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SEC Brings Charges against Individuals Behind Allegedly Fraudulent Unregistered Digital Asset Securities Offering

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On February 1, 2021, the U.S. Securities and Exchange Commission (SEC) announced that it had brought charges against several individuals involved in an alleged scheme to induce investors to transfer more than $11 million to buy into an unregistered initial coin offering (ICO) of B2G tokens, which the SEC claimed was merely an elaborate sham. (*SEC v. Krstic*, No. 21-0529 (E.D.N.Y. Filed Feb. 1, 2021)). The complaint, filed in the Eastern District of New York, alleged that Kristijan Krstic ("Krstic"), John DeMarr ("DeMarr"), and Robin Enos ("Enos") (collectively, "Defendants") conspired, in violation of securities laws, to defraud over 460 investors of $11.4 million with promises of large returns on investments from its offerings, including for B2G tokens that the defendants claimed were genuine digital assets for a mining and trading platform.

The defendants allegedly solicited investments for two companies, Start Options and Bitcoiin2Gen, and promoted the digital asset security known as B2G tokens based on false representations that the pooled investments would be used to build a platform that would create demand for B2G tokens and make them more valuable. The B2G tokens were to purportedly be issued as digital tokens on the Ethereum blockchain in advance of Bitcoiin2Gen's purported launch of a mineable, tradeable cryptocurrency. According to the complaint, the defendants created a multifaceted scam: (1) marketing materials claimed that Start Options was "consistently rated the best and most secure Bitcoin exchange by independent news media" when allegedly no articles or websites even listed Start Options as a digital asset trading platform; (2) multiple press releases and social media posts falsely touted the success of the B2G ICO and trading prices of B2G set by world markets and other false claims about technological developments involving the B2G token and Start Options' supposed Hong Kong-based mining operations; (3) fictional office locations and personnel, backed by a fabricated white paper and similar documents and website content; (4) multiple investor calls and meetings held by defendant DeMarr and Krstic; and (5) the creation of a fictional website, as referenced in press releases, that created the appearance of an independent website that tracked legitimate digital assets.

The SEC further put defendants under siege by taking issue with their use of paid promoters to achieve the veneer of legitimacy and the defendants' allegedly misleading public statements about some of their promoters. According to the complaint, the defendants purportedly retained a host of paid promoters, including the 90s action-adventure hero and actor Steven Seagal, to tout the digital token; another promoter, on a call to an investor, reportedly claimed that B2G could generate an 8000% return on its investments within one year.

Ultimately, the complaint alleges, investors never actually received tokens in exchange for their investments, and the funds raised in the ICO were not used to develop the B2G platform. Between January and May 2018, the B2G ICO raised about $7.2 million from over 435 investors in addition to the more than $4 million invested in Start Options, none of which was returned to investors. DeMarr allegedly did not use the invested funds from Start Options or the B2G ICO as marketed, rather on lavish personal expenses. The fraudulent scheme allegedly continued even after investors requested the return of their funds, but were strung along by more obfuscation by DeMarr. In fact, to avoid facing his investors, DeMarr allegedly had someone release a statement saying he was missing in Montenegro, when the SEC claims he was hiding in California.

The complaint asserts several violations of the anti-fraud and registration provisions of federal securities law, including aiding and abetting charges against Enos for providing substantial assistance to Bitcoiin2Gen and defendants Krstic and DeMarr. The Commission is seeking various forms of relief including permanently enjoining defendants from violating the federal securities laws and ordering defendants to disgorge all ill-gotten gains, as well as pay civil penalties under the Securities Act.

This is one of the latest SEC actions against a promoter of an ICO. Though, unlike some of the SEC's other enforcement activities in this area, this particular action against these defendants involved an alleged scheme to defraud investors and not just a failure to register securities under the Securities Act of 1933. The SEC press release also states that the U.S. Attorney's Office for the Eastern District of New York announced criminal charges against DeMarr.

Given investors' interest in cryptocurrency in recent years, it's also no surprise that recent updates to the SEC's Public Alert: Unregistered Soliciting Entities (PAUSE) list – which keeps track of entities that falsely claim to be registered, licensed or located in the U.S. with regard to their solicitation of investors – include eight entities that were involved with cryptocurrency services.

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