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The CFTC Signals New Era in Enforcement of Cryptocurrency Trading with Action Against Antivirus Software Pioneer John McAfee

For the first time, the United States Commodity Futures Trading Commission (“CFTC”) filed a complaint alleging a manipulative scheme involving digital assets.¹ The CFTC’s complaint, filed on March 5, 2021 in the Southern District of New York, charged antivirus software creator John McAfee and his former employee, Jimmy Gale Watson, who served as executive adviser of McAfee’s cryptocurrency team, for engaging in a pump-and-dump scheme in a variety of digital currencies.²

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McAfee is no stranger to enforcement actions. These new charges filed by the CFTC come in addition to a complaint filed in October by the Securities and Exchange Commission against McAfee, alleging fraudulent promotion of multiple initial coin offerings.³ And while McAfee is in custody in Spain, he awaits possible extradition for criminal charges filed by the U.S. DOJ last June relating to tax violations, some of which stem from unreported income connected to this very manipulation scheme.⁴

According to the complaint, this pump-and-dump scheme took place in three stages. First, the defendants secretly accumulated positions in certain cryptocurrencies, such as dogecoin, reddcoin, and verge. Second, they used McAfee’s clout to promote these digital assets on social media as valuable long-term investments, causing their value to rise. Finally, they sold the assets at these inflated values to earn more than \$2 million in total profit. The CFTC’s complaint seeks “restitution, disgorgement, civil monetary penalties, permanent trading and registration bans, and a permanent injunction against further violations of the Commodity Exchange Act and CFTC regulations”⁵

Vincent McGonagle, the CFTC’s Acting Director of Enforcement, commented on the agency’s first enforcement action related to market manipulation in the digital currency arena. “Financial innovation is constantly breaking new ground, and the CFTC’s enforcement efforts must keep up,” he remarked. “We will always act to hold fraudsters and manipulators accountable for misconduct.”⁶

McAfee and Watson’s scheme also caught the attention of criminal authorities. On March 5, 2021 the Federal Bureau of Investigation (FBI) and Audrey Strauss, the United States Attorney for the Southern District of New York, announced the unsealing of a criminal indictment charging both individuals with conspiracy to commit commodities and securities fraud, conspiracy to commit securities and touting fraud, wire fraud conspiracy and substantive wire fraud, and money

¹ Press Release, *CFTC Charges Two Individuals with Multi-Million Dollar Digital Asset Pump-and-Dump Scheme*, U.S. Commodity Futures Trading Comm’n (Mar. 5, 2021), <https://www.cftc.gov/PressRoom/PressReleases/8366-21>.

² Complaint, *Commodity Futures Trading Comm’n v. McAfee*, No. 21-CV-1919 (S.D.N.Y. Mar. 5, 2021); *see also* Press Release, *John David McAfee And Executive Adviser Of His Cryptocurrency Team Indicted In Manhattan Federal Court For Fraud And Money Laundering Conspiracy Crimes*, U.S. Dep’t of Justice (Mar. 5, 2021), <https://www.justice.gov/usao-sdny/pr/john-david-mcafee-and-executive-adviser-his-cryptocurrency-team-indicted-manhattan>.

³ Press Release, *SEC Charges John McAfee With Fraudulently Touting ICOs*, Sec. Exch. Comm’n (Mar. 5, 2021), <https://www.sec.gov/news/press-release/2020-246>.

⁴ *John McAfee Charged Over Crypto Promotion on Top of Tax Woes* (3), Bloomberg Law (Mar. 5, 2021, 4:24 PM), <https://news.bloomberglaw.com/white-collar-and-criminal-law/cybersecurity-mogul-mcafee-charged-over-crypto-promotion>.

⁵ Complaint, *supra* note 2; *see also* Press Release, *supra* note 1.

⁶ Press Release, *supra* note 1.

laundering conspiracy offenses.⁷ Each count carries a maximum potential sentence of twenty years in prison. FBI Assistant Director William F. Sweeney Jr. made clear that prosecutors will not give a special pass to cryptocurrency promoters: “[w]hen engaging in illegal activity, simply finding new ways to carry out old tricks won’t produce different results. Investment fraud and money laundering schemes carry a strict penalty under federal law.”⁸

Although this is the first digital asset market manipulation case brought by the CFTC, cryptocurrencies have long been on the agency’s radar. The CFTC brought its first case involving cryptocurrencies in 2015 and has been very active ever since. In fiscal year 2020 alone, the CFTC brought seven enforcement actions related to retail fraud in the cryptocurrency space.⁹

Yet, the CFTC’s complaint against McAfee and Watson marks the dawn of a new era in digital currency trading enforcement. The CFTC’s enforcement action should serve as a notice to the digital currency market that the agency views cryptocurrencies through the same regulatory lens as other regulated products. Asset managers and others with digital currencies in their portfolios should closely monitor these new developments and should be sure that their compliance programs are adequately designed and operating to respond to the increased CFTC scrutiny.

Please contact [Eva Carman](#), [Nicholas M. Berg](#), [Helen Gugel](#), [Jeremy A. Liabo](#) or the Ropes & Gray attorney who usually advises you with any questions you may have or if you would like additional information.

⁷ Press Release, *John David McAfee And Executive Adviser Of His Cryptocurrency Team Indicted In Manhattan Federal Court For Fraud And Money Laundering Conspiracy Crimes*, Dept. of Justice (Mar. 5, 2021), <https://www.justice.gov/usao-sdny/pr/john-david-mcafee-and-executive-adviser-his-cryptocurrency-team-indicted-manhattan>.

⁸ *Id.*

⁹ Press Release, *CFTC Division of Enforcement Issues Annual Report*, U.S. Commodity Futures Trading Comm’n (Dec. 1, 2020), <https://www.cftc.gov/PressRoom/PressReleases/8323-20>.