

Mr. Stephen J Topel

February 28, 2023

Commodity Futures Trading Commission (CFTC)

77 West Jackson Blvd
Suite 800.
Chicago, IL 60604

This is to complain against Coinbase.

URGENCY: HIGH
IMPORTANCE: HIGH

[WITHOUT PREJUDICE]

I wish to practice my right as a customer of Coinbase to use your organization's service, seeking a formal, impartial investigation to amicably settle my dispute with Coinbase.

In order to clear up the myriad of letters and correspondences I have hitherto sent to Coinbase respecting my complaint, I believe it will substantially strengthen both my case and your understanding, by taking a deeper look at the happenings of my case and analysing the relevant facts in an objective and comprehensive fashion.

It is crucial to note that I have been manipulated, socially engineered, and coerced to engage these fraudulent criminals. Much to my embarrassment, I recognize that I am the victim of an investment scam.

My complaint to the CFTC has arisen as I do not consider, by any stretch of the imagination, the conduct of Coinbase to be commensurate with their legal role and responsibility to their customers. They sell a service to look after their customers, and protect their money and are a financial institution that maintains a traditional relationship and way of working with its customers.

During the complaints process with Coinbase, I found their communication ineffective, which further hides their conduct to management and diminishes the service offered to their clients. They are struggling to adapt their business offering in the ever-changing world of IT development. The internet is presenting a real problem that they choose to manage in a way that is, not in line with the rules and regulations of CFTC as well as their own internal policy and procedures sold to their clients.

General Obligation:

Commencing on or around April 09,2022, I fell victim to two multi-layered scam operations run by **Bitantox / Traincointesk / Metafxoption** which involved me making deposits for a total amount of **15,202.00 USD** from my Coinbase account to fraudulent investment firm(s).

When determining what's reasonable and fair, we should focus on the issue of liability; common queries include, but are not limited to, the following (i) whether Coinbase did not take notice of any rule, law, or regulation, and/or possibly missed any material elements of the relevant bylaws or codes of conduct, that may have prevented them from protecting my financial safety; (ii) whether by virtue of Coinbase's custodianship over my funds or by its control over them, they owed a fiduciary duty to the me and if so, whether that duty was breached; (iii) whether Coinbase promoted the transaction(s) in question despite being aware of the nature of the transaction(s) in question (iv) whether Coinbase was in compliance with its own policies and procedures; (v) whether Coinbase owed duties to myself, what the scope of those duties was, and whether Coinbase did not uphold those duties; (vi) whether Coinbase's conduct was unfair; and (vii) whether Coinbase has within its power the ability to, and should, compensate me for the harm that has befallen me.

Upon identification of such unusual or suspicious activity, it is crucial that the relevant staff member adequately describe the factors making an activity or transaction suspicious, thoroughly depict the extent and nature of this activity and properly communicate to the customer that such activity meets the relevant criteria of fraud.

In providing its services to a customer, a financial institution is required by law to exercise the care and skill of a diligent, prudent banker. In this case, this means that the payment service provider should not turn a 'blind eye' to known facts pointing to a real possibility that their customer is being scammed. In other words, Coinbase must have had special knowledge of what was occurring or been alerted to a real possibility of fraud taking place. The financial institution must have known or reasonably ought to have known that I was dealing with a scammer.

Granted, there is room for diversity of view insofar as reasonableness is concerned. Indeed, there is a sense in which the standard of care of the reasonable person involves in its application a subjective element.

However, it must be remembered that the correct test is always reasonable care in all circumstances, not average care. *The fact that most people behave in a certain way may be good evidence that the conduct is reasonable, but this is not necessarily the case.* Although

reasonableness is a very fluid concept, all of the evidence suggests that Coinbase did not foresee the fraud and disregarded even the most obvious dangers in this respect.

Situations do tend to repeat themselves and it is advisable to examine previous outcomes to see how the standard of the reasonable person should be applied, and that lessons can be learnt from the errors of the past.

Coinbase's Position:

On October 12, 2022, Coinbase wrote in a letter *"All cryptocurrency transactions that are confirmed on the blockchain are irreversible. Because this is an external process, there is no way Coinbase cannot reverse, or recover crypto sent off our platform."*

Refuting Coinbase's arguments from a purely logical perspective:

Coinbase's position is that the features of the situation at hand do not generate a genuine obligation to protect innocent and helpless victims; they are essentially arguing that common-sense-based approaches are doomed to fail, leaving their exclusively technical account of the subject matter as the only meaningful choice. For reasons which are unclear, this extremely serious situation barely gets the attention it deserves even though ample evidence has been offered in support of this complaint.

In Coinbase's view, it is implied that we should not home in (and consequently rely) on unwritten laws, practicality, good judgement, reasonableness, sharpness, sensibleness, past outcomes, and insight, when taking appropriate precautions. To underscore, once again, such views are at odds with common sense and are wildly irresponsible.

Imagine a view according to which the one and only thing that can make Coinbase morally obligated to do something is having it written down somewhere. Pursuant to this view, if Coinbase encounter the suffering of totally naive victims, they are only obligated to intervene in or remedy the situation, to the degree required by written material. This is unbecoming for a reputable establishment such as Coinbase.

I have reviewed the material hereto sent by Coinbase carefully, and it unfortunately provides no response to my fundamental argument concerning the degree of care. Given its size, influence, and the resources at its disposal, this establishment clearly had a far greater capacity than an individual such as myself had, to determine the level and likelihood of risk that a client such as myself is subjected to and had a duty to intervene as they now do to query in particular out-of-pattern transactions of this kind.

It is perfectly obvious that Coinbase, inadvertently, employs a subtle approach in addressing some of the key questions in a manner which neither provides me with adequate support nor protects anything other than its own interests.

It is Coinbase here, who has the burden of proof, to show that it has exercised the duty of care, that is to say, that Coinbase adhered to a standard of reasonable care in relation to the matter at issue given its extensive experience compared to mine.

It is Coinbase that claims that the damages which I have suffered in connection to this matter have not been reasonably foreseeable and that my proposed degree of care is not, and has not been, commensurate with Coinbase's capacity, experience, expertise, or scope of services in any way. To re-emphasize, Coinbase's indisputable overriding purpose is by no means to purely execute transactions in a blind and blank fashion, but rather to strike a balance between executing those transactions and capitalizing on its undeniably vast capabilities to protect consumers thereby enhancing market integrity.

Apropos of the fluidity of the concept of reasonableness, all Coinbase has done in this regard is set up a dichotomy of *having or not having* the legal obligation under consideration, however, that does not go one inch toward explaining why various regulatory authorities, have maintained that financial institutions can, and should, protect consumers using their systems, advanced technologies, and rich experience.

Coinbase is obliged to take some action if it is sufficiently aware of a real possibility that fraud may be being perpetuated. If you don't question its customer's instructions or raise the possibility of a scam with the customer in these circumstances, it may be liable if the red flags indicate the customer is:

- particularly vulnerable, or
- if the possibility of fraud was "serious or real", not just suspected.

There are some recommendations to organizations for protecting customers from financial harm that might occur as a result of fraud or financial abuse; and gives guidance on how to recognize customers who might be at risk, how to assess the potential risks to the individual and how to take the necessary actions to prevent or minimize financial harm.

These recommendations are established as a general principle, the organization should deliver a service that:

1) Takes a proactive approach to minimizing risks, impact, and incidences of financial harm and it sets out systems and tools for the prevention and detection of fraud and financial abuse. As a general point, it says organizations should ensure that all systems are developed using technologies and methodologies that are effective in the prevention of fraud and financial abuse, through authorized and unauthorized payments, thereby minimizing the risk of financial harm to customers. As regards to the detection of fraud and financial abuse, it says the organization:

A) should have measures in place across all payment channels and products to detect suspicious transactions or activities that might indicate fraud or financial abuse. It then lists the following examples of suspicious activity on customer accounts:

- a. multiple chequebooks;
- b. sudden increased spending;
- c. transfers to other accounts;
- d. multiple password attempts;
- e. logins from new devices, multiple geographical locations;
- f. sudden changes to the operation of the account; **“Unusual transactions are transactions whose amount, characteristics and frequency bear no relation to the economic activity of the customer, exceed normal market parameters or have no apparent legal justification.”**
- g. a withdrawal or payment for a large amount;
- h. a payment or series of payments to a new payee;
- i. a financial activity that matches a known method of fraud or financial abuse.

B) organizations should have a process in place to ensure that staff makes contact with the customer to verify the financial activity, challenge its authenticity, explain the nature of the suspected or detected fraud, and discuss an appropriate plan of action.

Coinbase are yet to show, or otherwise provide me with, a compelling argument that their wide-ranging experience and wealth of specialist knowledge in detecting transactional anomalies were not sufficient to avert the fraud at issue. By contrast, I have provided a multitude of sound and powerful reasons by which requiring their involvement has not only been pressingly relevant but also eminently reasonable and well-justified.

Rather than empathising with and undertaking substantial efforts to convey their knowledge of the existence of such regulations abroad and thereafter use it to protect and proactively relieve the plight of consumers who have been cheated out of their money and whose role in society is properly fulfilled, positively contributing to local economic growth, development and sustainability – Coinbase adopts a rather insouciant attitude toward my financial predicament portrayed herein.

I am deeply convinced that the disastrous results that I have previously elaborated upon will continue to ensue if no responsibility is adopted by Coinbase in relation to this matter. I have also thoroughly detailed why they cannot simply dismiss this problem by strictly adhering to legal technicalities which, after careful reflection, struck me as being nothing more than self-interest. Indeed, it seems to me utterly unfair to disregard fragile, sensitive, and vulnerable consumers who are afflicted by such allegedly malevolent acts, thereby keeping an unjust status-quo that is corrupting our society at its core.

Conclusion:

Based on my analysis, and as confirmed by various authorities concerned with such matters, there is abundant evidence that forward-thinking financial institutions ought to take reasonable steps to forestall fraud, or at least mitigate its risk by using an effective risk management system, demonstrating their undisputed ability to responsibly and pre-emptively respond to questionable transactions in the digital arena. The use of such systems, largely based on newly adopted technologies aimed at effectively navigating the evolving threat landscape, is only one of a number of possible endeavours undertaken in this connection, alongside the application of past knowledge and experience related to popular fraudulent practices.

Astonishingly, I am pondering how it is that, despite being shown that Coinbase's business conduct was insufficient insofar as background checks are concerned, they keep refuting their indisputable role and responsibility in connection with the matter herein discussed. The points that I have hitherto made are too crucial to be taken lightly. Coinbase's non-observance of the fundamental principles of justice – that is, to completely overlook and not even remotely try to mitigate the suffering of vulnerable consumers– is inexcusable given the size of the establishment and the vast resources at its disposal as the direct result of the patronage of clients like myself.

If it was, indeed, solely my responsibility, we must then believe at least one of the following clauses: a) financial institutions have absolutely no role whatsoever in preventing and detecting fraud, b) the fraud in question was not reasonably foreseeable, or c) the transactions in question were not sufficiently alarming. It is extremely unfortunate that Coinbase pushes quite hard for me to believe all three of these things—despite evidence to the contrary.

In summary, I respectfully ask your organization to consider my points, given your personal and companywide obligation to provide a fair and reasonable investigation into the complaint.

I look forward to your input and would gladly cooperate to reach a fair and reasonable outcome.

Thank you.

Stephen J Topel
stephentopel@yahoo.com

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Transactions

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-  **0x745a...0aa5** **+\$13.77**
Receive • Feb 17... 0.0103 ETH
-  **0x5e68...4556** **-\$1,004.33**
Send • Feb 17, 2... 997 USDT
-  **0x745a...0aa5** **+\$99.95**
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-  **0x745a...0aa5** **+\$329.77**
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-  **0x745a...0aa5** **+\$568.23**
Receive • Ja... 568.201 USDT
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Receive • Jan 2... 0.0103 ETH



Assets



Transactions



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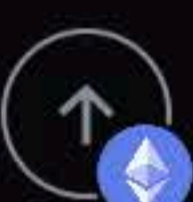



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|  | 0x745a...0aa5
Receive • Ma... | +\$474.80
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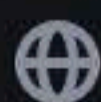
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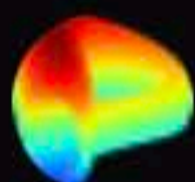
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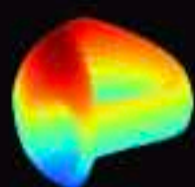
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Decentralized exchange



Curve

Stablecoin project



AAVE

Decentralized lending



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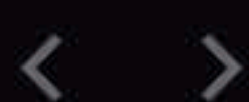
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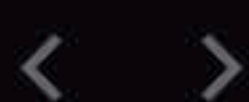
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