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corpcounsel.com | November 13, 2018

## SEC Files First Action Against Unregistered Cryptocurrency Exchange

By Dan Clark

The U.S. Securities and Exchange Commission announced that it has filed a cease and desist order against the sole owner and operator of EtherDelta, an unregistered online trading platform, marking the first time the commission went after such a platform based on findings that it operated as an unregistered securities exchange.

The SEC claimed in an announcement released on Nov. 8 that EtherDelta and its founder, Zachary Coburn, violated Section Five of the Exchange Act, which makes it illegal for any broker, dealer or exchange directly or indirectly to “effect any transaction in a security or to report any such transaction in interstate commerce, unless the exchange is registered as a national securities exchange under Section Six of the Exchange Act.”

“EtherDelta had both the user interface and underlying functionality of an online national securities exchange, and was required to register with the SEC or qualify for an exemption,” Stephanie Avakian, co-director of the SEC’s Enforcement Division, said in a news release announcing the order.

Coburn, without admitting or denying the findings, consented to the order and agreed to pay \$300,000 in disgorgement and \$13,000 in prejudgment interest and a civil penalty of \$75,000.

Coburn’s attorney, Greg Lisa, a partner at Hogan Lovells in Washington, D.C., said both he and Coburn were pleased with the result.

“The commission recognized that there was no fraud involved, or even



Photo illustration: Jason Doiy/ALM

alleged; our client neither admitted nor denied the allegations; and the remedy was limited and fair. They also recognized that Mr. Coburn undertook prompt remedial acts and cooperated with the SEC. Our client appreciates being able to get this behind him,” Lisa said in an emailed statement.

According to the order, Coburn started EtherDelta in July 2016 and stopped operating it in December 2017. The order says that in November 2017 he had entered into an agreement with foreign buyers to sell EtherDelta. During the time he operated EtherDelta, there had been more than 3.6 million buy and sell orders in ERC20 tokens.

Susan Gault Brown, a partner at Morrison & Foerster’s Washington, D.C., office, said that the area of unregistered exchanges is one that was ripe for action and that she would expect to see the SEC take similar actions against unregistered exchanges in the future.

“We’ve been advising our clients, if they’re offering a token, to look at exchanges with ATS licenses,” she said.

She explained that many companies that offered tokens or some kind of cryptocurrency had been using unregistered exchanges because there was not another option.

The SEC said in the news release that it previously has brought enforcement actions relating to unregistered broker-dealers and unregistered ICOs, including some of the tokens traded on EtherDelta.

According to the news release, the SEC is continuing its investigation, which is being conducted by Daphna Waxman of the division’s cyber unit and Alison Levine and Jorge Tenreiro of the New York regional office. The case is supervised by Cyber Unit Chief Robert Cohen.

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