

EtherDelta Founder Sanctioned for Operating an Unregistered Securities Exchange

On November 8, the SEC [announced](#) an enforcement action charging the founder of a digital "token" trading platform for operating as an unregistered national securities exchange. The SEC has [previously brought enforcement actions](#) relating to unregistered broker-dealers and unregistered ICOs, including some of the tokens traded on EtherDelta. Stephanie Avakian, Co-Director of the SEC's Enforcement Division, commented that "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."

Findings

The SEC [order](#) charged Zachary Coburn with causing EtherDelta to operate as a securities exchange without registering as required by Section 5 of the Securities Exchange Act of 1934. According to the SEC, the EtherDelta website "had features similar to online securities trading platforms" and provided a marketplace for bringing together the orders of multiple buyers and sellers in "tokens that included securities." The SEC noted that "purchasers of such digital tokens invested money with a reasonable expectation of profits, including through the increased value of their investments in secondary trading, based on the managerial efforts of others." The SEC did not identify any specific tokens that were securities, however. Over an 18-month period, EtherDelta's users executed more than 3.6 million orders for ERC20 tokens, including tokens that the SEC stated "are securities under the federal securities laws." The SEC highlighted that almost all of the orders placed through EtherDelta's platform were "traded after the Commission issued its [2017 DAO Report](#)" which concluded that certain digital assets were securities and that platforms that offered trading of these digital asset securities would be subject to the SEC's exchange requirement that exchanges register or operate pursuant to an exemption. The SEC order found that Coburn's conduct caused EtherDelta to operate as an unregistered national securities exchange, including the founding of EtherDelta, writing and deploying the EtherDelta smart contract to the Ethereum Blockchain, and exercising complete and sole control over EtherDelta's operations. According to the SEC's order, Zachary Coburn previously sold EtherDelta to foreign buyers and does not currently operate EtherDelta.

Sanctions

Coburn agreed to settle the charges without admitting or denying the SEC's findings. He was required to disgorge \$300,000, plus \$13,000 in interest, and to pay a \$75,000 civil penalty. Coburn also agreed to cooperate in another SEC investigation and to testify in any related enforcement action.

More Cases on the Way

In the [TokenLot Order](#) from September 11, 2018, where the SEC charged an unregistered broker-dealer for selling digital securities post-DAO Report, the SEC noted that the digital tokens that TokenLot "promoted and sold . . . included securities." In the [Crypto Asset Management Order](#) also from September 11, 2018 charging a crypto hedge fund manager with violating registration provisions, the SEC also found that the Fund invested in, held and traded "certain digital assets that were investment securities." In each case, as in EtherDelta, SEC did

not identify which tokens were securities or provide any analysis about [why those digital assets were securities](#). Further analysis on those September 2018 orders is available [here](#). Although the SEC did not announce any actions with respect to the digital tokens themselves in each of these cases, it must be considered whether the SEC is pursuing actions against the creators of the individual tokens that were deemed to be securities. "We are witnessing a time of significant innovation in the securities markets with the use and application of distributed ledger technology," said Steven Peikin, Co-Director of the SEC's Enforcement Division. "But to protect investors, this innovation necessitates the SEC's thoughtful oversight of digital markets and enforcement of existing laws." The SEC press release states that the investigation is continuing.

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