

Securities Regulation Daily Wrap Up, FRAUD AND MANIPULATION —E.D. Tex.: Injunction and money penalties ordered in Bitcoin Ponzi scheme, (Sep. 23, 2014)

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By Rodney F. Tonkovic, J.D.

The founder of a Bitcoin-based investment opportunity has been sanctioned for the sale of unregistered securities. The SEC had charged Trendon T. Shavers and with making misrepresentations to and defrauding investors in Bitcoin Savings and Trust (BS&T). Because Shavers did not respond to the motion, the court granted summary judgment in favor of the Commission and granted the requested injunctions, disgorgement, and penalties (*SEC v. Shavers*, September 18, 2014, Mazzant, A.).

Background. BS&T was an unincorporated online investment scheme through which Shavers solicited and accepted investments, and paid all purported returns, in the digital currency known as Bitcoin. Investments in BS&T were offered and sold over the internet in online chat rooms and fora dedicated to Bitcoin. Shavers promised investors up to 1 percent daily interest, based on Shavers' trading of Bitcoin against the U.S. dollar. For more background, please see our coverage in the *Securities Regulation Daily Wrap Up* for August 7, 2013.

From February 2011 through August 2012, BS&T was, in fact, a sham and Ponzi scheme. According to the uncontested evidence, Shavers commingled investor funds with his personal Bitcoins, and used the same Bitcoin "wallet" for personal transactions and for investor deposits and returns. New Bitcoins from investors were used to make payments on outstanding BS&T investments and Shavers diverted investors' bitcoins for his personal use. Shavers' illicit profits totaled 180,819 Bitcoins, which is more than \$101 million based on current exchange rates. BS&T investors collectively suffered net losses of 265,678 Bitcoins, or more than \$149 million.

Procedural history. To date neither defendant has pleaded or otherwise defended this action. The Commission filed a motion for summary judgment in March 2014, and no response was filed by the September 12, 2014 deadline.

Summary judgment. The court had previously determined that Bitcoin are securities because they meet the definition of an investment contract. The court accordingly found that the defendants violated the registration provisions of the Securities Act because there was no registration statement filed or in effect for the BS&T securities at issue. The uncontested evidence also established that Shavers knowingly operated a Ponzi scheme, made misrepresentations to investors, and misappropriated investors funds.

Remedies. The court then concluded that a permanent injunction against future violations of the antifraud and registration provisions of the securities laws was warranted. According to the court, the defendants sold BS&T investments to at least eighty investors over the course of eighteen months. This was done with a high degree of scienter.

Shavers and BS&T were then jointly and severally ordered to disgorge \$38,638,569, plus prejudgment interest of \$1,766,098. The court found this to be a reasonable approximation of profits casually connected to the violation, based on the average price of Bitcoin from the date of the scheme's collapse up to the date of this order. Finally, Shavers and BS&T were each ordered to pay maximum third-tier civil penalties of \$150,000.

The case is No. 4:13-CV-416.

Attorneys: Jessica B. Magee for the SEC. Trendon T. Shavers, pro se.

Companies: Bitcoin Savings and Trust

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