

## Lowenstein Crypto

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**DeFi Takes Another Hit: CFTC Settles With Uniswap Labs Over Leveraged Tokens**By [Ethan L. Silver](#), [William Brannan](#), and [Trevor A. Levine](#)**What You Need To Know:**

- The CFTC determined that leveraged tokens available through a DeFi protocol constituted retail commodity transactions that needed to be offered on a CFTC-registered contract market.
- DeFi interface operators risk CFTC enforcement action if they provide retail users with access to DeFi protocols that enable trading in tokens that provide margined, leveraged, or financed exposure to an underlying commodity.
- CFTC confirms (again) that BTC and ETH are commodities.

**Background:**

On September 4, the Commodity Futures Trading Commission (CFTC) issued a settlement order (the Order) against Universal Navigation Inc. d/b/a Uniswap Labs (Uniswap).<sup>1</sup> The Order asserted that Uniswap, through its front-end interface (the Interface), which provides users the ability to exchange digital assets through a network of smart contracts on the Ethereum blockchain (the Protocol), accepted orders by retail customers for trading in leveraged tokens that qualified as retail commodity transactions under Commodity Exchange Act (CEA) Section 2(c)(2)(D). In connection with the Order, Uniswap was required to pay a civil monetary penalty of \$175,000.

Under CEA Section 2(c)(2)(D)(i), a retail commodity transaction is a transaction that is offered to a person who is not an eligible contract participant (i.e., a retail customer) and offered on a leveraged, margined, or financed basis. If a transaction fits the characteristics of a retail commodity transaction, it must be offered pursuant to the rules of a CFTC-registered contract market pursuant to CEA Section 4(a). Transactions that result in actual delivery of the underlying commodity within 28 days of the execution date are excepted from the CEA Section 4(a) requirement and therefore do not have to be traded on a CFTC-registered contract market. According to the Order, the leveraged tokens at issue qualified as retail commodity transactions but did not satisfy the 28-day actual delivery exception. Therefore, Uniswap was found to be in violation of CEA Section 4(a).

The leveraged tokens cited in the Order were developed and issued through the Protocol by a third party unaffiliated with Uniswap. These tokens provided holders with leveraged exposure to price movements in Bitcoin (BTC) and Ether (ETH). For example, a buyer of a token called ETH2XFLI would receive an approximately 20 percent return if the price of ETH increased by 10 percent. The leveraged tokens were not programmed to provide actual delivery of the underlying BTC or ETH to the holder, within 28 days of a holder buying the token. Therefore, the leveraged tokens did not qualify for an exception under CEA Section 2(c)(2)(D)(ii)(III).

Uniswap did not issue the leveraged tokens and did not receive any trading fees in connection with transactions facilitated through the Interface. However, pointing to its 2020 interpretive guidance, the CFTC determined that by operating the Interface, Uniswap facilitated users' ability to source leverage from other users and third parties<sup>2</sup> in violation of the requirement that such leveraged transactions be offered pursuant to the rules of a CFTC-registered contract market.

## Takeways:

The Order provides important takeaways for the digital asset sector, particularly companies that develop DeFi trading protocols and operate interfaces that provide users with access to those protocols.

First, for companies building DeFi protocols and interfaces, the Order is a reminder that the characteristics of individual tokens available through a protocol could implicate CFTC jurisdiction.

Second, it is important for interface operators to be aware of the types of tokens available through each protocol to which the interface provides access, especially when retail users are able to access a protocol. As Commissioner Summer Mersinger pointed out in her dissent, Uniswap actually took proactive measures to block the leveraged tokens at issue in the Order, following previous CFTC actions against DeFi companies.<sup>3</sup> While the CFTC still brought an action against Uniswap, the Order did note the company's "substantial cooperation" with the Division of Enforcement and "remediation" efforts, which reduced the civil monetary penalty.

Third, the CFTC appears steadfast in its commitment to "regulation by enforcement." However, Commissioner Mersinger took particular issue with the CFTC's regulation by enforcement approach to DeFi, stating, "Through this settlement, the Commission appears to be taking the position that any DeFi platform could be liable for any and all conduct occurring on its protocol. The practical effect of this approach is to severely chill the launching of any DeFi protocol within the United States and to significantly increase the odds that all DeFi innovation and economic activity will occur elsewhere." Given the CFTC Division of Enforcement's actions within the DeFi space to date, market participants should expect continued enforcement activity.

Finally, the CFTC reaffirmed explicitly that BTC and ETH are "encompassed" in the definition of commodities under CEA Section 1a(9). The Order cited to several federal district court cases and CFTC enforcement orders as support for this position, including *CFTC v. My Big Coin Pay, Inc.*, where the court determined that "the CEA only requires the existence of futures trading within a certain class (e.g. 'natural gas') in order for all items within that class (e.g. 'West Coast' natural gas) to be considered commodities."<sup>4</sup>

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<sup>1</sup> [In the Matter of Universal Navigation Inc. d/b/a Uniswap Labs](#), CFTC Docket No. 24-25 (Sept. 4, 2024).

<sup>2</sup> See [Retail Commodity Transactions Involving Certain Digital Assets](#), 85 Fed. Reg. 37,742 n.152, 37,743 n.165. (June 24, 2020).

<sup>3</sup> [Dissenting Statement of Commissioner Summer K. Mersinger Regarding Settlement with Uniswap Labs](#).

<sup>4</sup> *CFTC v. My Big Coin Pay, Inc.*, 334 F. Supp. 3d 492, 498 (D. Mass. 2018).

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