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Quartet Of Bitcoin Manipulation Cases Consolidated In SDNY

By **Philip Rosenstein**

Law360 (January 27, 2020, 9:11 PM EST) -- Tether and Bitfinex now face a consolidated class action in New York federal court after a judge ordered the consolidation of four cases with overlapping claims that the cryptocurrency companies manipulated the Bitcoin market and cost investors hundreds of billions of dollars.

The cases allege that Tether, the issuer of a "stablecoin" cryptocurrency of the same name, and cryptocurrency exchange Bitfinex engaged in a "part-fraud, part-pump-and-dump, and part-money laundering" scheme that eventually cost cryptocurrency investors hundreds of billions of dollars.

Investor David Leibowitz's action was the **first case to be filed**, bringing suit against Tether and Bitfinex in October, and investor Eric Young's action came the following month in **Washington federal court**. In an order filed Monday and dated Friday, those two cases, along with ones brought by Bryan Faubus and Joseph Ebanks, were consolidated into the current David Leibowitz, et al., v. iFinex action in the Southern District of New York.

Four firms are **currently in contention** to **lead the class**: Kirby McInerney LLP, the Radice Law Firm, Roche Cyrulnik Freedman LLP and Schneider Wallace Cottrell Konecky Wotkyns LLP.

The plaintiffs in a Jan. 16 letter asked U.S. District Judge Katherine Polk Failla to consolidate three of the four cases and outlined the significant factual and legal overlap between the Leibowitz, Young and Faubus actions.

“The matters all share factual issues arising from allegations concerning defendants’ manipulation of Bitcoin and Bitcoin futures,” the parties wrote.

The “overlapping factual questions” include whether Bitfinex and Tether “monopolized and manipulated the Bitcoin market and also thereby manipulated the market for Bitcoin futures” and whether Tether actually held the 1-to-1 U.S. dollar reserves backing its tether stablecoin, among others.

Likewise, the cases allege that Bitfinex and Tether “violated the same federal statutes”: the Commodity Exchange Act, the Sherman Act and the Racketeer Influenced and Corrupt Organization Act.

“As such, consolidating the related actions will eliminate duplicative discovery, prevent inconsistent pretrial rulings, promote judicial efficiency, and conserve the resources of the parties, counsel, and judiciary,” the plaintiffs said in their letter to Judge Failla.

The cases, which Bitfinex and Tether have called **“simply preposterous,”** allege that 2.8 billion tether tokens issued by Tether between 2017 and 2018 were used to flood the Bitfinex exchange and buy up other cryptocurrencies. Because the market was led to believe tethers were fully backed by U.S. dollars, the demand and prices for cryptocurrencies spiked, creating a bubble that ultimately wiped out $450 billion in value when it burst, the suit alleges.

The suits highlight the findings in a university professor's unpublished report, first made public in June 2018 and updated on Oct. 3, that concluded Tether and Bitfinex had coordinated to manipulate the price of Bitcoin. A day before the Leibowitz complaint was filed, Tether and Bitfinex vehemently opposed the reports' allegations in similar postings on their websites, acknowledging that they expected a lawsuit to be filed imminently.

“We were pleased that the Court consolidated this case quickly. Now we can address the pending Interim Lead Counsel motions and move on to advancing the interests of the class,” Karen M. Lerner of Kirby McInerney LLP, who serves as counsel to the Young plaintiffs, told Law360.

Tether and Bitfinex pointed Law360 to a statement released following the motions for consolidation, in which they said they are not opposed to consolidation. However, the companies vehemently challenge the allegations.

“Tether and its affiliates have never used Tether tokens or issuances to manipulate the cryptocurrency market or token pricing,” Tether said in a statement following the plaintiffs’ letter to Judge Failla. “All Tether tokens are fully backed by reserves and are issued pursuant to market demand, and not for the purpose of controlling the price of crypto assets.”

Tether challenged the veracity of the research underpinning the allegations, saying it “deploys preselected data to retrofit a desired narrative and demonstrates a patent misunderstanding of the cryptocurrency market and the demand that drives purchases of Tether.”

“Tether looks forward to putting the true facts before the Court throughout the consolidated proceedings to debunk the fanciful accusations that the plaintiffs and their counsel are peddling in a shameless attempt to line their pockets,” the statement said.

Tether and Bitfinex are represented by James Walden, Daniel A. Cohen, Stephanie T. Levick of Walden Macht & Haran LLP, Michael J. Lee of the Law Office of Michael J. Lee and Sunjina Ahuja and Christopher Beal of Dillon Miller Ahuja LLP.

The Leibowitz plaintiffs are represented by Kyle W. Roche, Devin “Velvel” Freedman, Jason C. Cyrulnik, Amos E. Friedland, Edward J. Normand and Joseph M. Delich of Roche Cyrulnik Freedman LLP, and Todd M. Schneider, Jason H. Kim, Matthew S. Weiler and Kyle G. Bates of Schneider Wallace Cottrell Konecky Wotkyns LLP.

The Young plaintiffs are represented by Roger M. Townsend of Breskin Johnson Townsend PLLC, David E. Kovel, Karen M. Lerner, Thomas W. Elrod and Anthony E. Maneiro of Kirby McInerney LLP and John Radice of the Radice Law Firm PC.

The Faubus plaintiffs are represented by Brian P. Murray and Gregory B. Linkh of Glancy Prongay Murray LLP.

The Ebanks plaintiffs are represented by Samuel Howard Rudman of Robbins Geller Rudman & Dowd LLP.

The consolidated case is Leibowitz et al. v. iFinex Inc. et al., case number 1:19-cv-09236-KPF, in the U.S. District Court for the Southern District of New York.

--Editing by Alanna Weissman.
