



Securities Litigation ADVISORY ■

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SEC Enforcement Actions Signal Ramp-Up Against Cryptocurrency

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A little more than a year ago, the U.S. Securities and Exchange Commission (SEC) issued the [DAO Report](#), which confirmed that those who offer and sell digital currency could be subject to the federal securities laws. This week, the SEC announced two of its “first ever” cryptocurrency enforcement actions. The first was against Crypto Asset Management LP (CAM), a hedge fund manager, and its sole proprietor, Timothy Enneking. The SEC found that CAM falsely claimed that it was the first cryptocurrency asset fund in the U.S. to be registered with the SEC and thus violated various provisions of the Securities Act of 1933 and the Investment Company Act of 1940. The second was against TokenLot LLC, an unregistered broker-dealer, and its operators, Lenny Kugel and Eli Lewitt. The SEC found that TokenLot, which described itself as an “ICO Superstore,” acted as an unregistered broker-dealer by promoting its website as a way to purchase digital tokens during initial coin offerings (ICOs) and engage in secondary trading of those tokens. These actions may be the first of many if the cryptocurrency craze continues.

Enforcement Actions

CAM

CAM was formed in March 2017 and set up to be the managing member of and manager to Crypto Asset Fund LLC (CAF), a pooled investment vehicle formed for the purpose of investing in digital assets. In fall 2017, CAM engaged in a general solicitation through its website, social media accounts, and traditional media outlet interviews and raised more than \$3.6 million from 44 investors across 15 states. At no point during this period did CAM file a registration statement with the SEC, and no exemption was available.

During the same period, CAF engaged in the business of investing, holding, and trading digital assets that were investment securities, as defined in Section 3(a)(2) of the Investment Company Act. CAF did not register with the SEC as an investment company, meet any exemptions or exclusions, or seek an order from the SEC declaring it was not an investment company. Without admitting or denying the SEC’s findings, CAM and Enneking [agreed to pay \\$200,000](#) to settle the SEC’s claims.

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TokenLot LLC

According to the SEC's [Order](#), 6,100 retail investors placed orders with TokenLot for more than 200 different digital tokens, some of which the SEC deemed securities. TokenLot made money by buying and selling digital tokens and taking a percentage of the money that TokenLot raised in ICOs. This activity required it to register as a broker-dealer, which it never did. TokenLot began winding down almost immediately after the SEC began investigating it and refunded investors' payments for unfilled orders. In addition, TokenLot cooperated fully and provided information to investigators, and the SEC's Order specifically noted TokenLot's cooperation.¹ Steven Peikin, co-director of the SEC's Enforcement Division, [said](#), "The penalties in this case reflect the prompt cooperation and remedial actions by TokenLot, Kugel, and Lewitt. [They] provided valuable information to Commission staff, stopped the conduct, and refunded money to investors."

Without admitting or denying the SEC's findings, TokenLot agreed to pay \$471,000 in disgorgement as well as \$7,929 in interest. The company also agreed to retain an independent third party to destroy TokenLot's remaining inventory of digital assets. The two named defendants, Kugel and Lewitt, agreed to pay penalties of \$45,000 each and are barred from the securities industry with a right to reapply after three years.

Conclusion

These two SEC enforcement actions may be a harbinger of many more cryptocurrency-related SEC enforcement actions and more active regulation of cryptocurrency markets, especially ICOs. Moreover, as discussed in [our last advisory](#), federal district courts are also getting more comfortable asserting jurisdiction over participants in cryptocurrency offerings. Also noteworthy this week, the [Eastern District of New York held](#) that certain types of cryptocurrencies would be treated as securities under the *Howey* test and the Department of Justice could proceed with its federal criminal securities fraud case against an individual.² This prosecution is the first of its kind.

All of these developments portend increased regulatory and litigation risk exposure for those offering, investing, or otherwise participating in digital asset transactions. It appears that the carefree days of unregulated digital asset offerings and transactions are swiftly coming to an end.

¹ "In determining to accept the Offers, including the decision not to impose greater penalties, the Commission considered remedial acts promptly undertaken by Respondents and cooperation afforded the Commission staff"

² *United States of America v. Maksim Zaslavskiy*, No. 1:17-cr-00647 (E.D.N.Y. Sept. 11, 2018) ("First, courts are clear that the securities laws are meant to be interpreted 'flexibly to effectuate [their] remedial purpose.'").

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