

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10788 / May 28, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19816

In the Matter of

BITCLAVE PTE LTD.

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT
TO SECTION 8A OF THE
SECURITIES ACT OF 1933, MAKING
FINDINGS, AND IMPOSING A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to 8A of the Securities Act of 1933 (“Securities Act”), against BitClave PTE Ltd. (“BitClave” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Summary

1. BitClave is an early-stage blockchain services company that operates through an entity in Singapore and maintains its principal place of operations in San Jose, California. From June 2017 through November 2017, BitClave offered and sold securities in the form of digital tokens to fund the development of a blockchain-based search platform for targeted consumer advertising. As part of this process, BitClave conducted an initial coin offering ("ICO" or the "offering") in which it raised approximately \$25.5 million through the issuance of digital assets called Consumer Activity Tokens ("CAT") to approximately 9,500 investors, including individuals in the United States.

2. Based on the facts and circumstances set forth below, the CAT were offered and sold as investment contracts and therefore were securities. A purchaser in the offering would have had a reasonable expectation of obtaining a future profit based on BitClave's efforts to develop and market the platform after the offering, to support the growth of the platform, and cause the price of the tokens to increase. BitClave also highlighted to purchasers that they would have liquidity for their investments because BitClave would undertake efforts to make CAT available on digital asset trading platforms. BitClave violated Sections 5(a) and 5(c) of the Securities Act by offering and selling securities without having a registration statement filed or in effect with the Commission or qualifying for an exemption from registration.

Respondent

3. BitClave is headquartered in San Jose, California and operates through BitClave PTE Ltd., a Singapore private limited company constituted on July 17, 2017. Neither BitClave nor its securities, nor BitClave's principals, are registered with the Commission in any capacity.

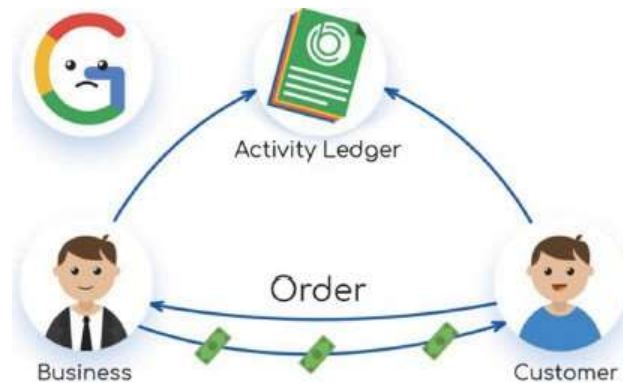
Facts

BitClave Planned to Use the Offering Proceeds to Build the Platform

4. In June 2017, BitClave began marketing the development of a platform called the BitClave Active Search Ecosystem ("BASE"). BitClave advertised that on BASE, once developed, customers would receive a digital asset the company created, CAT, in exchange for viewing and interacting with targeted ads. Around the same time, BitClave began marketing an ICO through which it would sell CAT to raise money for the project to develop BASE. BitClave released a White Paper ("White Paper") on its website explaining the business plan, the details of which BitClave revised several times during the offering. BitClave promoted its business plan and the CAT offering widely by presenting at several industry events in the United States and abroad, posting on various online forums such as social media websites and news blogs, including Twitter, Facebook, Telegram, Slack, and Medium, as well as posting videos on YouTube produced by the company.

5. In the White Paper, BitClave stated that businesses would be able to use BASE to "directly market to customers whose searches align with the goods and services being offered," while "customers can earn CAT tokens for interacting with directly targeted ads." BitClave provided the diagram below in its marketing materials to illustrate the company's model and

potential advantages of BASE compared to established search providers:



6. BitClave represented in the White Paper that it would pool the money raised in the offering, which it referred to as a “fundraiser,” and use it to develop, administer, and market BASE. Specifically, BitClave stated that it would use 38% of the proceeds for development of the platform, 37% for expanding adoption of the platform, and the remaining 25% for administration, advisers, legal expenses, and other costs.

7. BitClave stated that it planned to create a total supply of 2 billion CAT, up to half of which the company would sell in the ICO. The company planned to distribute the remaining tokens for “long term budget,” “community grants,” and to the “team,” which included executives, employees, and advisors of the company.

BitClave Offered and Sold CAT to the General Public

8. BitClave publicly announced a so-called “pre-sale” phase of the offering from July 25, 2017 through August 1, 2017, during which CAT were sold to the general public at discounts of up to 50% off the initial price of \$.05 per token. BitClave sold about 60 million CAT to approximately 1,000 purchasers in the pre-sale phase, including to persons in the United States, in exchange for the equivalent of approximately \$1.5 million worth of digital assets.

9. BitClave also engaged in a bounty program during the offering, through which BitClave allocated approximately 9 million CAT to over 600 individuals in exchange for online marketing activities that they provided in support of the offering.

10. BitClave conducted the final phase of the offering on November 29, 2017. BitClave priced CAT at \$.10 per token for the final phase, but provided bonus tokens in varying amounts to investors who had made deposits prior to November 29, 2017. BitClave sold approximately 611 million CAT to approximately 8,500 purchasers during the final phase of the offering, including to persons in the United States, for the equivalent of approximately \$24 million worth of digital assets. BitClave announced that it met its “hard cap” of \$25.5 million total raised within 32 seconds of the official start of this phase of the sale.

11. In total, BitClave raised \$25.5 million through the sale of approximately 680 million CAT in the offering. In January 2018, BitClave created a total of 2 billion CAT on the Ethereum blockchain and distributed the 680 million CAT tokens that had been purchased in the offering. Shortly thereafter, the tokens began trading on digital asset trading platforms. BitClave continues to retain the remaining 1.32 billion CAT.

BitClave Promoted CAT as an Opportunity to Obtain Future Profits from the Efforts of BitClave and Its Agents, and CAT Purchasers Would Have Reasonably Expected That They Would Profit from BitClave's Efforts

12. BitClave had not fully developed and launched its BASE platform at the time of the offering. In or around October 2017, BitClave released an “alpha,” or preliminary, version of the smart contracts for BASE. Around the same time, BitClave released a limited application built on the BASE platform in an effort to demonstrate proof of concept.

13. In the offering materials, BitClave described the development and marketing efforts the company had undertaken leading up to the ICO, the work the company planned to perform to increase the value of the platform in the future, and the technical credentials and work experience of the BitClave team. In the “Growth Plan” section of the White Paper, BitClave explained that “[a]s part of the initial ecosystem bootstrapping, we have already introduced 15-20 small companies for the initial instance of the BASE market ... Once our small market is established, we will increase our marketing efforts to continually expand the numbers of players involved.” BitClave also explained in the White Paper that “[o]nce the platform is launched, team BitClave will shift significant focus to marketing to small and medium businesses to build the retail side of the marketplace.” BitClave identified several team members on its website and boasted that the team “consists of 20 engineers and [an] advisory board of world-class talents in the fields of security, payments, and blockchain.”

14. BitClave emphasized an expectation that the price of CAT would appreciate. In the White Paper, BitClave stated that “since the total volume of CAT is fixed, token exchange among the growing population of retail partners and customers implies a general growth model for CAT value,” and “as more service providers join, the amount of CATs required for an equivalent service will gradually decrease, corresponding to a [] CAT value increase.”

15. CAT purchasers would have reasonably expected they would obtain future profits if BitClave was successful in its entrepreneurial and managerial efforts to develop its business. Fueling such expectations, the day before the final phase of the ICO, BitClave tweeted a link to a video titled “Time Sensitive Initial Coin Offering (ICO) Launch Info on BitClave CAT Search Engine.” This video featured an investor promoting the “profit potential” of the BitClave token offering.

16. In its offering materials, BitClave stated that CAT would be used “internally within BASE among the participating parties” once the platform was developed and could incentivize users to participate in the BASE platform. It did not, however, identify any specific means for token holders to use CAT within the BASE “ecosystem.” Rather, BitClave stated that the tokens could be traded on digital asset trading platforms, and that BitClave planned to make trading of CAT available on digital asset trading platforms after completing the token distribution. CAT purchasers would have reasonably expected an opportunity to profit by selling the tokens following the token distribution.

17. Following the ICO, BitClave contacted over a dozen digital asset trading platforms, requesting that they make CAT available for trading on the platforms. CAT was traded on multiple platforms, and BitClave did not request or impose any trading restrictions on CAT.

18. By mid-2019, CAT had been removed from at least four digital asset trading platforms.

BitClave's Lawsuit against a Co-Founder and Its Wind Down

19. On May 22, 2018, BitClave filed a complaint in California state court against its former officer, director and co-founder. In the course of that litigation, BitClave alleged that the co-founder and his affiliated entity, misused company funds that were raised in the CAT offering. On November 12, 2019, after a three-week trial, the jury returned a verdict against the co-founder and his affiliated entity, awarding BitClave \$7.6 million in damages on its claim for conversion against them, \$2.5 million on its claim for breach of fiduciary duty against the co-founder, and \$2.5 million on its claim for fraud against his affiliated entity. BitClave is endeavoring to collect on its judgment.

20. Due in large part to the distraction and cost of legal matters, including BitClave's lawsuit against the co-founder, BitClave determined that its business plan would not be viable and is in the process of winding down its operations entirely. The company does not plan to continue developing, operating, or marketing the platform.

BitClave Offered and Sold CAT in Violation of the Securities Act

21. Based on the facts and circumstances set forth above, CAT were offered and sold as investment contracts and therefore securities pursuant to *SEC v. W. J. Howey Co.*, 328 U.S. 293 (1946), and its progeny, including the cases discussed by the Commission in its *Report of Investigation Pursuant To Section 21(a) of the Securities Exchange Act of 1934: The DAO* (Exchange Act Rel. No. 81207) (July 25, 2017) (the "DAO Report").

22. No registration statements were filed or in effect for BitClave's offers and sales of securities and the offers and sales did not qualify for an exemption from registration under the Securities Act.

23. As a result of the conduct described above, BitClave violated Section 5(a) of the Securities Act, which states that "[u]nless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly, (1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such a security through the use or medium of any prospectus or otherwise, or (2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale."

24. As a result of the conduct described above, BitClave violated Section 5(c) of the Securities Act, which states that "[i]t shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security."

Undertakings

1. Respondent has undertaken to:

A. Transfer all 1.32 billion CAT in its possession or control to the Fund Administrator within 10 days of receiving notice of the Fund Administrator's appointment, to enable the Fund Administrator to permanently disable such CAT.

B. Pay toward satisfaction of the amounts ordered in Section IV.B below all amounts recovered related to the Offering, including all amounts reasonably recoverable through

litigation and through any tax refund process, with the sole exception that BitClave may retain the rights to its intellectual property. If BitClave elects to liquidate the rights to its intellectual property before the amounts ordered in Section IV.B below have been satisfied, or BitClave has paid all reasonably recoverable assets toward satisfaction of the amounts ordered and certified compliance with the undertakings as required in undertaking 2 below, amounts received from the liquidation of the intellectual property shall be paid toward satisfaction of the amounts ordered.

C. Publish notice of the Order on BitClave's website and social media channels, in a form not unacceptable to Commission staff, within 10 days of the date of this Order.

D. Take reasonable steps to convey this Order to digital asset trading platforms that offer trading of CAT and request the removal of CAT from the platforms, and publish notice of such requests on BitClave's website and social media channels, in a form not unacceptable to Commission staff, within 10 days of the date of this Order.

E. Not pursue any voluntary dissolution proceedings in Singapore until after the amounts ordered in Section IV.B below have been satisfied, or BitClave has paid all reasonably recoverable assets toward satisfaction of the amounts ordered and certified compliance with the undertakings as required in undertaking 2 below.

2. Respondent shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, including steps reasonably taken to recover amounts through litigation and any tax refund process, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Kristina Littman, Chief, Cyber Unit, Division of Enforcement, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than thirty (30) days from the date of the completion of the undertakings.

3. Respondent may apply to the Commission staff for an extension of the deadlines set forth above before their expiration and, upon a showing of good cause by Respondent, which may include ongoing efforts to collect funds owing to Respondent, to defend claims against Respondent, or to wind down its operations, the Commission staff may, in its sole discretion, grant such extensions for whatever time period it deems appropriate.

4. In determining whether to accept the Offer, the Commission has considered these undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that pursuant to Section 8A of the Securities Act:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 5(a) and 5(c) of the Securities Act.

B. Respondent shall pay disgorgement of \$25,500,000, prejudgment interest of

\$3,444,197, and a civil penalty of \$400,000, to the Securities and Exchange Commission. Payment shall be made in the following installments: (1) \$10,000,000 within 14 days of the entry of this Order; and (2) the remainder within 180 days after the entry of this Order. Payments shall be applied first to post-Order interest, which accrues pursuant to SEC Rule of Practice 600 and to 31 U.S.C. 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date and/or in the amount according to the schedule set forth above, all outstanding payments under this Order, including post-Order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying the party as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Kristina Littman, Chief, Cyber Unit, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549, or such other person or address as the Commission staff may provide.

C. Respondent shall comply with the undertakings enumerated in Paragraphs 1.A, C., and D. above.

D. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the disgorgement, prejudgment interest, and penalties referenced in paragraph B above. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private

damages action brought against any Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

E. The disgorgement, prejudgment interest, and civil penalty shall be aggregated in the Fair Fund, which shall be maintained in the type of account directed by the Commission staff. The Commission will appoint a Fund Administrator who will develop a distribution plan (the “Plan”) and administer the Plan in accordance with the Commission Rules on Fair Fund and Disgorgement Plans. The Fair Fund shall be used to compensate injured investors for losses resulting from the violations determined herein and to cover the costs of administration of the Fair Fund. Any amount remaining in the Fair Fund after all distributions have been made and costs have been paid shall be transmitted to the Commission for transfer to the U.S. Treasury.

By the Commission.

Vanessa A. Countryman
Secretary