

Lessons From Bittrex's Settlements With OFAC And FINCEN

By **Kara Bombach, Kyle Freeny and Marina Olman-Pal** (December 1, 2022)

On Oct. 11, the U.S. Department of the Treasury announced[1] that Washington-based cryptocurrency exchange Bittrex Inc. had agreed to settle \$53 million total in fines over allegations it violated sanctions and anti-money laundering laws.

The fines come after the Office of Foreign Assets Control and Financial Crimes Enforcement Network conducted parallel investigations into Bittrex's activities. Bittrex settled with OFAC and FinCEN, respectively.

These actions — the largest against a crypto firm by OFAC, and the first parallel action taken by OFAC and FinCEN — come as the virtual currency sector faces increasing regulatory scrutiny.

Both OFAC and FinCEN focus on risks in the virtual currency space generally, and specifically when companies do not implement adequate compliance programs and internal controls from the outset.

The Treasury Department noted that these actions highlight the importance of crypto firms maintaining risk-based sanctions and anti-money-laundering compliance programs, as the failure to do so can expose exchanges and others in the industry to illicit actors. OFAC Director Andrea Gacki said:

When virtual currency firms fail to implement effective sanctions compliance controls, including screening customers located in sanctioned jurisdictions, they can become a vehicle for illicit actors that threaten U.S national security.

The FinCEN consent order imposing the penalties stated that Bittrex's failure to implement proper internal controls "left its platform open to abuse by bad actors, including money launderers, terrorist financiers, and sanctions evaders."

Overview of OFAC Settlement With Bittrex

Bittrex agreed to pay approximately \$24 million in fines to OFAC to settle its potential civil liability stemming from roughly 116,000 apparent violations of several sanctions programs.

Bittrex failed to, according to the settlement, prohibit individuals that were apparently located in the sanctioned jurisdictions of the Crimea region of Ukraine, Cuba, Iran, Sudan and Syria from transacting \$263 million in cryptocurrency on the platform between March 2014 and December 2017.

U.S. individuals are generally prohibited under relevant sanctions programs from engaging in transactions with these jurisdictions.

Using both IP address information and physical address information collected at the time of onboarding from each customer, OFAC found that Bittrex had reason to know that there



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were users located in these sanctioned jurisdictions.

Despite this information, Bittrex did not screen customer information at the time of the transactions for terms associated with sanctioned jurisdictions.

OFAC noted that Bittrex's use of a third-party vendor for its sanctions screenings did not absolve it of liability, even though Bittrex instituted numerous remedial measures after learning the vendor did not screen customers or transactions for a nexus to sanctioned jurisdictions, and did not restrict accounts or screen IPs and other addresses associated with sanctioned locations.

The settlement amount reflects OFAC's determination that Bittrex's apparent violations were not voluntarily self-disclosed and were not egregious.

Overview of FinCEN Settlement With Bittrex

Bittrex has agreed to remit approximately \$29 million for its willful violations of the Bank Secrecy Act's anti-money laundering program and suspicious activity reporting, or SAR, requirements. FinCEN will credit Bittrex's payment of \$24 million as part of its agreement to settle its potential liability with OFAC against the FinCEN-levied penalties.

FinCEN's investigation found that from February 2014 through December 2018, though Bittrex was aware of its obligations under the BSA, it willfully violated the BSA by failing to develop, implement and maintain an effective AML program. In particular, Bittrex failed to maintain adequate controls reasonably designed to assure compliance with SAR filing requirements.

Instead of using transaction monitoring software tools to screen transactions for suspicious activity, Bittrex relied on a small number of staff with minimal AML training and experience to manually review all transactions for suspicious activity.

Further, Bittrex's AML program failed to appropriately address the risks associated with the products and services it offered, including anonymity-enhanced cryptocurrencies.

As a result of these gaps, Bittrex failed to file any SARs between February 2014 and May 2017, and to identify and block a significant number of transactions involving sanctioned jurisdictions.

As is typical with FinCEN resolutions, Bittrex was required to admit the facts giving rise to the settlement.

Key Takeaways

The Treasury Department remains focused on the virtual currency space.

This summer, the Treasury Department began seeking public comment on the possible illicit finance and national security risks posed by the use of digital assets, as part of the agency's mandate under President Joe Biden's March Executive Order No. 14067[2] to study the development of cryptocurrency, further indicating that additional review and scrutiny of this space is forthcoming.

The enforcement actions, coupled with OFAC guidance on compliance in the virtual currency space[3] and for instant payment systems,[4] signal that companies must take

responsibility for their OFAC compliance.

This responsibility does not end even when the company is using a third-party vendor for its OFAC compliance program, as Bittrex did. Companies are responsible for monitoring and implementing the services their vendors provide and cannot solely rely on the vendor to ensure the company is compliant.

Companies should develop and implement risk-based compliance programs, especially when engaging in high-risk activities like cross-border financial transactions in the virtual currency space.

This applies to startups and small and new companies in the virtual currency space as well because, as these enforcement actions indicate, these companies will not be provided leniency for failing to have compliance programs in place as they become operational.

As the OFAC enforcement release states,

[t]his enforcement action emphasizes the importance of new companies and those involved in emerging technologies incorporating sanctions compliance into their business functions at the outset, especially when the companies seek to offer financial services to a global customer base.

Additionally, crypto firms, and particularly exchanges and payment processors, should be reviewing their BSA/AML and sanctions programs to ensure they have implemented adequate controls to address the AML and sanctions risks presented by their operations.

FinCEN acting Director Himamauli Das noted that "[v]irtual asset service providers are on notice that they must implement robust risk-based compliance programs and meet their BSA reporting requirements. FinCEN will not hesitate to act when it identifies willful violations of the BSA."

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[1] <https://home.treasury.gov/news/press-releases/jy1006>.

[2] <https://www.gtlaw.com/en/insights/2022/3/executive-order-digital-assets-establishes-policy-goals-whole-of-government-approach-to-regulation>.

[3] https://home.treasury.gov/system/files/126/virtual_currency_guidance_brochure.pdf.

[4] https://home.treasury.gov/system/files/126/instant_payment_systems_compliance_guidance_brochure.pdf.