

2018), available at <https://www.sec.gov/rules/sro/nysearca/2018/34-83912.pdf>.

¹⁸See Notification of Commission Review of Order Disapproving a Proposed Rule Change to List and Trade the Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF, Exchange Act Release No. 83913 (Aug. 22, 2018), available at <https://www.sec.gov/rules/sro/cboebzx/2018/34-83913-letter-from-secretary.pdf>; Notification of Commission Review of Order Disapproving a Proposed Rule Change to List and Trade the Shares of the ProShares Bitcoin ETF and the ProShares Short Bitcoin ETF, Exchange Act Release No. 83904 (Aug. 22, 2018), available at <https://www.sec.gov/rules/sro/nysearca/2018/34-83904-letter-from-secretary.pdf>; Notification of Commission Review of Order Disapproving a Proposed Rule Change Relating to Listing and Trading of the Direxion Daily Bitcoin Bear 1X Shares, Direxion Daily Bitcoin 1.25X Bull Shares, Direxion Daily Bitcoin 1.5X Bull Shares, Direxion Daily Bitcoin 2X Bull Shares, and Direxion Daily Bitcoin 2X Bear Shares Under NYSE Arca Rule 8.200-E, Exchange Act Release No. 83912 (Aug. 22, 2018), available at <https://www.sec.gov/rules/sro/nysearca/2018/34-83912-letter-from-secretary.pdf>.

¹⁹See Trading Suspension, Exchange Act Release No. 84063 (Sept. 9, 2018), available at <https://www.sec.gov/litigation/suspensions/2018/34-84063.pdf>.

²⁰See 17 C.F.R. § 201.431 (2018).

²¹U.S. Dep't of the Treasury, A Financial System That Creates Economic Opportunities: Nonbank Financials, Fintech, and Innovation (2018), available at https://home.treasury.gov/sites/default/files/2018-08/A-Financial-System-that-Creates-Economic-Opportunities---Nonbank-Financials-Fintech-and-Innovation_0.pdf.

²²*Id.* at 6.

²³See Press Release, U.S. Commodity Futures Trading Comm'n, CFTC Launches LabCFTC as Major FinTech Initiative (May 17, 2017), available at <https://www.cftc.gov/PressRoom/PressReleases/pr7558-17> ("LabCFTC is the agency's focal point to promote FinTech innovation and fair competition by making the CFTC more ac-

cessible to FinTech innovators and serving as a platform to inform the CFTC's understanding of new technologies."); Press Release, Bureau of Consumer Fin. Prot., BCFP Collaborates with Regulators Around the World to Create Global Financial Innovation Network (Aug. 7, 2018), available at <https://www.consumerfinance.gov/about-us/newsroom/bcfp-collaborates-regulators-around-world-create-global-financial-innovation-network>; Press Release, U.S. Dep't of the Treasury, Office of the Comptroller of the Currency, OCC Issues Responsible Innovation Framework (Oct. 26, 2016), available at <https://www.occ.treas.gov/news-issuances/news-releases/2016/nr-occ-2016-135.html> (announcing the creation of the Office of Innovation focused on responsible innovation).

SEC/SRO UPDATE

SEC Chairman Wants More Individuals to Invest in Private Companies; SEC Awards More Than \$54 Million to 2 Whistleblowers; Elad Roisman Sworn in as Newest SEC Commissioner; SEC Charges ICO Superstore and Owners with Operating as Unregistered Broker-Dealers

By Peter H. Schwartz & Laura Pflumm Cerezo

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SEC Chairman Wants More Individuals to Invest in Private Companies

On August 31, U.S. Securities and Exchange Commission Chairman Jay Clayton stated that

said the SEC is now weighing a major overhaul of rules intended to protect mom-and-pop investors, with the goal of opening up new options for them to invest in private companies.¹

According to the article, the SEC plans in the coming months to issue a white paper (in the form of a concept release) that will explore:

- Whether there should be broader access to investing in privately held companies, perhaps by adjusting restrictions on which types of sophisticated investors can buy stakes;
- How to streamline rules that govern private fundraising by smaller companies;
- How to simplify other fundraising channels that let companies raise limited amounts of money through less-regulated public offerings; and
- Whether technology firms with business models built around the “gig economy” should have an easier way to compensate their workers by giving them stock in the company.

The concept release will seek public comment on how to revamp the capital-raising process, including by expanding access to private stock sales.

Chair Clayton also indicated that the SEC hopes to streamline that process and create more “accredited” investors, such as by allowing in people who don’t meet income or wealth thresholds but have professional licenses or advanced education.

SEC Awards More than \$54 Million to two Whistleblowers

On September 6, the SEC announced whistleblower awards of \$39 million to one whistleblower and \$15 million to another after the agency received critical information and continued assistance to help bring an important enforcement action.² The \$39 million award is the second-largest award since the SEC’s whistleblower program’s inception in 2011.

In total, the SEC has awarded more than \$320 million to 57 individuals since issuing its first award in 2012. Under the current rules, whistleblowers may be eligible for an award ranging from 10% to 30% of the amount collected in a case when monetary sanctions exceed \$1 million.³

In June, however, the SEC voted to propose potential cuts to the awards whistleblowers can collect under the program.⁴ The proposal would give the SEC the discretion to limit awards in the biggest cases, when the agency collects penalties of \$100 million or more, to a level it would see as “reasonably necessary.”⁵ The proposal was largely criticized during the public comment period as many thought the potential for a cap on awards may prevent whistleblowers from reporting their concerns. It is unclear if or when the SEC may issue a final rule.

(See “Comments on the SEC’s Proposed Rule-making of its Whistleblower Program Rules,” by Jane Turner & Frederic Whitehurst of the National Whistleblower Center, elsewhere in this issue.)

Elad Roisman Sworn in as Newest SEC Commissioner

On September 11, Elad Roisman was sworn into office as commissioner of the SEC.⁶ Mr. Roisman was nominated by President Donald J. Trump and will fill the open Republican commissioner seat that was vacated by former-Commissioner Michael Piwowar when his term ended in June. The addition of Roisman gives the SEC a full five-member commission. Mr. Roisman joins fellow Commissioners Kara Stein, Robert Jackson, Hester Pierce, and Chairman Jay Clayton.

Commissioner Roisman comes to the SEC from the Senate Banking Committee where he served as Chief Counsel. He previously served as counsel to former SEC Commissioner Daniel Gallagher and prior to that, as chief counsel at NYSE Euronext.

Commissioner Roisman's term expires on June 5, 2023.⁷ Commissioner Stein's five-year term expired on June 5, 2017 and her holdover term of 18 months will expire on December 5, 2018.

SEC Charges ICO Superstore and Owners with Operating as Unregistered Broker-Dealers

Also on September 11, the SEC announced that TokenLot LLC, a self-described "ICO Superstore," and its owners will settle charges that they acted as unregistered broker-dealers in violation of Section 15 of the Securities Exchange Act of 1934, as amended.⁸ This is the SEC's first case charging unregistered broker-dealers for selling digital tokens after the SEC issued the 2017 DAO Report,⁹ which, among other things, cautioned that those who offer and sell digital securities must comply with the federal securities laws.

According to the SEC's order, TokenLot and its owners promoted TokenLot's website to purchase digital tokens that included securities during initial coin offerings (ICOs) and to engage in secondary trading. The company received orders from more than 6,100 retail investors and handled more than 200 different digital tokens, which the SEC found included securities.

The company's profits included trading profits and a percentage of the money that TokenLot raised for ICOs. According to the press release, these activities required TokenLot and its owners to be registered with the SEC as broker-dealers, but they were not. TokenLot operated from July 2017 through late February, with most of its business occurring after the release of the DAO Report. According to the order, in response to the SEC's investigation, TokenLot voluntarily began winding down and refunding investors' payments for unfilled orders. TokenLot and its officers also were charged with violating the registration provisions in connection with their conduct.

Without admitting or denying the SEC's findings, TokenLot and its officers consented to the SEC's order and agreed to pay \$471,000 in disgorgement plus \$7,929 in interest, and they will retain an independent third party to destroy TokenLot's remaining inventory of digital assets. Each officer also agreed to pay penalties of \$45,000 each and agreed to industry and penny stock bars and an investment company prohibition with the right to reapply after three years.

ENDNOTES:

¹Dave Michaels, "SEC Chairman Wants to Let More Main Street Investors in on Private Deals," Wall Street Journal (Aug. 30, 2018), available at <https://www.wsj.com/articles/sec-ch>

[airman-wants-to-let-more-main-street-investors-in-on-private-deals-1535648208](#).

²See SEC Rel. No. 2018-179 (Sept. 6, 2018), available at <https://www.sec.gov/news/press-release/2018-179>.

³White, Mary Jo (Apr. 30, 2015). *The SEC as the Whistleblower's Advocate*. Speech presented at the Ray Garrett, Jr. Corporate and Securities Law Institute- Northwestern University School of Law, Chicago, Ill. <https://www.sec.gov/news/speech/chair-white-remarks-at-garrett-institute.html>.

⁴Samuel Rubinfeld, "SEC Issues Two Whistleblower Awards, Handing Out \$54 Million," Wall Street Journal (Sept. 6, 2018), available at <https://blogs.wsj.com/riskandcompliance/2018/09/06/sec-issues-two-whistleblower-awards-handing-out-54-million>.

⁵Samuel Rubinfeld, "SEC Proposal to Limit Big Whistleblower Awards Draws Criticism," Wall Street Journal (Sept. 18, 2018), available at <https://www.wsj.com/articles/sec-proposal-to-limit-big-whistleblower-awards-draws-criticism-1537304617>.

⁶See SEC Rel. No. 2018-187 (Sept. 11, 2018), available at <https://www.sec.gov/news/press-release/2018-187>.

⁷See *Id.*

⁸See SEC Rel. No. 2018-185 (Sept. 11, 2018), available at <https://www.sec.gov/news/press-release/2018-185>. See also SEC Litig. Rel. No. 33-10543 (Sept. 11, 2018), available at <http://www.sec.gov/litigation/admin/2018/33-10543.pdf> (order).

⁹See *Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO* (Exchange Act Rel. No. 34-81207) (July 25, 2017).