

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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 :
 COMMODITY FUTURES TRADING :
 COMMISSION, :
 :
 Plaintiff, :
 :
 v. :
 :
 HDR GLOBAL TRADING LIMITED, :
 100X HOLDINGS LIMITED, ABS :
 GLOBAL TRADING LIMITED, SHINE :
 EFFORT INC LIMITED, HDR GLOBAL :
 SERVICES (BERMUDA) LIMITED, :
 ARTHUR HAYES, BEN PETER DELO, :
 AND SAMUEL REED, :
 :
 Defendants. :
 :
 ----- X

Case No. 01:20-cv-08132-MKV

Hon. Mary Kay Vyskocil

**DEFENDANT BEN PETER DELO’S MEMORANDUM OF LAW IN SUPPORT OF HIS
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

Dated: September 17, 2021

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Defendant Ben Peter Delo respectfully submits this memorandum of law in support of his motion to dismiss Plaintiff Commodity Futures Trading Commission's ("CFTC's") Complaint for Injunctive and Other Equitable Relief and Civil Monetary Penalties Under the Commodity Exchange Act and Commission Regulations ("Complaint") pursuant to Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction.

PRELIMINARY STATEMENT

The CFTC contends that Mr. Delo—a foreign, minority owner and non-CEO executive of a company organized in a foreign jurisdiction—may be haled into court in New York without specific allegations that he personally participated in, managed, or supervised the conduct that constitutes the violations of law alleged in its Complaint. When the allegations now before the Court are examined critically against the background of key unpled facts known to the CFTC, the conclusion is inescapable: personal jurisdiction over Mr. Delo is lacking, and the Due Process Clause of the U.S. Constitution requires that he be dismissed from this action.

After a two-and-a-half-year investigation involving numerous witness interviews, administrative subpoenas, requests to foreign regulators, and at least six full days of investigative testimony from key witnesses, the CFTC sued HDR Global Trading Limited ("HDR Global") and several affiliates that operate a foreign crypto-products trading platform under the name "BitMEX." The core of the case is that BitMEX was unlawfully present in the United States and failed to register with the CFTC and implement know-your-customer ("KYC") and anti-money laundering ("AML") programs. The Complaint asserts "controlling person" claims against Mr. Delo and two individual co-defendants, Arthur Hayes and Samuel Reed, based upon broad allegations of joint control of BitMEX and an alleged joint decision to cause BitMEX to engage in conduct that violated the law. This group-pleading approach is an inadequate basis to assert personal jurisdiction over Mr. Delo.

Mr. Delo is a British citizen who is alleged to reside in Hong Kong, where he, along with Defendants Hayes and Reed, co-founded BitMEX. The CFTC knew from its pre-filing investigation that Mr. Delo lacked any connections to the United States, and thus the Complaint (perhaps understandably) fails to identify any plausible basis for asserting personal jurisdiction over him. In pre-filing submissions preceding this motion, the CFTC argued that Mr. Delo's joint control over BitMEX, his involvement in BitMEX's so-called "availment" of U.S. markets, and his alleged principal-agent relationship with certain BitMEX-affiliated operations and functions in the United States permitted the assertion of personal jurisdiction. These arguments cannot salvage the Complaint's defective personal jurisdiction allegations.

The Complaint's control allegations are deficient in two critical respects. First, there are no individualized allegations specific to Mr. Delo that show he personally had the power to control BitMEX. The CFTC groups Mr. Delo together with his co-founders to make the sort of generic claims of control that courts routinely reject. Second, the Complaint does not include any nonconclusory factual allegations that would support a reasonable inference that Mr. Delo was responsible for any alleged decision to evade CFTC registration or KYC and AML requirements. The Complaint affirmatively alleges that Mr. Delo was responsible for developing and overseeing BitMEX's trading engine, which the CFTC knew was located outside of the United States. But he is not alleged to have been responsible for marketing or business development anywhere in the world, much less the United States. Due process requires more than mere allegations of participation in management to assert personal jurisdiction over an individual defendant based on a control-person theory.

The allegations that Mr. Delo was involved in BitMEX's "availment" of U.S. markets fare no better. Because Mr. Delo is a foreign defendant who does not have any in-forum

contacts that give rise to the underlying claims, the Second Circuit requires allegations that the defendant “expressly aimed” his conduct at the forum. Mr. Delo’s alleged development and oversight of the trading engine is not conduct aimed at U.S. persons, and there are no fact-specific allegations tying Mr. Delo to any U.S. activities that establish personal jurisdiction.

There is likewise no basis to impute BitMEX’s alleged unlawful in-forum activity to Mr. Delo. The Complaint does not allege that Mr. Delo supervised any employees in the United States or oversaw any BitMEX functions that operated in the United States. Nor is there any basis to claim that Mr. Delo was responsible for, or involved in, any alleged solicitation and acceptance of U.S. customers, a purported basis for the CFTC to assert jurisdiction over BitMEX. Any claim on this score is further weakened by the CFTC’s choice to omit from the Complaint the steps BitMEX took to ban U.S. customers in September 2015 after the CFTC asserted for the first time that cryptocurrencies are commodities within its purview. BitMEX immediately updated its terms of service to expressly ban U.S. customers and implemented IP address checks to prevent U.S. customers from registering to trade. The CFTC refuses to credit these efforts and, instead, alleges that there was a secret policy to market to and allow U.S. customers, who had accessed the platform through virtual private networks (“VPNs”) to mask their location. No factual allegations support any inference that Mr. Delo or an agent was responsible for such an alleged policy. Unilateral decisions by persons to access BitMEX in violation of its terms of service in a deceptive fashion cannot, without more, be a basis for asserting jurisdiction.

Because the CFTC failed to make a *prima facie* showing, the Court need not address whether asserting personal jurisdiction is reasonable. But the reasonableness inquiry underscores why dismissal on jurisdictional grounds is warranted. Mr. Delo is a foreign defendant who is

alleged to have controlled a company that was organized in a foreign jurisdiction. It is patently unreasonable to force him to defend himself before this Court on such an unpersuasive showing of participation in the purported registration or KYC and AML violations.

BACKGROUND

A. The Failure to Register Claims Against the Entity Defendants.

According to the Complaint, Defendant HDR Global, together with Defendants 100x Holdings Limited, ABS Global Trading Limited, Shine Effort Inc Limited, and HDR Global Services (Bermuda) Limited, are alleged to operate a crypto-products trading platform under the name “BitMEX.” (Compl. ¶¶ 10-18.) HDR Global was incorporated in the Seychelles in 2014 and owns and operates the BitMEX trading platform. (*Id.* ¶ 10.) HDR Global is alleged to have operations and employees in various offices and locations throughout the world, including Hong Kong, Singapore, Bermuda, New York, San Francisco, and Milwaukee. (*Id.*)

BitMEX is alleged to be a “pure derivatives platform” that launched in November 2014 and offers “the trading of cryptocurrency derivatives including bitcoin, ether and litecoin.” (*Id.* ¶ 36; *see also id.* ¶¶ 39, 45.) BitMEX allegedly offered its products to customers in the United States and from offices in the United States, and as a result, was allegedly required to register under the Commodity Exchange Act (“CEA”) with the CFTC as a swap execution facility, designated contract market, or futures commission merchant, and to implement KYC and AML procedures. (*Id.* ¶¶ 1-2, 4, 34, 51-62, 74-84, 85-103, 112, 118, 123; *see also* Aug. 23, 2021 CFTC Pre-Mot. Ltr. at 2, ECF No. 71.)

B. The CFTC’s Controlling Persons Claims Against the Individual Defendants.

The individual defendants, including Mr. Delo, are alleged to be the “co-founder[s] and co-owner[s] of BitMEX.” (Compl. ¶¶ 16-17.) The claims against the individual defendants, including Mr. Delo, allegedly arise under 7 U.S.C. § 13c(b), “which imposes derivative liability

on ‘controlling persons’ that ‘did not act in good faith [with respect to violations] or knowingly induced, directly or indirectly, the act or acts constituting the violation.’” (Aug. 16, 2021 CFTC Pre-Mot. Ltr. at 2, ECF No. 68.)

The Complaint alleges that Mr. Delo is a U.K. citizen who resides in Hong Kong. (Compl. ¶ 17.) In addition to co-founding BitMEX along with Defendants Arthur Hayes and Samuel Reed, Mr. Delo is alleged to have shared responsibilities with them for “various aspects of the BitMEX business.” (*Id.* ¶ 69.) The Complaint alleges that Defendant Hayes was BitMEX’s Chief Executive Officer, who was allegedly responsible for “strategic decisions, business development, marketing, and management of the BitMEX enterprise.” (*Id.* ¶¶ 16, 69.) Mr. Delo is alleged to have been BitMEX’s Chief Operating Officer, who allegedly built and oversaw the BitMEX trading engine, which, according to the Complaint, “matches customer orders.” (*Id.* ¶¶ 17, 41, 69.) Defendant Reed is alleged to have been BitMEX’s Chief Technology Officer, who allegedly built and oversaw the BitMEX website, application protocol interface, and order entry system. (*Id.* ¶¶ 18, 69.)

C. The CFTC’s Alleged Basis for Personal Jurisdiction Over Mr. Delo.

The Complaint does not state a specific basis for personal jurisdiction. (*Id.* ¶¶ 7-8.) The CFTC clarified in its pre-motion submissions that jurisdiction over Mr. Delo is based on his alleged control—along with his co-founders—over the entities that operate BitMEX and the imputation to Mr. Delo of BitMEX’s alleged U.S. contacts, including BitMEX’s alleged U.S. operations and alleged solicitation of U.S. customers. (ECF No. 68 at 2.)

With respect to the individual defendants’ control over BitMEX, the Complaint broadly alleges that Mr. Delo and his co-founders together “control the operations” of the “BitMEX common enterprise, including the various entities that comprise BitMEX.” (Compl. ¶ 63; *see also id.* ¶ 19.) In support of this allegation, the Complaint alleges generally that the co-founders

“each sign documents on behalf of the various BitMEX corporate entities,” “control the bank and trading accounts for the various BitMEX corporate entities,” and “have the authority to hire and fire employees.” (*Id.* ¶ 63.) The Complaint also alleges that Mr. Delo and his co-founders “control the deposits to and withdrawals from the BitMEX platform” (*id.*), and that “[k]ey financial and trading decisions require ‘Founder’ approval, meaning approval by Hayes, Delo, and Reed.” (*Id.* ¶ 73.) The Complaint does not allege that Mr. Delo individually had any control or responsibility over issues of regulatory compliance. Instead, the Complaint alleges that Mr. Delo participated in “critical decisions” with his co-founders about “the enterprise, such as whether (or not) to pursue regulatory approval . . . or whether (or not) to implement KYC or AML policies and procedures.” (*Id.* ¶ 70.) None of these generalized allegations of control invokes a U.S. nexus.

In terms of BitMEX’s alleged “extensive and deliberate access to the United States” (CFTC Pre-Mot. Ltr., ECF No. 71 at 2), the Complaint does not allege that Mr. Delo played any role with BitMEX’s sole alleged U.S. affiliate—ABS Global Trading Limited (“ABS Global”). (Compl. ¶ 67.) Besides incorporating ABS Global in Delaware along with his co-founders in 2017, Mr. Delo is not alleged to have been an officer or director of ABS Global, to have been an authorized signatory of ABS Global, or to have opened bank accounts on behalf of, or held credit cards for, ABS Global. (*Id.* ¶¶ 67-68.) Mr. Delo is also not alleged to have supervised any employees based in, or any functions operated out of, BitMEX’s offices located in the United States. (*Id.* ¶¶ 54-60.)

Nor is Mr. Delo alleged to have been responsible for soliciting or marketing to U.S. customers. The Complaint’s discussion of BitMEX’s alleged solicitation of U.S. customers mentions Mr. Delo once. (*Id.* ¶ 82.) This single allegation states that Mr. Delo communicated

with a Chicago-based proprietary trading firm in 2014 (*id.*), well before the CFTC issued public enforcement orders in September 2015 taking the position that cryptocurrencies were commodities for the purposes of the CEA. (*Id.* ¶ 98.)

D. The Complaint Omits Critical Facts Known to the CFTC About BitMEX’s Ban on U.S. Customers and the Procedures to Implement that Ban.

The Complaint’s allegations that BitMEX solicited U.S. customers must be considered in combination with BitMEX’s policies and controls with respect to U.S. customers.¹ The Complaint makes passing references to “superficial steps” that BitMEX allegedly took “to block U.S. traders” without alleging what the specific steps were. (*Id.* ¶ 92; *see also id.* ¶¶ 100-01.) As referenced in the Complaint, in September 2015, the CFTC charged and settled two matters involving alleged violations of the CEA by two firms involved in digital asset transactions. (*Id.* ¶ 98.) Those enforcement orders asserted for the first time that Bitcoin was a commodity under the CEA and that Bitcoin derivatives fell under the CFTC’s jurisdiction. *See In the Matter of Coinflip, Inc.*, CFTC No. 15-29, 2015 WL 5535736 (Sept. 17, 2015); *In the Matter of TeraExchange LLC*, CFTC No. 15-33, 2015 WL 5658082 (Sept. 24, 2015). Immediately following the publication of the consent orders, BitMEX implemented measures to restrict U.S. customers’ access to the trading platform. (Compl. ¶ 98.) Those measures included (i) amending BitMEX’s terms of service to prohibit trading by U.S. persons (Ex. A at 3 (BMX-CFTC-00002882)); (ii) requiring users to declare a country of residence upon registration for a trading account (Ex. B (June 25, 2019 A. Hayes CFTC Tr. at 70:7-71:10)); and (iii) implementing GeoIP checks upon registration to identify U.S. IP addresses (Ex. D (June 20,

¹ “[W]hen considering arguments related to personal jurisdiction, ‘the Court may look beyond the four corners of the complaint and consider material outside the pleadings, including accompanying affidavits, declarations, and other written materials.’” *Am. Girl, LLC v. Zembrka*, 2021 WL 1699928, at *3 (S.D.N.Y. Apr. 28, 2021) (Vyskocil, J.).

2019 B. Delo CFTC Tr. (“Delo Tr.”) at 326:4-17); Ex. E (Apr. 16, 2021 M. Curry CFTC Tr. (“Curry Tr.”) at 34:11-35:14, 61:22-64:16, 225:9-226:11)).²

Despite these measures, and BitMEX’s public stance prohibiting U.S. customers, the Complaint alleges that there was a shadow policy of soliciting U.S. customers and permitting them to trade on the platform. (Compl. ¶ 74.) The Complaint alleges that U.S. customers undermined BitMEX’s controls by using VPNs to “mask the customer’s [IP] address” and make “online actions . . . virtually untraceable.” (*Id.* ¶ 80.) According to the Complaint, the use of VPNs was an “open secret” of which the co-founders, including Mr. Delo, were allegedly “fully aware.” (*Id.* ¶¶ 80, 89.) Mr. Delo’s alleged knowledge of VPN use by U.S. customers stems from his alleged receipt of email notifications indicating that U.S. customers were opening accounts on BitMEX and his receipt of, or access to, “spreadsheets and reports that showed the trading volume, revenue to BitMEX, and other account and transactional information for U.S. based traders.” (*Id.* ¶ 91.) There are no allegations concerning Mr. Delo’s knowledge of, or control over, a purported secret policy to allow or encourage U.S. customers to undermine BitMEX’s controls to trade on the platform. On the contrary, the CFTC possesses ample pre-suit evidence that Mr. Delo personally participated in implementing U.S.-person trading restrictions and that he also personally barred accounts showing a U.S. nexus. (*E.g.*, Ex. E (Curry Tr. at 162:22-163:12, 198:13-23, 218:9-220:1) (showing Mr. Delo’s involvement in the implementation of IP address tracking and U.S. customer ban); Ex. F at BMX-PROD-00017784, 17785 (Mr. Delo stating to a customer: “We detected a log in to your account from a US IP address and have disabled your account” because “BitMEX does not service US customers”));

² References to “Ex.” refer to the exhibits attached to the Declaration of Patrick J. Smith filed in support of this Motion.

Ex. G at BMX-PROD-00005905, 5909 (identifying and disabling account of user with a U.S. passport); Ex. H at BMX-PROD-00005922 (“We do not allow US residents of any nationality on our platform.”); Ex. I at BMX-PROD-00023292, 23295 (disabling U.S.-based user, who was told “[a]s per our Terms of Service, residents of the United States cannot trade on our platform”).)

E. The Complaint Omits Critical Facts Known to the CFTC About BitMEX’s Marketing Activities.

The Complaint sweepingly asserts that BitMEX “devoted significant resources to soliciting customers in the U.S.” by “advertising on its website and on social media.” (Compl. ¶ 74.) The CFTC further alleges that BitMEX offered and advertised its products to customers in the U.S. through its website. (*Id.* ¶¶ 37-38.) The CFTC fails to mention that BitMEX’s website displayed a large, prominent banner on its homepage and trading page stating that trading is prohibited for U.S. persons. (Ex. E (Curry Tr. at 61:22-64:16, 225:9-226:11); Ex. J (Apr. 25, 2019 G. Dwyer CFTC Tr. (“Dwyer Tr.”) at 99:17-100:11).)

Additional facts known to the CFTC reveal how misleading the Complaint’s advertising allegations are. The CFTC took the testimony of a former BitMEX employee who was head of marketing from December 1, 2017 to April 4, 2018. (Ex. K (Apr. 23, 2019 L. Loud CFTC Tr. at 7:15-21).) Among other things, she testified about her responsibilities as head of marketing, to whom she reported, the types of marketing activities BitMEX engaged in, and to whom BitMEX marketed its products. (*Id.* at 25:5-23, 27:17-28:19.) This former employee confirmed that she did not report to Mr. Delo and that Mr. Delo was not involved in the direction or supervision of the marketing function at BitMEX. (*Id.* at 37:17-39:3.) This former employee further confirmed that BitMEX did not run advertising campaigns, including search engine marketing through Google, targeting U.S. customers. (*Id.* at 35:9-36:4.) When asked by the CFTC whether BitMEX’s Google ads would show up in U.S. search results, the former employee confirmed,

twice, that “[n]one of [BitMEX’s] ads were running in the United States.” (*Id.* at 35:5-21.) In light of these additional facts, the CFTC’s allegations about marketing cannot be understood as targeting potential U.S. customers.

F. The Complaint Omits Critical Facts Known to the CFTC About Mr. Delo’s Activities Designing and Managing the Trading Engine.

The Complaint is silent about the location and development of the trading engine. The CFTC knows, however, that BitMEX’s platform, including the trading engine, is hosted by Amazon Web Services located in Ireland. (Ex. D (Delo Tr. at 267:8-17); *see also* Ex. C (Jan. 22, 2019 S. Reed CFTC Tr. at 72:14-18).) While the Complaint alleges that Mr. Delo was responsible for building and overseeing the BitMEX trading engine (Compl. ¶ 69), the CFTC fails to mention that Mr. Delo built and operated the trading engine while living and working outside the United States. (Ex. D (Delo Tr. at 19:9-14, 28:14-16).) At all relevant times, engineers operated and maintained the trading engine from outside the United States. (*Id.* at 39:14-22.)

G. Procedural History.

The government revealed in court filings in the parallel criminal case involving Mr. Delo and his co-founders that the CFTC opened its investigation into BitMEX on April 10, 2018, and issued a formal order of investigation on October 4, 2018. (Gov’t’s Br. in Opp’n to Defs.’ Mots. to Compel (“Gov’t Br.”) at 4, *United States v. Hayes*, Case No. 1:20-cr-00500-JGK (S.D.N.Y. July 6, 2021), ECF No. 111.) The CFTC issued its first subpoena to BitMEX on November 8, 2018. (*Id.*)

The CFTC claims to have conducted an incomplete and modest investigation with limited resources that included document subpoenas to BitMEX and sworn investigative testimony from “a handful of key witnesses,” including Mr. Delo and his co-founders. (CFTC Pre-Mot. Ltr.,

ECF No. 71 at 2-4.) However, filings in the criminal matter reveal robust factfinding: over the course of more than two years, the CFTC issued approximately fourteen administrative subpoenas, issued three requests to foreign regulators for documents, and interviewed an undisclosed number of additional witnesses. (Gov't Br. at 4.)

Importantly, on June 20, 2019, the CFTC took a full day of investigative testimony from Mr. Delo. (Ex. D (Delo Tr.)) The CFTC questioned Mr. Delo about his connections with the United States, the location of operations associated with BitMEX, Mr. Delo's role with the companies associated with BitMEX, and BitMEX's policies to bar U.S. persons from trading on the platform. (*Id.* at 9:5-16, 39:9-13, 44:17-24, 45:6-15, 85:22-89:7, 90:17-22, 93:20-94:10, 108:9-14, 126:4-127:24, 136:15-137:3, 142:4-9, 245:20-247:15, 255:11-18, 317:19-330:8, 336:23-337:22, 349:2-351:14.) The CFTC also took the investigative testimony of Mr. Delo's co-founders, Defendants Hayes and Reed, and had a similar opportunity to develop jurisdictional facts. (CFTC Pre-Mot. Ltr., ECF No. 71 at 2.) At the conclusion of Mr. Delo's testimony, the CFTC stated that "we may need to call you again to testify in this action" should additional document productions prompt the need for further questioning. (Ex. D (Delo Tr. at 351:25-352:7).) The CFTC did not recall Mr. Delo for further questioning.

The CFTC also had unique access to former BitMEX employees who provided information and testimony about BitMEX's business, its marketing activities, and interactions with U.S. persons. The CFTC conducted numerous informal witness interviews of an unknown number of persons and took formal testimony under oath of at least three additional witnesses besides Mr. Delo and his co-founders. (Gov't Br. at 4; *see also* Exs. E, J, K.) In addition, the CFTC had access to a former employee who is now a confidential witness for the government in the criminal matter. (Gov't Br. at 7.) The extent of the CFTC's interviews with the former

employee remains unknown because the CFTC has not provided its notes of witness interviews to the prosecutors in the criminal case or, of course, to the defense. (*Id.* at 7.) However, the CFTC did conduct, jointly with the prosecutors, two days of interviews in November 2019 with the former employee. (*Id.* at 8.)

On October 1, 2020—after its nearly two-and-a-half-year investigation—the CFTC filed its Complaint in this matter asserting six separate violations of the CEA and the rules promulgated thereunder. (Compl. ¶¶ 102-39.) On August 10, 2021, Mr. Delo’s co-founders, Defendants Hayes and Reed, filed Answers to the Complaint (ECF Nos. 64, 67) and Mr. Delo sought leave to file this Motion. (ECF No. 63.) In response to Mr. Delo’s letter requesting leave to file this Motion, the CFTC sought jurisdictional discovery, including requests for production, interrogatories, and further depositions of Mr. Delo and Defendants Hayes and Reed. (ECF No. 68 at 1-2.) The CFTC, without describing the scope of its pre-suit investigation, admitted that it had unpled “evidence, including but not limited to internal BitMEX documents and communications[] that will aid the Court in assessing the nature and extent of BitMEX’s contacts with the U.S. and [Mr.] Delo’s control over BitMEX.” (ECF No. 68 at 2 n.4.) After Mr. Delo highlighted the scope and extent of the CFTC’s pre-filing investigation and the redundant request for jurisdictional discovery (*Id.* at 1-2), the CFTC pared back its jurisdictional discovery requests and sought only documents and testimony from Mr. Delo. (ECF No. 71 at 4.) On August 30, 2021, the Court granted Mr. Delo leave to file this Motion and denied the CFTC’s request for jurisdictional discovery without prejudice. (Order, ECF No. 72.)

LEGAL STANDARD

On a motion to dismiss for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2), the “plaintiff bears the burden of making a *prima facie* showing that the court has personal jurisdiction over the defendant.” *Das v. Rio Tinto PLC*, 332 F. Supp. 3d 786,

799 (S.D.N.Y. 2018) (quoting *In re Magnetic Audiotape Antitrust Litig.*, 334 F.3d 2014, 206 (2d Cir. 2003)). “This *prima facie* showing ‘must include an averment of facts that, if credited by the ultimate trier of fact, would suffice to establish jurisdiction over the defendant.’” *In re Terrorist Attacks on Sept. 11, 2001*, 714 F.3d 659, 673 (2d Cir. 2013). “‘Conclusory non-fact-specific jurisdictional allegations’ or a ‘legal conclusion couched as a factual allegation’ will not establish a *prima facie* showing of jurisdiction.” *Orlando v. Nxt-ID Inc.*, 2021 WL 1143766, at *2 (S.D.N.Y. Mar. 23, 2021) (quoting *Jazini by Jazini v. Nissan Motor Co.*, 148 F.3d 181, 185 (2d Cir. 1998)). While the Court “must ‘accept[] all of the complaint’s factual allegations as true and draw[] all reasonable inferences in the plaintiff’s favor,” it is “not bound to accept conclusory allegations or legal conclusions masquerading as factual conclusions.” *Am. Girl, LLC v. Zembrka*, 2021 WL 1699928, at *3 (S.D.N.Y. Apr. 28, 2021) (Vyskocil, J.). “To avoid dismissal for lack of personal jurisdiction under Rule 12(b)(2), Plaintiffs must establish personal jurisdiction over *each* Defendant.” *In re Terrorist Attacks on Sept. 11, 2001*, 349 F. Supp. 2d 765, 804 (S.D.N.Y. 2005), *aff’d*, 538 F.3d 71 (2d Cir. 2008) (emphasis added).

ARGUMENT

I. THE COURT LACKS PERSONAL JURISDICTION OVER MR. DELO.

The Supreme Court has “recognized two types of personal jurisdiction: ‘general’ (sometimes called ‘all purpose’) jurisdiction and ‘specific’ (sometimes called ‘case-linked’) jurisdiction.” *Bristol-Myers Squibb Co. v. Sup. Ct. of Cal.*, 137 S. Ct. 1773, 1779-80 (2017) (citing *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). The CFTC’s pre-motion submissions make plain that it is not asserting that Mr. Delo is subject to the general jurisdiction of this Court. (ECF No. 68 at 2-3.)

To make a *prima facie* showing of specific jurisdiction, the CFTC must “(1) allege that [Mr. Delo] has ‘certain minimum contacts’ with the relevant forum, and (2) that the exercise of

jurisdiction is reasonable under the circumstances.” *In re Terrorist Attacks*, 714 F.3d at 673.

Where, as here, a federal statute authorizes suit and provides for nationwide service of process, the relevant forum is the “United States as a whole.” *SEC v. Sharef*, 924 F. Supp. 2d 539, 545 (S.D.N.Y. 2013). To establish the minimum contacts necessary to satisfy due process, the CFTC must show that its “claim[s] arise[] out of, or relate[] to, the defendant’s contacts with the forum . . . [and that] the defendant purposefully availed [himself] of the privilege of doing business in the forum and could foresee being haled into court there.” *Id.* (quoting *Bank Brussels Lambert v. Fiddler Gonzalez & Rodriguez*, 305 F.3d 120, 127 (2d Cir. 2002)). Additionally, the Second Circuit “relies on the ‘effects test’ to determine whether it can exercise specific jurisdiction over a defendant whose ‘conduct that forms the basis of the controversy occur[red] entirely out-of-forum.’” *In re Aegean Marine Petroleum Network, Inc. Sec. Litig.*, 2021 WL 1178216, at *12 (S.D.N.Y. Mar. 29, 2021) (quoting *Tarsavage v. Citic Tr. Co., Ltd.*, 3 F. Supp. 3d 137, 145 (S.D.N.Y. 2014)). Pursuant to the effects test, personal jurisdiction is permissible only “if the defendant expressly aimed [his] conduct at the forum.” *Id.*

The CFTC has argued that three intertwined theories justify asserting personal jurisdiction over Mr. Delo. (*See* ECF Nos. 68, 71 (CFTC’s pre-motion letters).) The CFTC claims: (i) that Mr. Delo “controlled BitMEX . . . with [Defendants] Hayes and Reed”; (ii) that Mr. Delo “directed [BitMEX’s] availment of U.S. markets”; and (iii) that “BitMEX’s U.S. contacts, including operating from the U.S. and targeting U.S. residents,” can be imputed to Mr. Delo on a principal-agent theory. (ECF No. 68 at 2.) None of these theories establishes personal jurisdiction over Mr. Delo.

A. The CFTC’s Allegations That Mr. Delo Controlled BitMEX Are Insufficient.

It is well-settled that the CFTC is required to make individualized allegations of control and cannot group Mr. Delo together with his co-founders. *See In re Aegean Marine Petroleum*,

2021 WL 1178216, at *12 (“To allege personal jurisdiction over a defendant, group pleading is not permitted.”); *see also Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781 n.13 (1984) (holding that due process demands that courts assess “[e]ach defendant’s contacts . . . individually”). The Complaint alleges only that Mr. Delo and his co-founders collectively “control the operations of the BitMEX enterprise” (Comp. ¶¶ 19, 63 (emphasis added)) based on their mere positions as founders and executives of BitMEX. (*See id.* ¶ 63.) In fact, the CFTC’s pre-motion submissions confirmed that the Complaint’s control allegations are premised on Mr. Delo being “a one-third owner of HDR, BitMEX’s primary operating company, and one of three members of that company’s board of directors, which oversaw all actions of the BitMEX ‘executive committee.’” (ECF No. 71 (citing Compl. ¶ 10).) These generic and undifferentiated control allegations are nothing more than “legal conclusion[s] couched as [] factual allegation[s]” that should be swiftly rejected: courts regularly hold that allegations of minority ownership, executive status, or generic oversight are not alone enough to establish minimum contacts. *See In re Terrorist Attacks*, 714 F.3d at 673; *see also In re Parmalat Sec. Litig.*, 376 F. Supp. 2d 449, 454 (S.D.N.Y. 2005) (finding that “the Due Process Clause is ‘made of sterner’ stuff than mere allegations of control”); *In re Rhodia S.A. Sec. Litig.*, 531 F. Supp. 2d 527, 542 (S.D.N.Y. 2007) (being an executive “does not, without more, amount to sufficient minimum contacts”); *In re Aegean Marine Petroleum*, 2021 WL 1178216, at *19 (“[P]ersonal jurisdiction does not follow from an oversight role”); *cf. In re Alstom SA Sec. Litig.*, 406 F. Supp. 2d 433, 492 (S.D.N.Y. 2005) (“Minority stock ownership and the ability to appoint a minority of the board do not create power to direct management and policies, and thus do not constitute sufficient control”).

The CFTC’s control allegations also fail because they do not sufficiently allege that Mr. Delo had control over, or involvement in, any purported “conscious decision” to refrain from

implementing KYC or AML procedures or otherwise “evade” U.S. regulatory requirements. (Compl. ¶ 93.) The CFTC’s control allegations (*id.* ¶¶ 63-72) recognize that Mr. Delo and his co-founders were each responsible for different aspects of BitMEX’s business (*id.* ¶ 69). Specifically, Mr. Delo is alleged to have been “responsible for building and overseeing the BitMEX trading engine”—an entirely offshore function. From there, the CFTC extrapolates that, because Mr. Delo was responsible for one aspect of the business, he was also involved in all “the critical decisions for the enterprise, such as whether (or not) to pursue regulatory approval for the platform, or whether (or not) to implement KYC or AML policies or procedures.” (*Id.* ¶ 70.) The CFTC’s threadbare assertion of involvement in alleged “critical decisions” is devoid of any factual support and entitled to no weight. *SPV OSUS Ltd. v. UBS AG*, 114 F. Supp. 3d 161, 167 (S.D.N.Y. 2015) (“[R]esolving all doubts in the plaintiff’s favor is not the same as blindly crediting all allegations regardless of their factual support.”); *In re Braskem S.A. Sec. Litig.*, 246 F. Supp. 3d 731, 770 (S.D.N.Y. 2017) (“[C]onclusory labels and allegations ‘will not do.’”).

Two cases, *Das v. Rio Tinto PLC*, 332 F. Supp. 3d 786 (S.D.N.Y. 2018) (Carter, J.) and *In re Braskem S.A. Sec. Litig.*, 246 F. Supp. 3d 731 (S.D.N.Y. 2017) (Engelmayer, J.), are instructive here. In *Das*, the corporate defendant, Rio Tinto plc, which was headquartered in the United Kingdom and listed on the New York Stock Exchange, was accused of paying bribes to Guinean government officials to secure mining rights. 332 F. Supp. 3d at 796, 801-02. Following the disclosure of the alleged bribes, the plaintiff brought securities fraud and control person claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 against several former officers, including a non-CEO executive, who led the group paying the bribes. *Id.* at 801-08. The court found that allegations about the non-CEO executive’s role in the mining

project, his position on the executive committee, and his involvement in drafting the company's ethics code of conduct (which prohibited the payment of bribes) were "merely conclusory statements applicable to all individual defendants as a result of their position within the Company." *Id.* at 801-02 (quoting *In re AstraZenica Sec. Litig.*, 559 F. Supp. 2d 453, 467 (S.D.N.Y. 2008)). Critically absent from the complaint in *Das* were any allegations about the executive's role in the conduct underlying the Section 10(b) claim—namely, preparation and dissemination of the allegedly false SEC filings. As a result, the court dismissed the claims for lack of personal jurisdiction. *Id.* at 802.

Similarly, in *Braskem*, plaintiffs asserted control person claims against Odebrecht S.A. ("Odebrecht"), which was alleged to have "exercised control" over Braskem S.A. ("Braskem"). 246 F. Supp. 3d at 769. Braskem was alleged to have violated Section 10(b) of the Securities Exchange Act of 1934 by submitting false and misleading statements in SEC filings. *Id.* at 770. The court recognized that the complaint's "theory of liability [was] that Odebrecht exercised control over Braskem" based on the fact that Odebrecht held 50.1% of Braskem's voting share capital, had veto power over Braskem's corporate actions, appointed ten of Braskem's eleven board members, had the power to appoint Braskem's CEO and CFO, and "had 'sole power to approve Braskem's business plan.'" *Id.* at 769. Judge Engelmayer found that the "sweeping and conclusory allegations" about Odebrecht's power "to influence and control . . . the decision-making of the Company" did not support a finding of personal jurisdiction absent "concrete factual pleadings . . . making the foreign defendant accountable for" the alleged violative acts. *Id.*

The CFTC's description of Mr. Delo's role within BitMEX provides even less of a basis for jurisdiction than the allegations rejected in *Braskem* and *Das*. While the CFTC conclusorily

alleges that the three founders were all “involved in the critical decisions for the enterprise” and “made deliberate decisions” regarding KYC and AML (Compl. ¶¶ 70, 100), it fails to make the necessary individualized factual allegations specific to Mr. Delo that might tie him to the alleged violative conduct. The CFTC’s theory of personal jurisdiction rests on the impermissible inference that, because Mr. Delo was involved in other aspects of BitMEX’s operations, he somehow caused or could have prevented the purported violations constituting the CFTC’s claims. This is “a far cry from the concrete factual pleadings” required under a control person theory of personal jurisdiction. *Braskem*, 246 F. Supp. 3d at 770; *see also In re Satyam Computer Servs. Ltd. Sec. Litig.*, 915 F. Supp. 2d 450, 485 (S.D.N.Y. 2013) (“Plaintiffs assert only conclusorily that the [defendants] ‘had the ability to prevent the issuance of the false and misleading statements or cause the statements to be corrected.’ Such bare assertions are insufficient to allege that the [defendants] purposefully directed their activities to the United States . . .”).

B. The CFTC Fails to Allege That Mr. Delo Was Responsible for Any Conduct Expressly Aimed at the United States.

The CFTC’s allegations that Mr. Delo was involved in BitMEX’s “availment of U.S. markets” fare no better. (ECF No. 68 at 2.) The CFTC’s “availment” allegations amount to claims that Mr. Delo participated in management decisions to target the United States, was in charge of the BitMEX trading engine, and was aware that U.S. residents were accessing the platform. (*Id.*) But, where, as here, the defendant resides outside the United States and the defendant’s conduct that forms the basis for the controversy occurs entirely out-of-forum, the Second Circuit “relies on the ‘effects test’ to determine whether it can exercise specific jurisdiction over a defendant.” *In re Aegean Marine Petroleum Network*, 2021 WL 1178216, at *12. Pursuant to the effects test, “the exercise of personal jurisdiction may be constitutionally

permissible if the defendant expressly aimed [his] conduct at the forum.” *Id.* (citing *Licci ex rel. Licci v. Lebanese Canadian Bank, SAL*, 732 F.3d 161, 173 (2d Cir. 2013)). None of Mr. Delo’s alleged involvement in “availment” activities adequately alleges that Mr. Delo “expressly aimed” any conduct at the United States, and the lone case the CFTC cited in its pre-motion submissions confirms the inadequacy of the allegations.

First, while the Complaint alleges that BitMEX solicited U.S. customers, it only mentions Mr. Delo’s name once in connection with alleged “communications” that he, along with his co-founders, had with a Chicago-based proprietary trading firm in 2014. (Compl. ¶ 82.) The CFTC attempted to alter this allegation in its pre-motion submissions by arguing, without providing any supporting detail, that BitMEX instead entered into a contract with the company “concerning over-the-counter trading of digital assets and digital assets derivatives,” and that Mr. Delo “was directly involved in communications with the firm’s executives.” (ECF No. 71 at 3 (citing Compl. ¶¶ 81-83).) Regardless of the CFTC’s changing story, a single interaction or transaction with a U.S.-based trading firm from 2014, which occurred before the CFTC issued its first public enforcement orders clarifying that cryptocurrencies were commodities for the purposes of the CEA, are precisely the type of “random, fortuitous, or attenuated” contacts that the Supreme Court has rejected as a basis for asserting personal jurisdiction. *See Walden v. Fiore*, 571 U.S. 277, 286 (2014) (“Due process requires that a defendant be haled into court in a forum State based on his own affiliation with the State, not based on the ‘random, fortuitous, or attenuated’ contacts he makes by interacting with other persons affiliated with the State.”).

Second, Mr. Delo’s alleged operation and oversight of the trading engine—which was not alleged to operate in the United States (presumably because the CFTC’s investigation revealed that it was entirely offshore)—is also not conduct aimed at the United States. *See Walden*, 571

U.S. at 284 (finding specific jurisdiction requires that a “defendant’s suit-related conduct . . . create a substantial connection with the forum”). There are there no allegations that the trading engine matched orders in the U.S. or was designed to target U.S. customers. *Cf. Loginovskaya v. Batratchenko*, 764 F.3d 266, 272 (2d Cir. 2014) (applying the presumption against extraterritoriality articulated in *Morrison v. Nat’l Australia Bank Ltd.*, 561 U.S. 247 (2010) to the CEA and finding that the “conduct underlying the suit [] must have occurred within the United States”). There are no allegations in the Complaint that connect the trading engine function to the United States, and thus no basis for relying on Mr. Delo’s role with respect to that function as a basis for personal jurisdiction.

Third, Mr. Delo’s alleged knowledge that U.S. customers traded on the platform in violation of BitMEX’s terms of service and controls is not conduct by Mr. Delo aimed at the United States. Mr. Delo’s purported knowledge of U.S. users on the platform stems from his alleged receipt of information about U.S. users in the form of an “email notification” or “spreadsheets and reports.” (Compl. ¶¶ 89, 91.) Courts have repeatedly ruled that a defendant’s passive receipt of information does not meet the “purposeful availment” requirement. *See Axiom Foods, Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064, 1069-70 (9th Cir. 2017) (holding that evidence that a U.K. company knew of California persons on its email distribution list “sheds no light on whether [the U.K. company] created minimum contacts with California”); *Tarsavage*, 3 F. Supp. 3d at 147 (a defendant’s “mere knowledge would be insufficient for this Court to exercise jurisdiction”). At most, the CFTC alleges that U.S. residents accessed BitMEX and placed orders in violation of its terms of service, which orders were matched in BitMEX’s offshore trading engine that Mr. Delo developed and oversaw. (Compl. ¶¶ 92, 100.) Settled law forecloses the CFTC’s ability to establish personal jurisdiction based on the unilateral actions of

U.S. persons, who circumvented BitMEX's controls and violated its terms of service to trade. *See Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984) (“[The] unilateral activity of another party or a third person is not an appropriate consideration . . .”).

Fourth, the CFTC references a single incident where Mr. Delo allegedly altered one U.S.-based customer's account information, and alleges that Mr. Delo was aware that corporate accounts were given restricted jurisdiction privileges. (CFTC Pre-Mot. Ltr., ECF No. 71 at 3 (citing Compl. ¶ 90).) The CFTC does not allege that these actions triggered the registration requirements under the CEA. *See In re Aegean Marine*, 2021 WL 1178216, at *14 (observing that a court cannot “exercise jurisdiction over [a] foreign defendant” when “plaintiff ‘do[es] not allege that these [events] relate in any way to the conduct underlying the instant case’”).

To salvage its availment claim, the CFTC relies in its pre-motion submission on *CFTC v. TFS-ICAP, LLC*, 415 F. Supp. 3d 371 (S.D.N.Y. 2019) (Marrero, J.), where a court found control allegations sufficient to support personal jurisdiction over a foreign defendant. (ECF No. 68 at 2-3.) But in that case, among other readily distinguishable features, both the individual moving defendant and the entity for which he worked were “*registered with the CFTC*” and operated trading functions from within the United States. *TFS-ICAP*, 415 F. Supp. 3d at 376-77 (emphasis added). Registration, evincing the intent to operate in the United States with the permission of the applicable regulator, seems to be the very essence of purposeful availment. Further, unlike the generalized allegations against Mr. Delo, the individual defendant in *TFS-ICAP* was alleged to have “exercised supervision and control over employees in the United States, and the CFTC's claims [were] related to those claims.” *Id.* at 385. These factually supported allegations showed that the individual defendant “played a key role in supervising the conduct at issue.” *Id.* No such allegations exist here to support the CFTC's claim that Mr. Delo

played any role, much less a key role, in decisions to operate in or access the United States without registering with the CFTC or implementing KYC or AML programs.

C. BitMEX’s Contacts Cannot Be Imputed to Mr. Delo for Purposes of Personal Jurisdiction Under a Principal-Agent Theory.

“It is ‘well established that individual officers and employees of a corporation are not automatically subject to personal jurisdiction . . . simply because a court can exercise jurisdiction over the corporation.’” *FAT Brands Inc. v. PPMT Cap. Advisors, Ltd.*, 2021 WL 37709, at *9 (S.D.N.Y. Jan. 5, 2021). In fact, “[j]urisdiction over a corporation’s . . . officer . . . in his or her individual capacity, must be premised on the defendant’s own personal contacts with the forum, and not the acts and/or contacts carried out by the defendant in his or her corporate capacity.” *In re Terrorist Attacks on Sept. 11, 2001*, 718 F. Supp. 2d 456, 471 (S.D.N.Y. 2010). Accordingly, the CFTC “must demonstrate that [Mr. Delo’s] suit-related conduct creates minimum contacts with [the forum], . . . not simply that [BitMEX has] a presence here or conduct[s] business activities here in general.” *7 W. 57th St. Realty Co., LLC v. Citigroup, Inc.*, 2015 WL 1514539, at *10 (S.D.N.Y. Mar. 31, 2015) (citing *Walden*, 571 U.S. at 284).

The CFTC’s agency argument hinges on claims that BitMEX had certain operations in the United States and allegedly solicited U.S. customers. (ECF No. 68 at 3 (citing Compl. ¶¶ 1-3, 37, 51-62, 74-84).) Neither suffice to establish personal jurisdiction over Mr. Delo.

Even assuming that BitMEX’s alleged operations in the United States would be sufficient to give rise to the alleged registration claims, the allegations that BitMEX operated from the United States barely mention Mr. Delo. (Compl. ¶¶ 51-62.) There are no allegations that Mr. Delo oversaw any of the U.S.-based offices, that he supervised or directed any U.S.-based employees, or that the trading engine—for which he is allegedly responsible—matched orders or otherwise operated in the United States. (Compl. ¶¶ 53, 67-68.) Courts have recognized that, as

a threshold matter, there must be some nonconclusory factual allegations indicating that the individual defendant “exercised control over [the corporation’s] activities” in the forum. *FAT Brands*, 2021 WL 37709, at *10 (citation omitted). But there are no such allegations in the Complaint connecting Mr. Delo to BitMEX’s alleged corporate activities in the United States. *See Charles Schwab Corp. v. Bank of Am. Corp.*, 883 F.3d 68, 86 (2d Cir. 2018) (requiring a plaintiff to do more than “*generally allege*[] that [the parent] controlled or otherwise directed or materially participated in the operations of [the subsidiary], [and] reaped proceeds or other financial benefits from the [subsidiary’s] sales of [the relevant] financial instruments”) (emphasis added); *City of Long Beach v. Total Gas & Power N. Am., Inc.*, 465 F. Supp. 3d 416, 438 (S.D.N.Y. 2020) (rejecting principal-agent theory of jurisdiction where complaint said “virtually nothing about the management of the defendants” and failed to “detail what role, if any” the alleged principals “played in the [U.S.-based agent’s] operations”).

The CFTC’s allegations regarding the solicitation of U.S. customers is equally unavailing. (Compl. ¶¶ 74-84.) The claim that BitMEX solicited U.S. customers ignores that BitMEX withdrew from the U.S. market and banned U.S. customers in September 2015, shortly after the CFTC issued public enforcement orders clarifying that cryptocurrencies were commodities for the purposes of the CEA. (*See* Compl. ¶ 98); *see also In the Matter of TeraExchange LLC*, CFTC No. 15-33, 2015 WL 5658082 (Sept. 24, 2015); *In the Matter of Coinflip, Inc.*, CFTC No. 15-29, 2015 WL 5535736 (Sept. 17, 2015). The CFTC declined to include allegations in the Complaint addressing the controls that BitMEX implemented to block U.S. users, electing instead to criticize the unidentified steps as “superficial” and “ineffective.” (Compl. ¶ 92.) But the CFTC knows based on its pre-filing investigation that, starting in September 2015, BitMEX amended its terms of service to expressly ban U.S. users, required

users to declare a country of residence upon registration, and implemented GeoIP checks upon registration to identify U.S. IP addresses. To remove any uncertainty about its stance regarding U.S. customers, BitMEX, from September 2015 to this day, displays a prominent banner on its website telling U.S. customers they cannot trade. *See* BitMEX Home Page, <https://www.bitmex.com> (last visited Sept. 17, 2021).

In light of BitMEX's efforts to block U.S.-based users, the CFTC's allegations that BitMEX solicited U.S. persons boils down to a claim that there was a secret policy in place to allow U.S. users to trade on the platform despite the company's contrary public stance. But there are no allegations tying Mr. Delo to control over BitMEX's marketing activities, let alone any purported secret policy to allow U.S. persons to trade in violation of BitMEX's U.S.-user ban. *See FAT Brands*, 2021 WL 37709, at *9 ("At the heart of [the principle-agent] inquiry is whether the out-of-state corporate officers were primary actors in the transactions in New York that gave rise to the litigation.").

II. THE EXERCISE OF JURISDICTION OVER MR. DELO WOULD BE UNREASONABLE.

In addition to satisfying the minimum contacts inquiry, the CFTC must also show that the exercise of personal jurisdiction is reasonable and "comports with 'traditional notions of fair play and substantial justice.'" *In re Braskem*, 246 F. Supp. 3d at 767. Because Mr. Delo lacks minimum contacts with the United States, the constitutional analysis should end here. *Id.* at 768 (citing *Walden*, 571 U.S. at 291). However, if the Court does reach the reasonableness question, the Supreme Court has articulated five factors for the Court to consider:

(1) the burden that the exercise of jurisdiction will impose on the defendant; (2) the interests of the forum state in adjudicating the case; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of the controversy; and (5) the shared interest of the states in furthering substantive social policies.

Asahi Metal Indus. Co., Ltd. v. Sup. Ct. of Cal., 480 U.S. 102, 113-14 (1987). As relevant here, “the weaker the plaintiff’s showing [on minimum contacts], the less a defendant need show in terms of unreasonableness to defeat jurisdiction.” *Metro. Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 568-69 (2d Cir. 1996).

Taken together, the *Asahi* factors confirm that exercising personal jurisdiction over Mr. Delo would be unreasonable. He is a foreign defendant with no alleged ties to the United States or involvement in the alleged conduct that the CFTC claims to have created the registration or KYC and AML requirements. *See Sharef*, 924 F. Supp. 2d at 548 (“[G]reat care and reserve should be exercised when extending our notions of personal jurisdiction into the international context.”). No other interest justifies forcing Mr. Delo to defend this case in a foreign jurisdiction given that the CFTC’s alleged registration violations flow from activities of alleged U.S. customers who traded in violation of BitMEX’s terms of service and undermined BitMEX’s controls, which were implemented to prevent them from trading in the first place.

CONCLUSION

Unlike the garden-variety civil plaintiff, the CFTC—a government agency—had a full panoply of compulsory pre-suit investigative tools at its disposal. Despite this inherent advantage, the best the CFTC can cobble together falls woefully short of a showing of minimum contacts. The Due Process Clause serves to protect Mr. Delo against this plaintiff just as it would in a case brought by a private litigant. The Complaint should be dismissed.

Dated: September 17, 2021
New York, New York

Respectfully submitted,

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