On Sept. 11, 2018, the SEC filed an enforcement action against an online platform TokenLot that bought and sold digital assets and facilitated their sale alleging that TokenLot operated as an unregistered broker-dealer. TokenLot described itself as an ICO superstore and operated a platform where retail investors could purchase digital tokens during and after an ICO. Among other things, TokenLot allegedly facilitated sales of digital tokens offered by multiple issuers in ICOs; marketed the digital tokens; accepted investor orders and funds for payment; assisted ICO issuers transfer digital tokens to investors; disbursed proceeds of the sales to the issuer(s); and itself purchased digital assets at a discount during certain ICOs and then sold those digital assets to retail investors for a profit. TokenLot earned fees in connection with its activities. Neither TokenLot nor its operators were registered with the SEC in any capacity.

The SEC charged TokenLot and its founders with failing to register as a broker-dealer and for selling unregistered securities. Of particular note, the SEC did not allege any that TokenLot or its founders engaged in fraudulent activity. As part of the settlement TokenLot and its founders were ordered to pay an nearly $480,000 in
disgorgement and prejudgment interest, and its founders were also ordered to pay $45,000 each as a civil penalty and were barred from participating in the securities industry with the right to apply for reentry after three years. TokenLot is in the process of winding down.

“This is the SEC’s first case charging unregistered broker-dealers for selling digital tokens after the SEC issued The DAO Report in 2017 cautioning that those who offer and sell digital securities must comply with the federal securities laws,” the SEC explained.

The enforcement action against TokenLot was the SEC’s first cryptocurrency enforcement action against a non-issuer for failing to register as a broker-dealer. This enforcement action is an example of the SEC’s on-going efforts to regulate the offer and sale of digital assets and their secondary trading by targeting unlicensed third parties who facilitate transactions of digital assets that are deemed to be unregistered securities.

© Polsinelli PC, Polsinelli LLP in California

Source URL: https://www.natlawreview.com/article/sec-charges-ico-token-offering-platform-unregistered-broker-dealer