

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

In the Matter of the Inquiry of LETITIA JAMES,
Attorney General of the State of New York,

Petitioner,

—*against*—

iFINEX INC., BFXNA Inc., BFXWW INC.,
TETHER HOLDINGS LIMITED, TETHER
OPERATIONS LIMITED, TETHER LIMITED,
TETHER INTERNATIONAL LIMITED,

Respondents.

Index No.: 450545/2019
Part 3
Justice Cohen
Motion Seq.: 003

AFFIRMATION OF STUART HOEGNER

STUART HOEGNER, hereby affirms this 21st day of May, 2019, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States, that the following is true, and I understand that this document may be filed in an action or proceeding in a court of law:

1. I am an attorney licensed in Canada and the United States. I am General Counsel of Bitfinex and Tether (collectively, the “Companies”). As used in this Affirmation, “Bitfinex” refers to iFinex Inc., BFXNA Inc., and BFXWW Inc., collectively, and “Tether” refers to Tether Holdings Limited, Tether Operations Limited, Tether Limited and Tether International Limited, collectively.

2. I make this Affirmation in support of the Companies' Motion to Dismiss the Special Proceedings and for an Immediate Stay. Except where indicated otherwise, the information in this Affirmation is based on my personal knowledge.

Bitfinex and Tether

3. iFinex Inc. ("iFinex") is a privately-held financial technology company, incorporated in the British Virgin Islands, that operates a virtual currency trading platform under the business name of Bitfinex. BFXNA Inc. ("BFXNA") and BFXWW Inc. are wholly-owned subsidiaries of iFinex that are incorporated in the British Virgin Islands.

4. Tether Limited is a privately-held financial technology company incorporated in Hong Kong that operates a platform to store, send, and make purchases of a digital token known as tether (₮), and is also responsible for issuing tether.

5. Tether Holdings Limited is incorporated in the British Virgin Islands and is the holding company for Tether Limited, as well as for Tether Operations Limited and Tether International Limited.

6. Neither Bitfinex nor Tether has a single headquarters or home office. Rather, the Companies have decentralized operations in different countries including Hong Kong, Switzerland, and Taiwan. Neither Bitfinex nor Tether maintains any office in the United States.

The Companies Prohibit New York and Any Other United States Customers

7. Both Bitfinex and Tether prohibit any United States customers, expressly including customers in the State of New York, from using their platforms.

8. On or about January 30, 2017, Bitfinex banned New York customers from transacting on the platform pursuant to the company's Terms of Service. In or about August 2017, Bitfinex extended that prohibition to all United States individual customers.

9. Effective August 2018, Bitfinex subsequently barred all United States entity and/or corporate customers from transacting on the platform pursuant to the company's revised Terms of Service.

10. The Bitfinex Terms of Service state in pertinent part:

[T]he following Persons are prohibited from depositing to, withdrawing from, or trading or providing or taking financing for any Digital Tokens Wallet on the Site:

...

any Person that resides, is located, has a place of business, or conducts business in the State of New York;

U.S. Persons. Any individual who is a U.S. Person and, effective August 15, 2018, any entity that is a U.S. Person is prohibited from using the Site or any Services, including but not limited to exchange trading services using a Digital Tokens Wallet on the Site. Exceptions to this policy may be made by Bitfinex, in its sole discretion, for Eligible Contract Participants only, which shall be customers solely of BFXNA. Notwithstanding the granting of an exception, such Eligible Contract Participants shall not be permitted to be Financing Providers or Financing Recipients. For the avoidance of doubt, as defined above, U.S. Persons (including but not limited to United States Citizens or United States Residents) are prohibited from using the Site or any Services, including but not limited to exchange trading services. In addition, where you are not a U.S. Person and your account would not be regarded as a U.S. Account, but Bitfinex knows or has reason to know that you are making a deposit, withdrawal, or transfer of Fiat or Digital Tokens to, from, or through any U.S. Financial Institution to facilitate the provision of the Services to you, then you may be regarded as a customer of BFXNA and prohibited from using the Site or any Services, at the sole discretion of Bitfinex.

11. Bitfinex's Terms of Service define "U.S. Persons" to include U.S. citizens, U.S. residents, any corporation, partnership, or other entity established or organized in or under U.S. laws, and any non-U.S. individual or entity controlled by U.S. citizens, residents or U.S. business entities. Bitfinex conducts screening to prevent U.S. customers from opening accounts, and if a customer is later determined to be a U.S. person in violation of the Terms

of Service, that customer's access to services on the platform through the account is terminated.

12. As of November 23, 2017, Tether ceased servicing U.S. Persons, including United States individual and corporate customers. Thus, at this time, Tether no longer provides issuances or redemptions of tether to any United States customers.

13. The Tether Terms of Service state in pertinent part:

The following Persons are prohibited from depositing to, or withdrawing from, any Digital Tokens Wallet on the Site:

...

any Person that resides, is located, has a place of business, or conducts business in the State of New York;

U.S. Persons. Any individual who is a U.S. Person and any entity that is a U.S. Person is prohibited from using the Site or any Services, including but not limited to using a Digital Tokens Wallet on the Site. Exceptions to this policy may be made by Tether, in its sole discretion, for Eligible Contract Participants only, which shall be customers solely of TLTD.

For the avoidance of doubt, as defined above, U.S. Persons (including but not limited to United States Citizens or United States Residents) are prohibited from using the Site or any Services.

14. Tether's Terms of Service define "U.S. Persons" to include U.S. Citizens, U.S. Residents, any corporation, partnership, or other entity established or organized in or under U.S. laws, and any non-U.S. individual or entity controlled by U.S. citizens, residents or U.S. business entities. Tether conducts screening to prevent U.S. customers from opening accounts, and if a customer is later determined to be a U.S. person in violation of the Terms of Service, that customer's access to services on the platform through the account is terminated.

15. Under Bitfinex's and Tether's Terms of Service, Eligible Contract Participants ("ECPs") that transact with Bitfinex or Tether must be foreign entities. Although those foreign entities may have shareholders who reside in, or otherwise have contact with the United States, Bitfinex's and Tether's customers are the foreign entities themselves. Bitfinex and Tether have no ability to control the shareholders of ECPs at any point in time and those shareholders may ultimately change from time to time.

16. The Companies do not advertise or market to individuals or entities in the United States or New York.

Purchase, Trading, and Redemption of Tether

17. Tethers are a form of "stablecoin" used to provide utility in the virtual currency market by allowing users to convert cash into virtual currency and to tie the value of virtual currency to the price of traditional fiat currencies like the U.S. dollar, the Euro, and the Yen.

18. Tether was specifically created to be redeemable at exactly par with the U.S. dollar, so that tethers can be used as a medium of exchange when purchasing or selling other cryptocurrencies. As such, there is no expected "profit" from the purchase or sale of tethers.

19. The purchase of tether does not create any ownership or profit interest in, or any rights to participate in the governance of, the company Tether, any of its affiliates, or any other investment vehicle or company. Holders of tethers are not eligible to receive any revenue generated by the company Tether.

20. Only verified Tether customers are entitled to redeem tether from Tether for fiat on a 1:1 basis. There is no right of redemption from Tether on a 1:1 basis for any holders of tether who obtained the tokens on a secondary market platform and who are not verified Tether customers; on the contrary, such holders of tether have no relationship with Tether and are expressly precluded from redeeming tether on a 1:1 basis from Tether. Rather, they


are only able to trade tethers for other forms of cryptocurrencies or fiat pursuant to the rules of, and at the prevailing exchange rates at, those secondary market platforms of which they are customers.

21. To redeem tether for fiat currency from Tether, a customer must create a verified customer account. Users in the United States—whether individuals or entities—are not permitted to create a verified customer account. Such users are otherwise unable to redeem tether for fiat currency from Tether.

22. To the extent that tether may be traded on platforms in the United States, any such trading is part of a secondary tether market over which Bitfinex and Tether have no control and which is independent of the business of Bitfinex or Tether.

Documents Requested by the April 24, 2019 Order

23. The Respondents maintain custody and control of the documents sought by the April 24, 2019 Order outside the United States. Those documents are held in files, computer systems, and/or data centers located in Switzerland, Ireland, Canada and other non-U.S. locations.


Stuart Hoegner