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CFTC Charges Binance and its Founder with Multiple CEA Violations



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On March 27, the Commodity Futures Trading Commission (“CFTC”), the U.S. derivatives regulator, **charged** three Binance entities (collectively “Binance”) and its founder and chief compliance officer (“CCO”) with numerous violations of the Commodity Exchange Act (“CEA”) and CFTC regulations.

CFTC’s complaint does not break new ground by advocating novel legal theories, but it is remarkable in its thoroughness (73 pages), depth and the comprehensive nature of the allegations, and gives the impression that the CFTC decided to take this opportunity to clearly explain the reach of its jurisdiction and the application of the CEA to virtually all aspects of the digital asset commodity industry.

At the core of CFTC’s complaint is the allegation that Binance, its founder and the CCO “chose to knowingly disregard applicable provisions of the CEA while engaging in a calculated strategy of regulatory arbitrage to their commercial benefit.” The complaint further explains application of the CEA and identifies the following violations:

- The CFTC has jurisdiction over this matter because Binance operated a facility for trading of certain digital assets, such as Bitcoin, Ether and Litecoin (each qualifying as a “commodity”) in interstate commerce for U.S. persons.
- Binance traded these digital asset commodities as contracts in spot markets as well as derivatives, such as futures, options and swaps.
- Many of these contracts were offered to “retail” U.S. persons, *i.e.*, those who were not eligible contract participants (“ECPs”).
- These retail contracts were offered on a margined and leveraged basis, and therefore these contracts qualified as “futures” and “options” that must only trade through designated contract markets (“DCMs”), *i.e.*, CFTC-registered

commodity exchanges and brokered only by registered futures commission merchants (“FCMs”).

- None of Binance entities were registered as DCMs or FCMs.
- Because Binance had operated as an FCM (albeit unregistered), it should have implemented a compliance program, such as “know your customer” and screening for terrorist activity.
- Binance operated as a swap execution facility (“SEF”) by facilitating the trading of swaps on digital asset commodities without registering as a SEF.
- Binance used an autodeleting messaging service when communicating with U.S. customers to destroy the audit trail evidence.
- Binance operated as an intentionally opaque global platform to deliberately evade regulation by the CFTC, and the CCO aided and abetted Binance in these violations.

The complaint is asking for a draconian set of remedies, including a permanent ban on participating in spot or derivative markets involving digital asset commodities and a permanent registration ban with the CFTC – meaning that if Binance chose to remedy its violations of the CEA by registering as an FCM, a DCM or a SEF, it will not be allowed to do so, which effectively means a complete ban on Binance’s operations in the U.S. In addition, the CFTC is asking for a full disgorgement and restitution of all gains from doing business in the U.S. (and theoretically this disgorgement and restitution may apply not only with respect to only U.S. customers, but all of Binance’s customers). Finally, the complaint is asking for civil monetary penalties under the CEA, which can be interpreted very broadly and may exceed billions, as demonstrated by CFTC’s previous enforcement actions.
