

Release Number 8590-22

CFTC Imposes \$250,000 Penalty Against bZeroX, LLC and Its Founders and Charges Successor Ooki DAO for Offering Illegal, Off-Exchange Digital-Asset Trading, Registration Violations, and Failing to Comply with Bank Secrecy Act

CFTC Order Finds, and Complaint Alleges, Ooki DAO is Liable as an Unincorporated Association

September 22, 2022

Washington, D.C. — The Commodity Futures Trading Commission today issued an order simultaneously filing and settling charges against respondent **bZeroX, LLC** (bZeroX) and its founders **Tom Bean** (Bean) and **Kyle Kistner** (Kistner) (collectively, respondents) for illegally offering leveraged and margined retail commodity transactions in digital assets; engaging in activities only registered futures commission merchants (FCM) can perform; and failing to adopt a customer identification program as part of a Bank Secrecy Act compliance program, as required of FCMs.

The respondents engaged in these activities in connection with a decentralized blockchain-based software protocol that functioned similarly to a trading platform. The order requires the respondents to pay a \$250,000 civil monetary penalty and to cease and desist from further violations of the Commodity Exchange Act (CEA) and CFTC regulations, as charged.

Simultaneously, the CFTC filed a federal civil enforcement action in the U.S. District Court for the Northern District of California charging the **Ooki DAO**—a decentralized autonomous organization and successor to bZeroX that operated the same software protocol as bZeroX—with violating the same laws as the respondents. The CFTC seeks restitution, disgorgement, civil monetary penalties, trading and registration bans, and injunctions against further violations of the CEA and CFTC regulations, as charged.

“Today’s actions demonstrate the CFTC’s commitment to aggressively pursuing individuals and their operations who purposefully seek to evade regulatory oversight at the expense of retail customers,” said Chairman Rostin Behnam. “I commend our dedicated enforcement team for pursuing this scheme which touches on many areas of concern regarding this growing market.”

“These actions are part of the CFTC’s broader efforts to protect U.S. customers in a rapidly evolving decentralized finance environment,” said Acting Director of Enforcement Gretchen Lowe. “Margined, leveraged, or financed digital asset trading offered to retail U.S. customers must occur on properly registered and regulated exchanges in accordance with all applicable laws and regulations. These requirements apply equally to entities with more traditional business structures as well as to DAOs.”

Case Background

The order finds, and the complaint alleges, from approximately June 1, 2019 to approximately August 23, 2021, the respondents designed, deployed, marketed, and made solicitations concerning a blockchain-based software protocol that accepted orders for and facilitated margined and leveraged retail commodity transactions (functioning similarly to a trading platform). This protocol (the bZx Protocol) permitted users to contribute margin (collateral) to open leveraged positions whose ultimate value was determined by the price difference between two digital assets from the time the position was established to the time it was closed. The bZx Protocol purported to offer users the ability to engage in these transactions in a decentralized environment—i.e., without third-party intermediaries taking custody of user assets.

These transactions were unlawful because they were required to take place on a designated contract market, but did not. Additionally, by soliciting and accepting orders for and entering into retail commodity transactions with customers, and accepting money or property (or extending credit in lieu thereof) to margin these transactions, bZeroX illegally operated as an unregistered FCM. bZeroX also failed to adopt a customer identification program as part of a Bank Secrecy Act compliance program, as required of FCMs. Bean and Kistner, who co-founded, co-owned and controlled bZeroX, were held liable as controlling persons who knowingly induced the underlying violations or failed to act in good faith.

As the order finds and as alleged in the complaint, on approximately August 23, 2021, bZeroX transferred control of the bZx Protocol to the bZx DAO, which subsequently renamed itself and is currently doing business as the Ooki DAO. The Ooki DAO operates the Ooki Protocol (formerly the bZx Protocol) in the exact same manner as bZeroX and thus is continuing to violate the law in the same manner as bZeroX. By transferring control to a DAO, bZeroX’s founders touted to bZeroX community members the operations would be enforcement-proof—allowing the Ooki DAO to violate the CEA and CFTC regulations with impunity, as alleged in the federal court action. The order finds the DAO was an unincorporated association of which Bean and Kistner were actively participating members and liable for the Ooki DAO’s violations of the CEA and CFTC regulations.

The Division of Enforcement staff responsible for this action are Anthony Biagioli, Lauren Fulks, Yusuf Caper, Thomas Simek, Brittne Snyder, Christopher Reed, and Charles Marvine.

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