

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 92607 / August 9, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20455

In the Matter of

Poloniex, LLC,

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, 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 Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Poloniex, LLC (“Poloniex” 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 21C of the Securities Exchange Act of 1934, 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 finds¹ that:

Summary

1. Poloniex operated a digital asset trading platform (the “Poloniex Trading Platform”) that meets the definition of an “exchange” under the federal securities laws. The Poloniex Trading Platform displayed a limit order book that matched the orders of multiple buyers and sellers in digital assets, including digital assets that were investment contracts under

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

SEC v. W.J. Howey Co., 328 U.S. 293 (1946), and therefore securities (hereinafter referred to as “Digital Asset Securities”) based on established non-discretionary methods. Notwithstanding its operation of the Poloniex Trading Platform, Poloniex did not register as a national securities exchange nor did it operate pursuant to an exemption from registration at any time, and its failure to do so was a violation of Section 5 of the Exchange Act.

2. Poloniex began operations on January 18, 2014, and provided services to both U.S. and international users (“Users”). A User could utilize the Poloniex Trading Platform by registering for an account and funding the account with digital assets that the User deposited into a digital asset wallet maintained by the Poloniex Trading Platform.² The User could then trade these digital assets, which included Digital Asset Securities, through the Poloniex Trading Platform. A User could withdraw its digital asset balance from the Poloniex Trading Platform by providing the address of another digital asset wallet owned by the User, and by directing Poloniex to transfer all or part of the User’s digital asset holdings to that wallet.

3. On July 25, 2017, the Commission issued 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”). In the DAO Report, the Commission advised that a platform that offers trading of digital assets that are securities and operates as an “exchange,” as defined by the federal securities laws, must register with the Commission as a national securities exchange or operate pursuant to an exemption from registration. Under Section 3(a)(10) of the Exchange Act, a security includes “an investment contract.” *See* 15 U.S.C. § 78c(a)(10). An investment contract is an investment of money in a common enterprise with a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others. *See Howey*, 328 U.S. at 301. After the DAO Report was published and through November 2019, when Poloniex sold the Poloniex Trading Platform to a third party (the “Relevant Period”), Poloniex made available for trading, on the Poloniex Trading Platform, digital assets that were offered and sold as securities as defined by Section 3(a)(10) of the Exchange Act, generating millions of dollars in revenues from transaction fees charged to Users.

4. As discussed further below, during the Relevant Period, Poloniex met the criteria of an “exchange” as defined by Section 3(a)(1) of the Exchange Act and Rule 3b-16 thereunder. During the Relevant Period, Poloniex was not registered with the Commission as a national securities exchange nor did it operate pursuant to any exemption from registration. As a result, Poloniex violated Section 5 of the Exchange Act.

Respondent

5. Poloniex, LLC, is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. Poloniex is a wholly-owned subsidiary of Pluto Holdings, Inc. (“Pluto”), a Delaware corporation, which is a wholly-owned subsidiary of Circle Internet Financial Limited (“Circle”), an Irish private company. Poloniex operated the Poloniex Trading Platform during the Relevant Period. In November 2019, Pluto sold the Poloniex Trading Platform to a third party.

² A digital asset wallet is computer software that maintains public keys and addresses and is used to send and receive digital assets on a blockchain.

Facts

The Poloniex Trading Platform: Users, Order Entry, and Display

6. During the Relevant Period, the Poloniex Trading Platform operated as a web-based trading platform that facilitated buying and selling certain digital assets, which included Digital Asset Securities, in the secondary market. The Poloniex Trading Platform was available to retail and institutional investors, including United States residents. Throughout the Relevant Period, the Poloniex Trading Platform was operated by individuals located in the United States and accessible to Users in the United States.

7. Prior to trading on the Poloniex Trading Platform, Poloniex required Users to create a Poloniex account. Beginning in early 2018, Poloniex required all potential account applicants to submit their full name, email address, proof of address, country of residence, and a record of their government-issued identification as part of the onboarding process.

8. When placing orders on the Poloniex Trading Platform, Poloniex required Users to have sufficient funds to cover the order at the time it was placed. Poloniex maintained custody of the digital assets deposited by Users and maintained a ledger that individually denominated the digital asset amounts belonging to each User. Once digital assets were sent to the Poloniex Trading Platform, Users were able to enter into trade agreements with other Users for purchases and sales of other digital assets. Once Users reached agreement, the Poloniex Trading Platform effected transfers to and from User accounts. Poloniex did not act as a principal to any of the transactions that took place on or through the Poloniex Trading Platform. Users could move their digital assets off the Poloniex Trading Platform by directing Poloniex to authenticate the transfer of digital assets to a blockchain address specified by the User.

9. The Poloniex Trading Platform's website provided a user-friendly interface for Users to enter and display orders on the Poloniex Trading Platform. Users entered buy or sell orders into the Poloniex Trading Platform, which included the digital asset trading pair (the assets being exchanged), size, price, and time-in-force. Users also had the ability to enter into the platform automated, algorithmic orders using Poloniex's API or using Poloniex's mobile trading application for certain handheld devices. As long as Poloniex's website was operational, Users could enter orders through the website 24 hours a day, seven days a week.

10. The Poloniex Trading Platform's website displayed to Users the current, top firm bids and offers for digital assets by symbol, price, and size. The website also displayed account information for Users and provided fields for Users to input orders in any available trading pair. Depending on the digital asset being traded, the digital asset could only be exchanged for (meaning one side of the digital asset trading pair had to be): Bitcoin, Ether, Monero, Tether, or USD Coin. Poloniex did not offer any fiat currency functionality or trading.

The Poloniex Order Types, Book of Orders, and Matching

11. Poloniex offered Users the ability to place three types of orders: a market order to buy or sell a digital asset at the best available price; a limit order to buy or sell a digital asset at a specific price or better; or a stop-limit order, which converts to a limit order when the best quote

reaches or passes the stop price (i.e., the best bid is at or lower than the stop price for sell orders, or the best offer is at or higher than the stop price for buy orders).

12. A User could cancel an order if the cancellation instruction was received before the order matched with another order. Once Poloniex matched the orders, the orders could not be cancelled. If any order had only been partially filled, the User could cancel the unfilled portion of the order.

13. After the User entered an order, Poloniex included the order in its order book for matching with orders from other Users. After the User entered an order into the platform, Poloniex updated the User's account to reflect the open order and included it in the order book for matching with orders from other Users.

14. The Poloniex Trading Platform displayed and prioritized orders entered on the order book on the basis of price and time. Buy orders were prioritized in decreasing order of prices with the highest bid placed at the top of the order book and sell orders were prioritized in increasing order of prices with the lowest ask placed at the top of the order book.

15. Orders with same prices were aggregated in the order book and were filled in a first in, first out manner. Poloniex maintained internal ledgers to track Users' balances in digital assets and updated Users' balances after an order was matched.

Trading Fees

16. Poloniex employed a volume-tiered, maker-taker fee schedule. A maker's order existed on the order book prior to the trade; the taker's order matched or took the maker's order. Poloniex charged a per transaction percentage fee ranging from 0-0.25% based on the User's 30-day trading volume and maker/taker status of the trade. Poloniex deducted trading fees from each transaction and aggregated the fees in a Poloniex-owned address of the digital asset in question.

The Poloniex Trading Platform Allowed Users to Transact in Digital Asset Securities

17. Both before and after being acquired by Circle, Poloniex implemented a digital asset "listing process" that included an analysis of whether an applicant's digital asset was a security.

18. Prior to the issuance of the DAO Report, Poloniex regularly informed applicants that it monitored the digital asset community and selected digital assets for "listing" that it believed were part of unique and innovative projects. Poloniex also regularly informed applicants that, as a matter of company policy, Poloniex "cannot list any token that resembles a security" and Poloniex "suggest[ed] token dev[eloper]s familiarize themselves with the Howey Test."

19. If Poloniex determined there was risk associated with a particular digital asset, including risk that the digital asset was a security, Poloniex would request that the applicant

provide a memorandum from a third-party law firm analyzing whether the digital asset could be considered a security under *Howey*.

20. Following the issuance of the DAO Report, Poloniex issued a blog post reiterating that Poloniex would not provide a trading market for Digital Assets Securities.

21. Nevertheless, in or around August 2017, Poloniex stated internally that it wanted to be “aggressive” in making available for trading new digital assets on the Poloniex Trading Platform, including digital assets that might be considered securities under *Howey*, in an effort to increase market share. This resulted in Poloniex making available for trading on the Poloniex Trading Platform digital assets that were investment contracts under *Howey*, and therefore, securities.

22. Upon Circle’s acquisition of Poloniex in February 2018, Poloniex updated its process for reviewing digital assets to include (1) an initial screening and data collection; and (2) an evaluation for each digital asset applicant if it passed the initial screening. In 2018, Circle created an internal Executive Risk Committee to evaluate when it would be appropriate for the Poloniex Trading Platform to provide a trading market for a particular digital asset, and Circle formed an in-house “token” legal team and engaged new outside counsel to provide additional legal advice on these decisions.

23. Nevertheless, in or around July 2018, Poloniex determined that it would continue to provide users of the Poloniex Trading Platform the ability to trade digital assets that were at “medium risk” of being considered securities under *Howey*. Poloniex made this determination to offer trading in “medium risk” Digital Asset Securities in light of the business rewards that would provide to Poloniex. This resulted in Poloniex continuing to make available to Users for trading on the Poloniex Trading Platform Digital Asset Securities, which resulted in the Poloniex Trading Platform operating as an unregistered exchange.

24. As a result of the above, during the Relevant Period, the Poloniex Trading Platform provided Users the ability to buy and sell digital assets that were offered and sold as investment contracts under *Howey*, and therefore, securities.

25. After conducting a re-review in 2018 of the 75 digital assets available to Users for trading, Poloniex determined to “delist” certain digital assets from the Poloniex Trading Platform. Poloniex ceased providing Users a trading market for these digital assets in two phases. In phase 1 in July 2018, Poloniex removed digital assets that traded in lower volumes and thus produced lower profits for Poloniex. In phase 2, occurring from September through November 2018, Poloniex undertook “to remove projects that are considered securities.” But despite these “delistings,” Poloniex continued to allow Users to trade certain Digital Asset Securities until it sold the Poloniex Trading Platform in November 2019.

Violations

26. As a result of the conduct described above, Poloniex violated Section 5 of the Exchange Act, which makes it unlawful for any broker, dealer, or exchange, directly or

indirectly, to effect any transaction in a security, or to report any such transaction, in interstate commerce, unless the exchange is registered as a national securities exchange under Section 6 of the Exchange Act, or is exempted from such registration.

27. Section 3(a)(1) of the Exchange Act defines an “exchange” as

any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

15 U.S.C. § 78c(a)(1). Exchange Act Rule 3b-16(a) provides a functional test to assess whether a trading system meets the definition of exchange under Section 3(a)(1) of the Exchange Act. Exchange Act Rule 3b-16(a) provides that an organization, association, or group of persons shall be considered to constitute, maintain, or provide “a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by an exchange” as those terms are used in Section 3(a)(1) of the Exchange Act if such an organization, association, or group of persons: (1) brings together the orders for securities of multiple buyers and sellers; and (2) uses established, non-discretionary methods (whether by providing a trading facility or by setting rules) under which such orders interact with each other, and the buyers and sellers entering such orders agree to the terms of the trade.³

28. A system that meets the criteria of Exchange Act Rule 3b-16(a), and is not excluded under Exchange Act Rule 3b-16(b), must register, pursuant to Section 5 of the Exchange Act, as a national securities exchange under Section 6 of the Exchange Act⁴ or operate pursuant to an appropriate exemption. One of the available exemptions is for ATSs.⁵ Exchange Act Rule 3a1-1(a)(2) exempts from the definition of “exchange” under Section 3(a)(1) an

³ See 17 CFR § 240.3b-16(a). The Commission adopted Exchange Act Rule 3b-16(b) to explicitly exclude certain systems that the Commission believed did not meet the exchange definition. These systems include systems that merely route orders to other execution facilities and systems that allow persons to enter orders for execution against the bids and offers of a single dealer system. See Securities Exchange Act Rel. No. 40760 (Dec. 8, 1998), 63 FR 70844 (Dec. 22, 1998) (Regulation of Exchanges and Alternative Trading Systems, hereinafter “Regulation ATS Adopting Release”), at 70852.

⁴ See 15 U.S.C. §§ 78e-78f. A “national securities exchange” is an exchange registered as such under Section 6 of the Exchange Act.

⁵ Rule 300(a) of Regulation ATS provides that an ATS is “any organization, association, person, group of persons, or system: (1) [t]hat constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of [Exchange Act Rule 3b-16]; and (2) [t]hat does not: (i) [s]et rules governing the conduct of subscribers other than the conduct of subscribers’ trading on such [ATS]; or (ii) [d]iscipline subscribers other than by exclusion from trading.”

organization, association, or group of persons that complies with Regulation ATS.⁶ Regulation ATS requires an ATS to, among other things, register as a broker-dealer, file a Form ATS with the Commission to notice its operations, and establish written safeguards and procedures to protect subscribers' confidential trading information. An ATS that complies with Regulation ATS and operates pursuant to the Rule 3a1-1(a)(2) exemption would not be required by Section 5 to register as a national securities exchange.

29. Poloniex satisfied the criteria of Exchange Act Rule 3b-16(a) and is not excluded under Rule 3b-16(b). As described above, Poloniex provided a limit order book for bringing together orders of multiple buyers and sellers. Poloniex received and stored orders from Users in digital assets, many of which were securities, on the Poloniex order book and displayed the top orders (including symbol, size, and price) as bids and offers on the Poloniex website. Poloniex provided the means for these orders to interact and execute through the combined use of the Poloniex website, order book, and pre-programmed trading protocols defined in the Poloniex trading engine. These established non-discretionary methods allowed Users to agree upon the terms of their trades in Digital Asset Securities on Poloniex during the Relevant Period.

30. Despite operating as a Rule 3b-16(a) system, Poloniex did not register as a national securities exchange or operate pursuant to an exemption from such registration. Accordingly, Poloniex violated Section 5 of the Exchange Act.

Disgorgement and Civil Penalties

31. The disgorgement and prejudgment interest ordered in paragraph B is consistent with equitable principles and does not exceed Respondent's net profits from its violations, and will be distributed to harmed investors to the extent feasible. The Commission will hold funds paid pursuant to paragraph B in an account at the United States Treasury pending distribution. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Poloniex cease and desist from committing or causing any violations and any future violations of Section 5 of the Exchange Act.

⁶ See 17 CFR 240.3a1-1(a)(2). Rule 3a1-1 also provides exemptions from the definition of "exchange" for any ATS operated by a national securities association, and any ATS not required to comply with Regulation ATS pursuant to Rule 301(a) of Regulation ATS. See 17 CFR 240.3a1-1(a)(1) and (3). Neither of these exemptions are applicable in the present matter.

B. Respondent Poloniex shall, within 10 days of the entry of this Order, pay disgorgement of \$8,484,313.99, prejudgment interest of \$403,995.12, and a civil money penalty of \$1,500,000, for a total of \$10,388,309.10, to the Securities and Exchange Commission. If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment of a civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

C. 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 Poloniex as 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 A. Kristina Littman, Chief, Cyber Unit, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549, or such other person or address as the Commission staff may provide.

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 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.

By the Commission.

Vanessa A. Countryman
Secretary