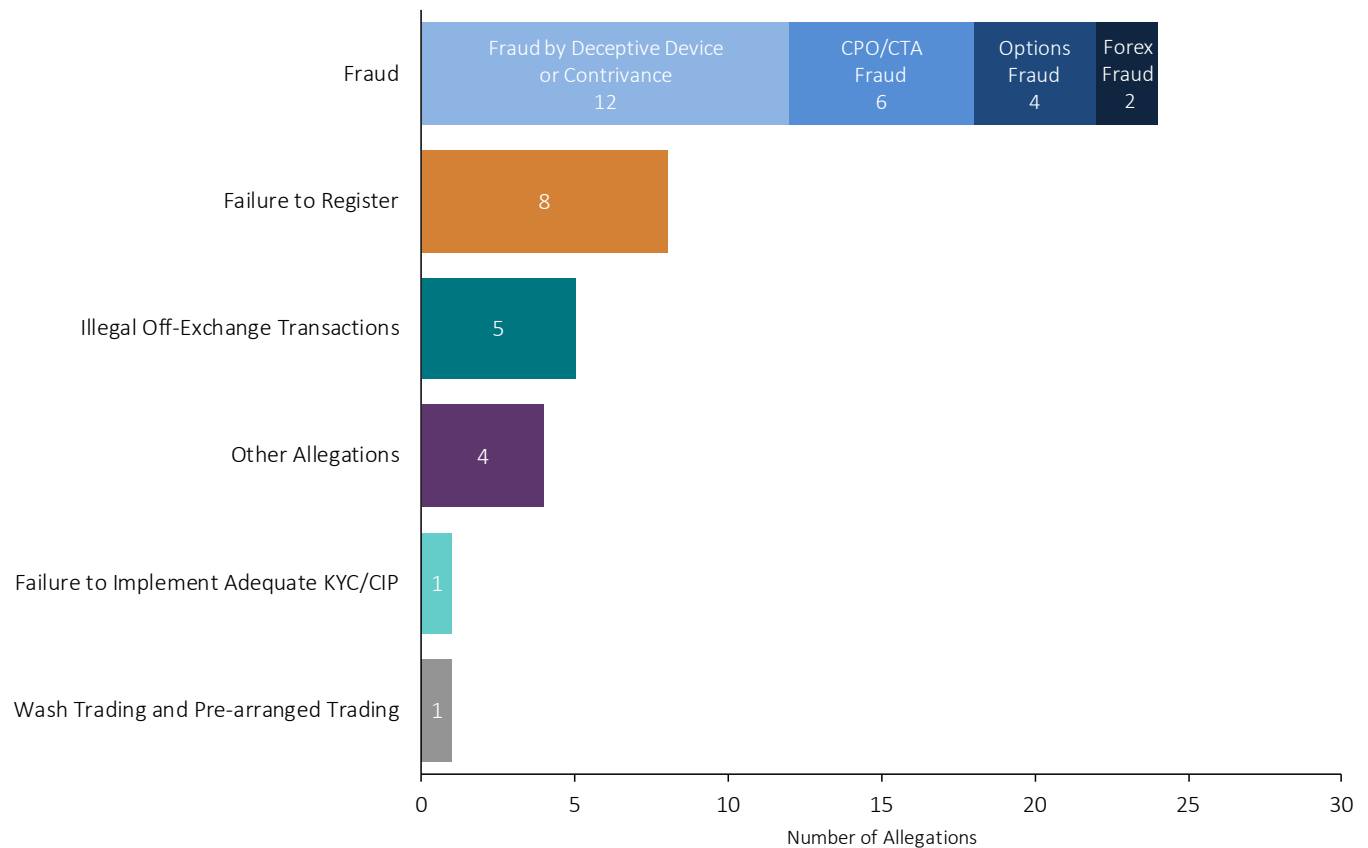
Note: Actions identified as occurring in a “Not Applicable” court represent actions maintained with the CFTC (see CFTC orders).

# Allegations

- The majority of actions involved an allegedly fraudulent scheme, with 14 out of the 19 involving allegedly misleading investors in the trading of commodities, commodity futures contracts, or options. Among the fraudulent schemes, seven cases alleged Ponzi-like schemes.<sup>2</sup>
- Eight of the actions involved a commodity trader allegedly failing to register with the CFTC, while four of the 19 actions involved allegedly illegal off-exchange commodity transactions.

*Almost 74 percent of actions involved an allegedly fraudulent scheme.*

Figure 4: CFTC Virtual Currency Enforcement Actions by Type of Allegation 2015–Q2 2020



Source: cftc.gov

Note: Allegations in the 19 actions are taken from the “Findings of Violations” section in the CFTC orders and the “Violations of the Commodity Exchange Act and Regulations” section in the litigation complaints. An action may be associated with more than one alleged violation. The “Other Allegations” category includes: failure to operate a Commodity Pool as a separate entity; false advertising; failure to include a disclaimer containing hypothetical results; and false or misleading statements to the CFTC. A commodity pool operator (CPO) is a person engaged in a business similar to an investment trust or a syndicate and who solicits or accepts funds, securities, or property for the purpose of trading commodity futures contracts or commodity options. The CPO either makes trading decisions on behalf of the pool or engages a commodity trading advisor (CTA) to do so.

# Recent Virtual Currency Enforcement Actions

- From 2019 through Q2 2020, the CFTC brought five separate multimillion-dollar actions alleging fraud. These actions involved a Bitcoin trading firm and its principal; the principal of a Bitcoin escrow fund; a virtual currency trader; and the principal of cryptocurrency trading and advisory firms.<sup>3</sup>
- The largest of these actions is *CFTC v. Control-Finance Limited and Benjamin Reynolds*, brought by the CFTC in June 2019 against the defunct UK private limited company Control-Finance Limited and its director. The CFTC complaint, filed in the Southern District of New York, alleged that Control-Finance Limited and Reynolds operated a fraudulent scheme to misappropriate at least 22,858.822 Bitcoin (approximately \$147 million) from more than 1,000 customers.<sup>4</sup>
- During Q2 2020, the CFTC brought two new actions, *CFTC v. Daniel Fingerhut et al.* and *CFTC v. Fintech Investment Group Inc. et al.*<sup>5</sup> These both involve allegations of fraud relating to trading, among others.

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*The CFTC brought five separate multimillion-dollar alleged fraud actions.*

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- The CFTC also litigated cases involving virtual currencies it had brought before 2019.<sup>6</sup>
- See Appendix for all CFTC virtual currency enforcement actions.

# Appendix

## CFTC Virtual Currency Enforcement Actions 2015–Q2 2020

CFTC Actions and Headlines	Action Number	Date of Complaint	Resolution Date	Allegations	Virtual Currency Involved	Reported Size of Allegation	CFTC Enforcement (\$ Fine/ Restitution)
Commodity Futures Trading Commission In the Matter of Coinflip, Inc., d/b/a Derivabit, and Francisco Riordan  CFTC Orders Bitcoin Options Trading Platform Operator and Its CEO to Cease Illegally Offering Bitcoin Options and to Cease Operating a Facility for Trading or Processing of Swaps without Registering	CFTC Docket No. 15-29		9/17/15	Failure to Register as a SEF. Illegal Off-Exchange Commodity Options.	Bitcoin	Not Provided	Not Provided
Commodity Futures Trading Commission In the Matter of TeraExchange LLC  CFTC Settles with TeraExchange LLC, a Swap Execution Facility, for Failing to Enforce Prohibitions on Wash Trading and Prearranged Trading in Bitcoin Swap	CFTC Docket No. 15-33		9/24/15	Wash Trading and Pre-arranged Trading.	Bitcoin	Not Provided	Not Provided
Commodity Futures Trading Commission In the Matter of BFXNA Inc. d/b/a Bitfinex  CFTC Orders Bitcoin Exchange Bitfinex to Pay \$75,000 for Offering Illegal Off-Exchange Financed Retail Commodity Transactions and Failing to Register as a Futures Commission Merchant	CFTC Docket No. 16-19		6/2/16	Illegal Off-Exchange Transactions. Failure to Register as a FCM.	Bitcoin	Not Provided	\$75,000
Commodity Futures Trading Commission v. Gelfman Blueprint Inc. and Nicholas Gelfman  Federal Court Orders Trading Firm and CEO to Pay More Than \$2.5 Million for Fraudulent Bitcoin Ponzi Scheme	S.D.N.Y. 1:17-cv-07181	9/21/17	10/2/18	Fraud by Deceptive Device or Contrivance.	Bitcoin	\$600,000	\$3,078,300
Commodity Futures Trading Commission v. My Big Coin Pay Inc., My Big Coin Inc., Randall Crater, Mark Gillespie, John Roche, and Michael Kruger  Federal Court Finds That Virtual Currencies Are Commodities	D. Mass. 1:18-cv-10077	1/16/18		Fraud by Deceptive Device or Contrivance.	My Big Coin	\$6,000,000	Unresolved
Commodity Futures Trading Commission v. Patrick K. McDonnell and CabbageTech Corp. d/b/a Coin Drop Markets  CFTC Wins Trial against Virtual Currency Fraudster	E.D.N.Y. 1:18-cv-00361	1/18/18	8/23/18	Fraud by Deceptive Device or Contrivance.	Bitcoin Litecoin	\$457,394	\$1,161,717
Commodity Futures Trading Commission v. Dillon Michael Dean and the Entrepreneurs Headquarters Limited  Federal Court Orders Commodity Pool Operator and Its Principal to Pay More Than \$1.9 Million for Bitcoin and Binary Options Fraud Scheme	E.D.N.Y. 2:18-cv-00345	1/18/18	7/9/18	Options Fraud CPO Fraud. Failure to Register as a CPO.	Bitcoin	\$432,185	\$1,929,977

CFTC Actions and Headlines	Action Number	Date of Complaint	Resolution Date	Allegations	Virtual Currency Involved	Reported Size of Allegation	CFTC Enforcement (\$ Fine/ Restitution)
Commodity Futures Trading Commission In the Matter of Joseph Kim; United States of America v. Joseph Kim  CFTC Orders Former Virtual Currency Trader to Pay More Than \$1.1 Million for Fraudulent Bitcoin and Litecoin Scheme	CFTC Docket No. 19-02		10/29/18	Fraud by Deceptive Device or Contrivance.	Bitcoin Litecoin	\$601,000	\$1,146,000
Commodity Futures Trading Commission v. Blake Harrison Kantor aka Bill Gordon, Nathan Mullins, Blue Bit Banc, Blue Bit Analytics Ltd., G. Thomas Client Services, and Mercury Cove Inc.  CFTC Charges Multiple Individuals and Companies with Operating a Fraudulent Scheme Involving Binary Options and a Virtual Currency Known as ATM Coin	E.D.N.Y. 2:18-cv-02247	4/16/18	10/23/19	Illegal Off-Exchange Retail Swaps and Commodity Options. Fraud by Deceptive Device or Contrivance. Options Fraud. Failure to Register as a FCM.	ATM Coin	\$618,810	\$4,251,738
Commodity Futures Trading Commission v. 1Pool Ltd. and Patrick Brunner  Foreign Trading Platform and Its CEO to Pay \$990,000 for Illegal Bitcoin-Related Transactions with U.S. Customers	D.D.C. 1:18-cv-02243	9/27/18	3/4/19	Illegal Off-Exchange Transactions. Failure to Register as a FCM. Failure to Implement Adequate KYC/CIP Procedures.	Bitcoin	Not Provided	\$990,000
Commodity Futures Trading Commission v. John Doe 1 aka Morgan Hunt dba Diamonds Trading Investment House, and John Doe 2 aka Kim Hecroft dba First Options Trading  Federal Court Permanently Enjoins Defendants and Orders Them to Pay Penalties and Restitution for Bitcoin Solicitation Fraud, Impersonating a CFTC Investigator, and Sending Forged CFTC Documents	N.D. Tex. 4:18-cv-00807	9/28/18	6/28/19	Fraud by Deceptive Device or Contrivance. CPO Fraud. Forex Fraud.	Bitcoin	Not Provided	\$400,000
Commodity Futures Trading Commission v. Control-Finance Limited and Benjamin Reynolds  CFTC Charges Company and Its Principal in \$147 Million Fraudulent Bitcoin Trading Scheme	S.D.N.Y. 1:19-cv-05631	6/17/19		Fraud by Deceptive Device or Contrivance.	Bitcoin	\$147,000,000	Unresolved
Commodity Futures Trading Commission v. Jon Barry Thompson  CFTC Charges Individual with Multi-Million Dollar Bitcoin Fraud	S.D.N.Y. 1:19-cv-09052	9/30/19		Fraud by Deceptive Device or Contrivance.	Bitcoin	\$7,000,000	Unresolved
Commodity Futures Trading Commission v. David Gilbert Saffron a/k/a David Gilbert and Circle Society Corp.  CFTC Charges Nevada Company and Its Owner in \$11 Million Cryptocurrency Fraud and Misappropriation Scheme	D. Nev. 2:19-cv-01697	9/30/19		Options Fraud. CPO Fraud. Failure to Register as a CPO. Other Allegations.	Bitcoin	\$11,000,000	Unresolved
Commodity Futures Trading Commission In the Matter of XBT Corp. SARL d/b/a First Global Credit  CFTC Charges Foreign Trading Platform for Failing to Register with the CFTC	CFTC Docket No. 20-04		10/31/19	Failure to Register as a FCM.	Bitcoin	Not Provided	\$100,000

CFTC Actions and Headlines	Action Number	Date of Complaint	Resolution Date	Allegations	Virtual Currency Involved	Reported Size of Allegation	CFTC Enforcement (\$ Fine/ Restitution)
Commodity Futures Trading Commission v. Michael Ackerman, Q3 Holdings LLC, and Q3 I LP  CFTC Charges Company and Its Principal in \$33 Million Fraudulent Digital Asset Scheme	S.D.N.Y. 1:20-cv-01183	2/11/20		Fraud by Deceptive Device or Contrivance.	None Mentioned	\$33,000,000	Unresolved
Commodity Futures Trading Commission v. Venture Capital Investments Ltd. and Breonna S. Clark  CFTC Charges Colorado Resident with Fraud in Digital Asset-Linked Ponzi Scheme	D. Col. 1:20-cv-00382	2/14/20		Fraud by Deceptive Device or Contrivance. Fraud by a CPO and CTA. Failure to Register as a CPO and as a CTA.	Bitcoin	\$534,829	Unresolved
Commodity Futures Trading Commission v. Fintech Investment Group Inc., Compcoin LLC, and Alan Friedland  CFTC Charges Florida Man and His Companies in Fraudulent Forex and Digital Asset Scheme	M.D. Fla. 6:20-cv-00652	4/16/20		Fraud by Deceptive Device or Contrivance. CTA Fraud. Forex Fraud. Other Allegations.	Compcoin	\$1,600,000	Unresolved
Commodity Futures Trading Commission v. Daniel Fingerhut, Digital Platinum Inc., Digital Platinum Ltd, Huf Mediya Ltd (A.K.A. Hoof Media Ltd.), Tal Valariola, and Itay Barak  CFTC Files Charges in \$20 Million International Binary Options and Digital Asset Fraud Scheme	S.D. Fla. 1:20-cv-21887	5/5/20		Fraud by Deceptive Device or Contrivance. CTA Fraud. Options Fraud. Other Allegations.	Bitcoin, Ethereum	\$20,000,000	Unresolved

Source: cftc.gov

Note: A swap execution facility (SEF) is a trading system or platform created by the Dodd-Frank Act in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce. The Dodd-Frank Act imposed different statutory provisions on SEFs than on designated contract markets.

A commodity pool operator (CPO) is a person engaged in a business similar to an investment trust or a syndicate and who solicits or accepts funds, securities, or property for the purpose of trading commodity futures contracts or commodity options. The CPO either makes trading decisions on behalf of the pool or engages a commodity trading advisor (CTA) to do so.

Futures commission merchants (FCM) are individuals, associations, partnerships, corporations, and trusts that solicit or accept orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any exchange and that accept payment from or extend credit to those whose orders are accepted.

See "Futures Glossary," CFTC, <https://www.cftc.gov/ConsumerProtection/EducationCenter/CFTCGlossary/index.htm>.

# Methodology

- The CFTC enforcement action website was used to identify actions relevant to financial technologies. See “Enforcement Actions,” CFTC, <https://www.cftc.gov/LawRegulation/Enforcement/EnforcementActions/index.htm>.
- Enforcement actions with a release date between January 1, 2015, and June 30, 2020, were reviewed for a series of financial technology relevant phrases.
- Actions were identified as relevant if the enforcement action released by the CFTC contained phrases such as “bitcoin,” “blockchain,” “digital currency,” “virtual currency,” or a number of other related phrases.
- Allegations in the enforcement actions were taken from the “Findings of Violations” section in the CFTC orders and the “Violations of the Commodity Exchange Act and Regulations” section in the litigation complaints.

## Endnotes

- <sup>1</sup> Two cases involve the trading of both Bitcoin and Litecoin. These are *CFTC v. Patrick K. McDonnell et al.* and *CFTC in the Matter of Joseph Kim*. Additionally, three actions deal with the trading of My Big Coin (*CFTC v. My Big Coin Pay Inc. et al.*), ATM Coin (*CFTC v. Blake Harrison Kantor et al.*), and Compcoin (*CFTC v. Fintech Investment Group Inc., Compcoin LLC, and Alan Friedland*).
- <sup>2</sup> The seven litigation actions alleging that defendants ran a Ponzi-like scheme are: *CFTC v. Gelfman Blueprint Inc. and Nicholas Gelfman*; *CFTC v. My Big Coin Pay Inc. et al.*; *CFTC v. Dillon Michael Dean and the Entrepreneurs Headquarters Limited*; *CFTC v. Control-Finance Limited and Benjamin Reynolds*; *CFTC v. David Gilbert Saffron a/k/a David Gilbert and Circle Society Corp.*; *CFTC v. Michael Ackerman et al.*; and *CFTC v. Venture Capital Investments Ltd. and Breonna S. Clark*.
- <sup>3</sup> Complaint, *CFTC v. Control-Finance Limited and Benjamin Reynolds*, June 17, 2019, <https://www.cftc.gov/media/2111/enfcontrolbenjamincomplaint061719/download>; Complaint, *CFTC v. Jon Barry Thompson*, September 30, 2019, <https://www.cftc.gov/media/2591/enfjonbarrycomplaint093019/download>; Complaint, *CFTC v. David Gilbert Saffron a/k/a David Gilbert and Circle Society Corp.*, September 30, 2019, <https://www.cftc.gov/media/2811/enfdavidgilbertsaffroncomplaint093019/download>; Complaint, *CFTC v. Michael Ackerman, Q3 Holdings LLC, and Q3 I LP*, February 11, 2020, <https://www.cftc.gov/media/3406/enfmichaelackermanqcomplaint021120/download>, and *CFTC v. Daniel Fingerhut, Digital Platinum Inc., Digital Platinum Ltd., HUF Mediya Ltd. (a.k.a. Hoof Media Ltd.), Tar Valariola, and Itay Barak*, May 5, 2020, <https://www.cftc.gov/media/3846/enfdanielfingerhutcomplaint050520/download>.
- <sup>4</sup> Complaint, *CFTC v. Control-Finance Limited and Benjamin Reynolds*, June 17, 2019, <https://www.cftc.gov/media/2111/enfcontrolbenjamincomplaint061719/download>.
- <sup>5</sup> *CFTC v. Daniel Fingerhut, Digital Platinum Inc., Digital Platinum Ltd., HUF Mediya Ltd. (a.k.a. Hoof Media Ltd.), Tar Valariola, and Itay Barak*, May 5, 2020, <https://www.cftc.gov/media/3846/enfdanielfingerhutcomplaint050520/download>; Complaint, *CFTC v. Fintech Investment Group Inc., Compcoin LLC, and Alan Friedland*, April 16, 2020, <https://www.cftc.gov/media/3756/enffintechalancomplaint041620/download>.
- <sup>6</sup> See Order for Final Judgment, *CFTC v. Blake Harrison Kantor et al.*, October 23, 2019, <https://www.cftc.gov/media/2931/enfblakeharrisonorder102319/download>. See also Consent Order for Permanent Injunction, *CFTC v. 1Pool Ltd. and Patrick Brunner*, March 4, 2019, <https://www.cftc.gov/sites/default/files/2019-03/enfconsentorder1poolLtdandbrunnertrustcompanycomplex.pdf>.

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