

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
3 SEATTLE DIVISION

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4 SECURITIES AND EXCHANGE COMMISSION, :

5 Plaintiff, :

6 - against - :

7 BITTREX, INC., BITTREX GLOBAL GMBH, and
8 WILLIAM HIROAKI SHIHARA, :

9 Defendants. :

23 Civ. 580

ECF Case

COMPLAINT
Jury Trial Demanded

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11 Plaintiff Securities and Exchange Commission (the “SEC” or the “Commission”), for its
12 Complaint against Defendants Bittrex, Inc. (“Bittrex”), Bittrex Global GmbH (“Bittrex Global”), and
13 William Hiroaki Shihara (“Shihara”), alleges as follows:

14 **SUMMARY**

15 1. Since 2014, Bittrex has operated a trading platform (the “Bittrex Platform”) through
16 which U.S. customers can buy, sell, and trade crypto assets. The assets made available on the Bittrex
17 Platform include crypto asset securities. The Bittrex Platform, like other crypto asset trading platforms,
18 has merged three functions that are typically separated in traditional securities markets—those of
19 broker-dealers, exchanges, and clearing agencies—despite the fact that Bittrex has never registered with
20 the SEC as a broker-dealer, national securities exchange, or clearing agency. All the while, Bittrex
21 earned at least \$1.3 billion in revenues from, among other things, transaction fees from investors
22 (including U.S. investors) it has placed at significant risk while servicing them in these unregistered
23 capacities.

24 2. Congress enacted the Securities Exchange Act of 1934 (the “Exchange Act”) in part to
25 provide for the regulation of the national securities markets. And Congress charged the SEC with
26 protecting investors, preserving fair and orderly markets, and facilitating capital formation, in part

1 through a series of registration, disclosure, recordkeeping, inspection, and anti-conflict-of-interest
2 provisions. These regulatory provisions have led, in turn, to the separation of key functions related to
3 securities transactions—including those carried out by brokers, exchanges, and clearing agencies—in
4 part to better protect investors and their assets from conflicts of interest. By collapsing these functions
5 into a single platform and failing to register with the SEC as to any of the three functions, and not
6 having obtained any applicable exemptions from registration, Bittrex has for years defied the regulatory
7 structures and evaded the disclosure requirements that Congress and the SEC have over the course of
8 decades constructed for the protection of the national securities markets and investors.

9 3. Since it launched the Bittrex Platform, Bittrex has been operating as an unregistered
10 broker (including by soliciting potential investors, handling customer funds and assets, and charging a
11 fee for these services) and an unregistered clearing agency (including by holding its customers' assets in
12 Bittrex-controlled wallets and settling its customers' transactions by debiting and crediting the relevant
13 customer accounts). In addition, since the launch of the Bittrex Platform, Bittrex and, since 2019, its
14 foreign affiliate Bittrex Global, acting in concert, have operated the Bittrex Platform as an unregistered
15 exchange by providing a market place that, among other things, brings together orders of multiple
16 buyers and sellers of crypto assets and matches and executes those orders.

17 4. Bittrex has carried out these functions despite the fact that the crypto assets it has made
18 available for trading on the Bittrex Platform have included crypto asset securities. For years, Bittrex
19 made calculated business decisions to make assets available on the Bittrex Platform in order to increase
20 its own revenues, which are primarily based on trading fees from customers, while explicitly
21 acknowledging that its conduct could invite regulatory scrutiny. Bittrex's strategy has been to elevate
22 increasing its profits over complying with the regulatory framework for securities markets.

23 5. An important part of this long-running strategy has been Bittrex's coordinated
24 campaign, going back to 2017, to direct issuers of crypto assets to “scrub” their public statements of
25 any language that could raise questions from the SEC as to whether these crypto assets were offered
26 and sold as securities, while allowing those securities to be traded on its platform. Bittrex's coordinated

1 “problematic statement cleanup” campaign was designed to attempt to conceal the true nature of the
2 offerings from the public and regulators.

3 6. This campaign included Bittrex directing certain issuers of crypto asset securities that
4 Bittrex wanted to make available on the Bittrex Platform to first purge public statements of
5 “investment-related terms” that Bittrex understood could make a crypto asset subject to regulation as a
6 crypto asset security under the Supreme Court’s decision in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946)
7 and well-established principles of the U.S. federal securities laws. In other words, Bittrex knew what
8 statements to ask issuers to “scrub” because it understood the test to determine whether a crypto asset
9 was being offered and sold as a security.
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11 7. From the launch of the Bittrex Platform in 2014 until late 2019, when he stepped down
12 as CEO, Shihara directed Bittrex’s operations and activities. Specifically, Shihara led decisions
13 regarding which crypto assets to make available for trading on the Bittrex Platform and directed
14 Bittrex’s “problematic statement cleanup” campaign. Like Bittrex, Shihara—who was acutely aware of
15 potential SEC scrutiny of these activities—was financially motivated to make more assets available for
16 trading on the Bittrex Platform in order to increase Bittrex’s revenues and, in turn, his own
17 compensation, which totaled at least \$130 million.

18 8. Defendants placed their own financial interests ahead of the interests of the investing
19 public by failing to comply with the legal requirement that they participate as regulated intermediaries
20 with concomitant obligations to their customers, including important disclosure and review obligations
21 designed to protect investors and promote the proper functioning of our capital markets. In so doing,
22 and because Defendants neither sought nor obtained any applicable exemptions from registration,
23 Defendants have violated the registration provisions of the Exchange Act applicable to brokers,
24 exchanges, and clearing agencies.
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VIOLATIONS

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2 9. By engaging in the conduct set forth in this Complaint, Bittrex and Bittrex Global have
3 acted as an exchange, and Bittrex has acted as a broker and clearing agency, without registering as an
4 exchange, broker-dealer, or clearing agency, in violation of Exchange Act Sections 5, 15(a), and 17A(b)
5 [15 U.S.C. §§ 78e, 78o(a), 78q-1(b)], respectively. Shihara has violated Exchange Act Sections 5, 15(a),
6 and 17A(b) [15 U.S.C. §§ 78e, 78o(a), 78q-1(b)] as a control person over Bittrex under Exchange Act
7 Section 20(a) [15 U.S.C. § 78t(a)].

8 10. Unless Defendants are permanently restrained and enjoined, there is a reasonable
9 likelihood that they will continue to engage in the acts, practices, and courses of business set forth in
10 this Complaint and in acts, practices, and courses of business of similar type and object in violation of
11 the federal securities laws.

12 **NATURE OF THE PROCEEDING AND RELIEF SOUGHT**

13 11. The Commission brings this action pursuant to the authority conferred upon it by
14 Exchange Act Section 21(d) [15 U.S.C. § 78u(d)].

15 12. The Commission seeks a final judgment: (a) pursuant to Exchange Act Section 21(d)(1)
16 [15 U.S.C. § 78u(d)(1)], permanently enjoining Defendants from violating Exchange Act Section 5, and
17 Bittrex and Shihara from violating Exchange Act Sections 15(a) and 17A(b); (b) pursuant to Sections
18 21(d)(3), (5), and (7) of the Exchange Act, (i) ordering Defendants to disgorge their ill-gotten gains and
19 to pay prejudgment interest thereon on a joint and several basis; (ii) prohibiting Bittrex and Shihara
20 from continuing to use means or instrumentalities of interstate commerce to accept and display orders
21 in crypto asset securities from U.S. persons, act as broker or dealer with respect to crypto asset
22 securities, or perform the functions of a clearing agency with respect to crypto asset securities, without
23 registering with the SEC; and Bittrex Global from continuing to use means or instrumentalities of
24 interstate commerce to accept orders in crypto asset securities from U.S. persons, without registering
25 with the SEC; and (iii) imposing civil money penalties on Defendants.

JURISDICTION AND VENUE

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2 13. This Court has jurisdiction over this action pursuant to Exchange Act Section 21(d) [15
3 U.S.C. § 78u(d)].

4 14. Defendants, directly or indirectly, have made use of the means or instrumentalities of
5 transportation or communication in interstate commerce or of the mails in connection with the
6 transactions, acts, practices, and courses of business alleged herein.

7 15. Venue is proper in the Western District of Washington pursuant to Exchange Act
8 Section 27(a) [15 U.S.C. § 78aa(a)]. Bittrex is headquartered in this District and conducts its operations
9 from this District, Bittrex personnel provide services to Bittrex Global from this District, including
10 maintaining technology shared by Bittrex and Bittrex Global, and Shihara resides in this District.

11 **DEFENDANTS**

12 16. **Bittrex** is a Delaware corporation founded in 2014 with its principal place of business
13 in Seattle, Washington. Bittrex has operated a crypto asset trading platform servicing U.S. customers
14 since 2014. Bittrex is a subsidiary of Aquila Holdings, Inc., a Delaware corporation. On or around
15 March 31, 2023, Bittrex announced that it would be winding down its operations in the United States
16 effective April 30, 2023. As part of the wind down process, customers were permitted to trade crypto
17 assets, including crypto asset securities, through April 14, 2023, and will be permitted to withdraw fiat
18 funds and crypto assets, including crypto asset securities, through April 27, 2023 and April 29, 2023,
19 respectively.

20 17. **Bittrex Global** is a limited liability company organized under the laws of Liechtenstein.
21 In 2019, Bittrex Global launched a crypto asset trading platform that purports to prohibit U.S.
22 customers. Like Bittrex, Bittrex Global is a subsidiary of Aquila Holdings, Inc. Bittrex personnel in the
23 United States provide a variety of services to Bittrex Global pursuant to service agreements between
24 Bittrex and Bittrex Global. Bittrex also provides Bittrex Global with the technology to operate its
25 trading platform, including a single matching engine and order book that Bittrex Global shares with
26 Bittrex, both of which are maintained by Bittrex personnel in the United States.

1 22. To fulfill the purposes of the Exchange Act, Congress enacted a regime that requires
2 registration of, and imposes disclosure obligations on, certain defined participants in the national
3 securities markets, including but not limited to securities exchanges, brokers and dealers, nationally
4 recognized statistical ratings associations, security-based swap dealers, self-regulatory organizations, and
5 clearing agencies, and subjects those participants to SEC and other rules governing their activities.

6 23. As Section 2 of the Exchange Act [15 U.S.C. § 78b] explains, in enacting the Exchange
7 Act, Congress found that those obligations are essential to the proper functioning of the national
8 securities markets and the national economy:

9 [T]ransactions in securities as commonly conducted upon securities
10 exchanges and over-the-counter markets are effected with a national
11 public interest which makes it necessary to provide for regulation and
12 control of such transactions and of practices and matters related thereto
13 ... [to] perfect the mechanisms of a national market system for securities
14 and a national system for the clearance and settlement of securities
15 transactions and the safeguarding of securities and funds related thereto,
16 and to impose requirements necessary to make such regulation and
control reasonably complete and effective, in order to protect interstate
commerce, the national credit, the Federal taxing power, to protect and
make more effective the national banking system and Federal Reserve
System, and to insure the maintenance of fair and honest markets in such
transactions.

17 24. Congress also determined that “[t]he prompt and accurate clearance and settlement of
18 securities transactions, including the transfer of record ownership and the safeguarding of securities and
19 funds related thereto, are necessary for the protection of investors and persons facilitating transactions
20 by and acting on behalf of investors.” 15 U.S.C. § 78q-1.

21 **Registration of Exchanges:**

22 25. In enacting registration provisions for national securities exchanges, Congress found in
23 Section 2(3) of the Exchange Act [15 U.S.C. §78b(3)] that:

24 Frequently the prices of securities on such exchanges and markets are
25 susceptible to manipulation and control, and the dissemination of such
26 prices gives rise to excessive speculation, resulting in sudden and
unreasonable fluctuations in the prices of securities which (a) cause
alternately unreasonable expansion and unreasonable contraction of the
volume of credit available for trade, transportation, and industry in
interstate commerce, (b) hinder the proper appraisal of the value of

1 securities and thus prevent a fair calculation of taxes owing to the United
2 States and to the several States by owners, buyers, and sellers of securities,
3 and (c) prevent the fair valuation of collateral for bank loans and/or
4 obstruct the effective operation of the national banking system and
5 Federal Reserve System.

6 26. Accordingly, Section 5 of the Exchange Act [15 U.S.C. § 78e] requires an organization,
7 association, or group of persons that meets the definition of “exchange” under Section 3(a)(1) of the
8 Exchange Act, unless otherwise exempt, to register with the Commission as a national securities
9 exchange pursuant to Section 6 of the Exchange Act.

10 27. Section 3(a)(1) of the Exchange Act [15 U.S.C. § 78c(a)(1)] defines “exchange” to mean
11 “any organization, association, or group of persons, whether incorporated or unincorporated, which
12 constitutes, maintains, or provides a market place or facilities for bringing together purchasers and
13 sellers of securities or for otherwise performing with respect to securities the functions commonly
14 performed by a stock exchange as that term is generally understood, and includes the market place and
15 the market facilities maintained by such exchange.”

16 28. Exchange Act Rule 3b-16(a) [17 C.F.R. § 240.3b-16(a)] defines certain terms in the
17 definition of “exchange” under Section 3(a)(1) of the Exchange Act, including “[a]n organization,
18 association, or group of persons,” as one that: “(1) [b]rings together the orders for securities of multiple
19 buyers and sellers; and (2) [u]ses established, non-discretionary methods (whether by providing a
20 trading facility or by setting rules) under which such orders interact with each other, and the buyers and
21 sellers entering such orders agree to the terms of a trade.” Exchange Act Rule 3b-16(b) excludes
22 certain systems from Exchange Act Rule 3b-16(a).

23 29. A system that meets the criteria of Exchange Act Rule 3b-16(a) and is not excluded
24 under Exchange Act Rule 3b-16(b) must register, pursuant to Section 5 of the Exchange Act, as a
25 national securities exchange under Section 6 of the Exchange Act or operate pursuant to an appropriate
26 exemption.

1 30. Registration of a trading platform as an “exchange” under the Exchange Act is a
2 bedrock Congressional enactment that permits the SEC to carry out its role of oversight over the
3 national securities markets.

4 31. Exchanges properly registered as such under the Exchange Act must enact a set of rules
5 to govern their and their members’ behavior, and these rules are subject to review by the SEC under
6 Section 19 of the Exchange Act [15 U.S.C. § 78s]. This review process is designed to ensure that each
7 of these securities marketplaces continues to operate in a manner consistent with the Exchange Act as
8 its practices and procedures evolve over time, in part to protect investors and the integrity of securities
9 markets that affect national commerce and the economy.

10 **Registration of Broker-Dealers:**

11 32. Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)] generally requires brokers and
12 dealers to register with the SEC, and brokers and dealers must also join “self-regulatory organizations”
13 (“SROs”) as members. SROs require members to adhere to rules governing their activities.

14 33. Section 3(a)(4) of the Exchange Act [15 U.S.C. § 78c(a)(4)] defines “broker” as “any
15 person engaged in the business of effecting transactions in securities for the account of others.”

16 34. The regulatory regime applicable to broker-dealers is a cornerstone of the U.S. federal
17 securities laws and provides important safeguards to investors and market participants. Registered
18 broker-dealers are subject to comprehensive regulation under the Exchange Act and under the rules of
19 each SRO of which the broker-dealer is a member. These regulations and rules include recordkeeping
20 and reporting obligations, Commission and SRO examination, and general and specific requirements
21 aimed at addressing certain conflicts of interest, among other things. All of these rules and regulations
22 are critical to the soundness of the national securities markets and to protecting public investors who
23 interact with broker-dealers when transacting in securities on regulated exchanges.

24 35. To preserve fair and orderly markets, avoid conflicts of interests, and protect investors,
25 Section 11(a) of the Exchange Act [15 U.S.C. § 78k(a)] generally prohibits broker-dealers that are
26 members of exchanges from effecting transactions on that exchange for their own accounts.

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Registration of Clearing Agencies:

36. Section 17A(b) of the Exchange Act [15 U.S.C. § 78q-1(b)] generally makes it unlawful “for any clearing agency, unless registered in accordance with this subsection, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to any security.”

37. Section 3(a)(23)(A) of the Exchange Act [15 U.S.C. § 78c(a)(23)(A)] defines the term “clearing agency” as “any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities,” as well as “any person ... who (i) acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates.”

38. The regulatory regime applicable to clearing agencies provides important safeguards to investors and market participants. Registered clearing agencies are subject to comprehensive regulation under the Exchange Act and the rules thereunder. These regulations and rules include recordkeeping obligations and require SEC examination. Clearing agencies properly registered as such under the Exchange Act must enact a set of rules to govern their and their members’ behavior, and these rules are subject to review by the SEC. All of these rules and regulations are critical to the protection of investors, the safeguarding of securities and funds, and the maintenance of fair competition.

1 *Registration of Exchanges, Broker-Dealers, and Clearing Agencies Is Essential to the*
2 *Proper Functioning of the U.S. Securities Markets.*

3 39. In traditional national securities markets such as those for equity securities, the
4 functions described above—those of “exchanges,” “broker-dealers,” and “clearing agencies”—have
5 been carried out by separate legal entities that are independently registered (or exempt from
6 registration) and regulated by the SEC. Separation of these core functions aims to minimize conflicts
7 between the interests of securities intermediaries and investors. Registration provides the means for the
8 SEC to understand the business of the securities intermediaries and their relationship with investors in
9 order to protect those investors and the securities markets, and to prevent fraud or other abuses.

10 40. Investors in traditional national securities markets do not generally trade directly with
11 national securities exchanges or clearing agencies but instead are customers of broker-dealers. Only
12 broker-dealers (or natural persons associated with a broker-dealer) may become members of a national
13 securities exchange. In addition, broker-dealers who have customers must become members of the
14 Financial Industry Regulatory Authority (“FINRA”), an SRO that imposes its own set of rules and
15 oversight over broker-dealers, particularly with regard to protecting retail investors.

16 41. National securities exchanges and clearing agencies must be approved for registration by
17 the SEC, become SROs, and subject all of their proposed rules and changes to those rules to review by
18 the Commission.

19 42. As noted, the Exchange Act also subjects registered intermediaries to important record
20 keeping and inspection requirements. For example, Section 17 of the Exchange Act [15 U.S.C. § 78q]
21 requires registered exchanges, broker-dealers, and clearing agencies to make and keep records as the
22 SEC prescribes by rule, and subject those records to reasonable periodic, special, or other examinations
23 by representatives of the SEC.

24 43. These provisions ensure fair and orderly markets to protect investors, and provide for
25 oversight over the national securities markets, given the importance of these markets to the economic
26 health of the nation. These provisions also seek to ensure, among other things, that investors’

1 securities orders are handled fairly and transparently, that securities transactions result in settlement
2 finality, and that investors' assets are protected and can be recovered if necessary. They are also aimed
3 at ensuring that the SEC and investors have a robust level of disclosures and protections against fraud
4 and conflicts of interest, and they make securities market intermediaries subject to rigorous external
5 oversight, regulatory exams, independent auditing, and other review and examination functions.

6 **BACKGROUND ON CRYPTO ASSETS AND CRYPTO TRADING PLATFORMS**

7 *What Is a "Crypto Asset"?*

8 44. As used herein, the terms "crypto asset," "digital asset," or "digital token" generally
9 refer to an asset issued and/or transferred using blockchain or distributed ledger technology, including
10 assets sometimes referred to colloquially as "cryptocurrencies," "virtual currencies," digital "coins," and
11 digital "tokens."

12 45. A blockchain or distributed ledger is a peer-to-peer database spread across a network of
13 computers that records transactions in theoretically unchangeable, digitally recorded data packages,
14 referred to as "blocks." These systems typically rely on cryptographic techniques for secure recording
15 of transactions.

16 46. Some crypto assets may be "native tokens" to a particular blockchain—meaning that
17 they are represented on their own blockchain—though other crypto assets may also be represented on
18 that same blockchain. Like other crypto assets, native tokens may also be sold and traded for
19 consideration.

20 *Consensus Mechanisms and Validation of Transactions on a Blockchain*

21 47. Blockchains typically employ a "consensus" mechanism that, among other things, aims
22 to achieve agreement among the blockchain's network of computers as to a data value or on the state
23 of the ledger.

24 48. A consensus mechanism describes the particular protocol used by a blockchain to agree
25 on, among other things, which ledger transactions are valid, to update the blockchain, and potentially to
26 compensate certain participants including with additional crypto assets. There can be multiple sources

1 for the compensation under the terms of the blockchain protocol, including from fees charged to those
2 transacting on the blockchain, or through the creation or “minting” of additional amounts of the
3 blockchain’s native crypto asset through the validation of transactions (which may dilute the value of
4 the existing tokens).

5 49. “Proof of work” and “proof of stake” describe the two major “consensus mechanisms”
6 used by blockchains. Proof of work, the consensus mechanism used by the Bitcoin blockchain,
7 involves computers, or validator nodes, attempting to “mine” a “block” of transactions, in part, by
8 guessing a pre-determined number. The first miner to successfully guess this number earns the right to
9 update the blockchain and to be rewarded with the blockchain’s native crypto asset (*e.g.*, for the Bitcoin
10 blockchain, the reward is in bitcoin). Proof of stake, the consensus mechanism currently used on
11 Ethereum, involves selecting block validators from crypto asset holders who have committed or
12 “staked” a minimum number of crypto assets as part of the validation process. On Ethereum, rewards
13 are earned in the blockchain’s native crypto asset, ether.

14 *The Offer and Sale of Crypto Assets*

15 50. Persons have offered and sold crypto assets in fundraising events in exchange for
16 consideration, including but not limited to through “initial coin offerings” or “ICOs,” “crowdsales,” or
17 public “token sales.” In some instances, the entities offering or selling the crypto assets may release a
18 “whitepaper” or other marketing materials describing a project to which the asset relates, the terms of
19 the issuance, and any rights associated with the asset.

20 51. Some issuers continue to sell the crypto assets after the initial offer and sale, and in
21 some offerings the asset may also be obtained by purchasing it on secondary markets, including but not
22 limited to crypto asset trading platforms.

23 *Crypto Asset Trading Platforms*

24 52. Generally speaking, crypto asset trading platforms—like the Bittrex Platform, which is
25 described in more detail below—are marketplaces that offer a variety of services relating to crypto
26 assets, often including brokerage, trading, and settlement.

1 53. Crypto asset trading platforms allow their customers to exchange crypto assets for fiat
2 currency (legal tender issued by a country, like U.S. Dollars) or to trade certain crypto assets for other
3 crypto assets. “Off-chain” transactions are those where the trades are tracked in the internal
4 recordkeeping mechanisms of the platform, while “on-chain” transactions are those where the crypto
5 asset is transferred from one blockchain address to another.

6 54. Crypto asset trading platforms typically require customers to deposit with the platform
7 in advance any crypto assets they will seek to sell there, frequently resulting in the platform possessing
8 and controlling such assets as the legal owner and thus functioning as a central securities depository.
9 The customers’ crypto assets are then typically tracked and maintained on internal ledgers maintained
10 by the crypto asset trading platforms, which typically have no legal obligation to segregate a particular
11 customer’s crypto assets at a separate blockchain address.

12 55. The graphic user interfaces employed by crypto asset trading platforms—on websites,
13 apps, or other software—typically emulate and function like traditional securities trading screens: They
14 show order books of the various assets available to trade, as well as historical trading information (such
15 as high and low prices on the platform, trading volumes, and market capitalizations).

16 56. However, unlike in traditional securities markets, crypto asset trading platforms
17 (including the Bittrex Platform, as more fully described below) typically solicit, accept, and handle
18 customer orders for securities; allow for the interaction and intermediation of multiple bids and offers
19 resulting in purchases and sales; act as an intermediary in making payments or deliveries, or both; and
20 maintain a central securities depository for the settlement of securities transactions.

21 57. By contrast, investors participate on registered national securities exchanges through
22 broker-dealer intermediaries. The exchange sends executed trades to a registered clearing agency that
23 takes responsibility for ensuring participants’ collective safekeeping of securities and settlement finality
24 among those participants and, in doing so, protects investors’ beneficial interests. Thus, registered
25 national securities exchanges typically do not assume possession or control of the underlying assets
26 being traded. By contrast, crypto asset trading platforms also usually settle transactions by updating

1 their internal records with each investor’s positions, a function that is typically carried out in the
2 traditional securities markets by clearing agencies—not by the exchanges.

3 58. Likewise, crypto asset trading platforms typically perform roles traditionally assigned to
4 broker-dealers in traditional securities markets, without following or even recognizing the legal
5 obligations and restrictions on activities that accompany status as a broker-dealer. For example,
6 unregistered and non-compliant crypto asset trading platforms often do not adequately disclose the risk
7 that they have the ability and financial incentive to trade crypto asset securities against their own
8 customers, which could put their customers on the losing side of each trade.

9 59. By functioning in roles similar to traditional intermediaries like broker-dealers—but
10 without registering in those capacities and thereby failing to adhere to their concomitant duties and
11 obligations to investors—crypto asset trading platforms like the Bittrex Platform harm the interests of
12 the investing public.

13 60. For example, a registered national securities exchange is required to have detailed and
14 transparent standards and procedures for listing and delisting a security. These rules are designed,
15 among other reasons, to provide an issuer in danger of falling below the listing standards with
16 reasonable notice of the potential delisting and an opportunity to remedy the defect. In addition, a
17 number of rules are designed to ensure that actual and potential delistings are made known to the
18 public, so that investors have material information about the businesses in which they invest.

19 61. By contrast, a crypto asset platform that fails to register in any capacity declares itself
20 free from any obligation to follow those provisions in the Exchange Act, including the types of rules
21 described above, that are designed to protect investors, promote the public interest, and provide
22 truthful and material information to investors. As a result, investors are at the whim of the crypto asset
23 platform to give them information about their standards and procedures for listing (and de-listing)
24 investments, about the investments themselves, including whether any particular listed crypto asset may
25 potentially be delisted, and the platform’s operations.

26

1 62. A private conversation in or around June 2017 between a Bittrex employee and one of
2 Bittrex’s three founders illustrates the type of investor harm that can result from a crypto asset platform
3 failing to follow or even recognize these obligations. The employee complained to the founder: “I hate
4 people bitching that we don’t email them about market removals...I LOST SO MUCH CAUSE I
5 DIDn’T KNOW.” The founder responded that his preferred response to those investors was “go f***
6 yourself” or at a minimum to tell them to “track your own damn investment or get a broker to do it for
7 you.”

8 ***The DAO Report***

9 63. On July 25, 2017, the SEC issued the *Report of Investigation Pursuant to Section 21(a) of the*
10 *Securities Exchange Act of 1934: The DAO* (the “DAO Report”), advising “those who would use ...
11 distributed ledger or blockchain-enabled means for capital raising[] to take appropriate steps to ensure
12 compliance with the U.S. federal securities laws,” and finding that the offering of crypto assets at issue
13 in the DAO Report were offerings of investment contracts and, therefore, of securities.

14 64. The DAO Report also advised that “any entity or person engaging in the activities of an
15 exchange must register as a national securities exchange or operate pursuant to an exemption from such
16 registration,” and “stress[ed] the obligation to comply with the registration provisions of the federal
17 securities laws with respect to products and platforms involving emerging technologies and new
18 investor interfaces.” The DAO Report also found that the trading platforms at issue there “provided
19 users with an electronic system that matched orders from multiple parties to buy and sell [the crypto
20 asset securities at issue] for execution based on non-discretionary methods” and therefore “appear to
21 have satisfied the criteria” for being an exchange under the Exchange Act.

FACTS

I. THE BITTREX PLATFORM

65. Bittrex was founded in 2014 by Shihara and two other individuals. Shihara served as Bittrex’s CEO from the time of its founding until late 2019, and as a member of Bittrex’s board of directors from at least 2016 through at least August 2020. Bittrex is headquartered in Seattle, Washington and, at its peak, had approximately 300 employees.

66. In 2014, Bittrex launched the Bittrex Platform, an online platform that allows customers to buy, sell, and trade certain crypto assets. On its website, Bittrex describes the Bittrex Platform as a “digital currency exchange offering spot market trades between many digital currency and fiat markets” and as a “crypto exchange for the future.”

67. From 2014 to the present (the “Relevant Period”), the Bittrex Platform made available more than 300 crypto assets for trading.

68. Through Bittrex’s website, customers could open accounts, deposit funds and crypto assets, enter orders, and trade crypto assets 24 hours a day, seven days a week. Customers could also trade crypto assets through mobile trading applications and Bittrex’s application programming interface or “API” (a software intermediary permitting two different computer programs to communicate).

69. During the Relevant Period, the Bittrex Platform was available to both retail and institutional customers, including U.S. residents. Institutional customers enjoyed additional “trading benefits” such as unlimited withdrawals, instant ability to engage in fiat trading, expedited credit for deposits, priority support, and additional API integration functionality.

70. From 2017 to 2022, Bittrex earned more than \$1.3 billion in revenues from transaction fees charged to customers for these crypto asset trading and related services. From these revenues, Shihara was paid at least \$130 million in bonuses and profit distributions.

71. As noted above, Bittrex has announced plans to wind down its operations in the United States effective April 30, 2023.

1 **II. THROUGH THE BITTREX PLATFORM, BITTREX AND BITTREX GLOBAL**
2 **PROVIDE EXCHANGE SERVICES TO U.S. CUSTOMERS, AND BITTREX ALSO**
3 **PROVIDES BROKERAGE AND CLEARING SERVICES TO U.S. CUSTOMERS.**

4 72. Neither Bittrex nor Bittrex Global has ever registered with the Commission as a
5 national securities exchange, and Bittrex has never registered with the Commission as a broker-dealer or
6 clearing agency. No exemption from registration applies to either Bittrex or Bittrex Global.

7 Nonetheless, throughout the Relevant Period, Bittrex (along with Bittrex Global starting in 2019) has
8 acted as an exchange, and Bittrex has also acted as a broker and clearing agency, including through the
9 following conduct:

10 **A. Bittrex Solicits Customers.**

11 73. During the Relevant Period, Bittrex regularly solicited customers to open accounts at
12 Bittrex and access the Bittrex Platform, including through posts on Bittrex’s website and on social
13 media.

14 74. For example, Bittrex posted on Twitter information about crypto assets available to
15 trade on the Bittrex Platform, trading features of the Bittrex Platform, and links to Bittrex product
16 announcements.

17 75. Moreover, certain Bittrex personnel regularly posted about Bittrex on their personal
18 Twitter accounts, including re-tweeting information published on Bittrex’s Twitter handle.

19 76. Bittrex regularly posted comments in the Bittrex forum on the social media platform
20 Reddit, including posts or comments referring customers to Bittrex’s trading support services and
21 providing updates about the status of the Bittrex Platform.

22 77. Bittrex has also marketed monetary incentives and promotions aimed at attracting more
23 investors to the Bittrex Platform. For example, in or around March 2020, Bittrex launched the “Bittrex
24 Referral Program,” which “rewards” existing Bittrex customers who refer new customers to Bittrex by
25 allowing them to “earn 10% on all commissions of the quote currency from every trade made” by the
26 customer they referred. In addition, as recently as the fourth quarter of 2022, Bittrex launched a “New

1 User Reward Program,” which provided a “\$10 sign up bonus” to be paid to referrers with respect to
2 new customers.

3 **B. Bittrex Holds and Controls Customers’ Funds and Crypto Assets.**

4 78. During the Relevant Period, Bittrex required that its customers, before placing orders to
5 buy or sell crypto assets, transfer their crypto assets into digital wallets and their funds into bank
6 accounts, both controlled by Bittrex. Specifically, to deposit crypto assets into a Bittrex trading
7 account, customers must transfer their crypto assets from an existing digital wallet to a Bittrex-
8 controlled digital wallet. Similarly, to deposit fiat currency into a Bittrex trading account, customers
9 must make a deposit to a Bittrex-controlled bank account using a wire transfer, bank transfer, or other
10 means.

11 79. Certain “terms of service” available on Bittrex’s website during the Relevant Period
12 informed customers that “Bittrex controls the private keys for the blockchain addresses for deposited”
13 crypto assets and that customers may not “claim ownership of any particular [crypto asset] based on the
14 blockchain address, blockchain transfer record or other basis” because they have “authorize[d] Bittrex
15 to take temporary control of” the crypto assets.¹

16 80. The terms of service also stated that customers’ crypto assets and fiat currency “are
17 tracked and maintained on internal ledgers maintained by Bittrex” and that “Bittrex has no obligation to
18 segregate [a particular user’s] fiat currency in a separate bank account or to segregate any of [a particular
19 user’s crypto assets] at a separate blockchain address.” The terms of service further stated that “[f]iat
20 currency and [crypto assets] are fungible with other like fiat currency and [crypto assets], and, to the
21 extent [customers] are entitled to withdraw or otherwise receive any funds or [crypto assets], [they] are
22 entitled to a quantity of fiat currency or [crypto assets] but not any particular fiat currency or [crypto
23 assets].”

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25
26 ¹ A “private key” is a password known only to the person who controls a crypto asset, which is tied to
the “address” (a long string of letters and numbers on the blockchain, similar to a bank account
number) with which the crypto asset is associated.

1 **C. Through the Bittrex Platform, Bittrex and Bittrex Global Together Maintain and**
2 **Provide a Marketplace for Trading Crypto Assets.**

3 81. According to Bittrex’s website, the Bittrex Platform provides a “custom-built trading
4 engine” (also known as a matching engine) that ensures customer “orders are executed in real-time.”

5 82. Customers could trade during the Relevant Period crypto asset “pairs,” which consist of
6 both a base asset and a quote asset, where the base asset is quoted in terms of the value of the quote
7 asset in the trading pair. For example, for the trading pair “BTC-USD,” the base asset, bitcoin, is
8 quoted in U.S. Dollars.

9 83. During the Relevant Period, Bittrex maintained individual order books for each trading
10 pair, which all customers could access via the Bittrex Platform or its API. All order books resided on a
11 centralized server maintained by Bittrex. As discussed below, during the Relevant Period, Bittrex and
12 Bittrex Global shared a single order book (for those trading pairs that are available on both the Bittrex
13 Platform and the Bittrex Global platform) and matching engine.

14 84. As demonstrated below, the design and functionality of the Bittrex Platform is similar to
15 those of properly registered national securities exchanges, including its (i) display and order book, (ii)
16 order entry and order types, and (iii) order matching and trading rules.

17 *i. Display and Order Book*

18 85. Bittrex’s website (www.bittrex.com) provides a user-friendly interface for trading crypto
19 assets on the Bittrex Platform. The Bittrex Platform displays current and historical pricing information
20 and other information relevant for trading crypto assets that is akin to what users see on traditional
21 securities platforms.

22 86. A tab or link on the Bittrex website called “Markets” leads customers to a page listing
23 the hundreds of crypto asset trading pairs available for trading on the Bittrex Platform. This page
24 provides customers with the current price for the base asset of each trading pair in terms of the quote
25 asset, the estimated USD value of the quoted asset, the high and low price for each trading pair over
26

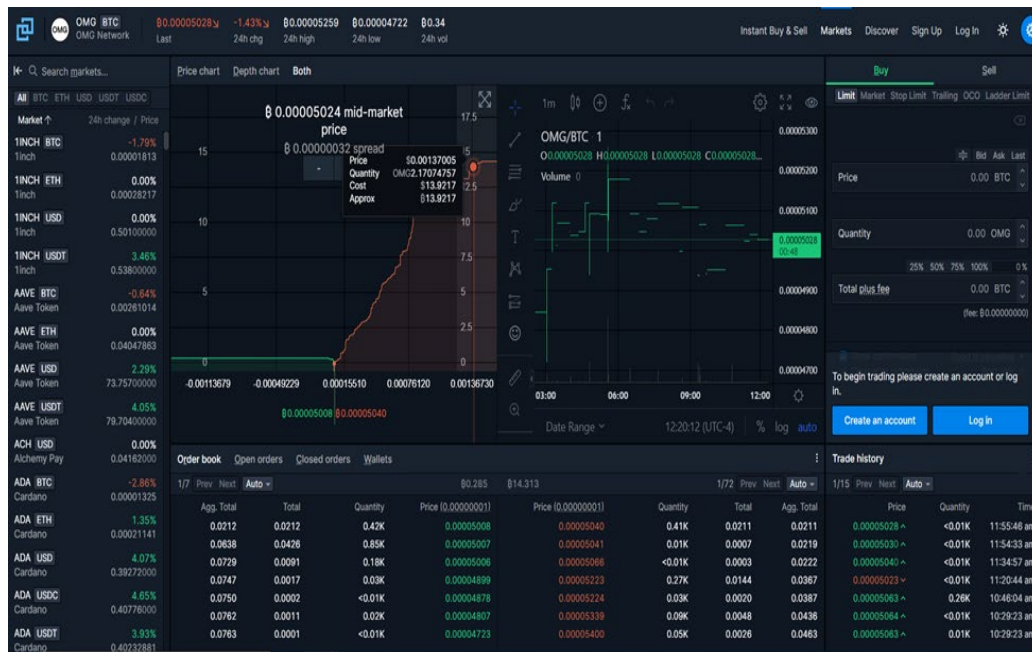
1 the previous 24 hours, the percentage change in price during that same period, and the total value of all
2 trading of that crypto asset trading pair that occurred over that period.

3 87. The crypto assets listed on the “Markets” page appear by full name and ticker symbol
4 and are displayed in descending order from largest to smallest based on the previous 24-hour trading
5 volume. The “Markets” page also displays approximately five crypto asset trading pairs under the
6 category of “trending”; these are the trading pairs that have had the highest volume of trading over the
7 previous 24 hours and/or the highest percentage of gains or losses in value over that same period.

8 88. Another link on the Bittrex Platform website called “Trade” leads customers to the
9 order books for the crypto asset trading pairs available for trading on the Bittrex Platform. One side of
10 the order book displays the current buy orders in descending order from highest bid price to lowest,
11 while the other side of the order book displays the sell orders in ascending order from lowest asking
12 price to the highest.

13 89. The “Trade” page also displays charts showing the platform’s trading volume in a
14 selected crypto asset over specified periods of time (*i.e.*, 1 day, 5 days, 1 month, etc.), last-sale prices,
15 open orders, and the platform’s computation of the current mid-market price in that asset (*i.e.*, the
16 middle point between the highest bid and lowest offer) and the spread (*i.e.*, the difference between the
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highest bid and lowest offer). Below is an example of the user interface display on the Bittrex Platform:



ii. Order Entry and Order Types

90. From the “Trade” page, a user can enter a buy or sell order by inputting a price and quantity of the asset and the website will calculate the total cost of the transaction including any transaction fee. In order to proceed with a trade, the user is then prompted to create an account or, for existing account holders, to log in using their credentials.

91. Users can then place various types of buy and sell orders, including market orders (*i.e.*, an order to buy or sell a crypto asset immediately at the best available price), limit orders (*i.e.*, an order to trade a specified quantity of an asset at a specified rate or better), or various conditional orders. When placing orders, customers are required to input the following information: token symbol, size, price, and time-in-force.

92. The crypto assets on the “Trade” page may be purchased in exchange for U.S. Dollars or certain crypto assets, including bitcoin. To place an order on the order book, a trader must have an available balance of the relevant crypto asset or fiat currency in his or her account to cover the total value of the order plus any applicable fees.

1 93. Bittrex’s order book resides on a centralized server maintained by Bittrex and can be
2 accessed by customers from Bittrex’s website.

3 *iii. Order Matching and Trading Rules*

4 94. Bittrex provides on its website “detailed trading rules for operating” the Bittrex
5 Platform. For example, the Bittrex order book prioritizes orders according to price and then time. Buy
6 orders are prioritized in decreasing order of price with the highest bid placed at the top of the order
7 book, and sell orders are prioritized in increasing order of price with the lowest ask placed at the top of
8 the order book. Orders with same price are filled in a first in, first out manner. Conditional orders are
9 stored separately from the order book on a reserved basis. Bittrex places the order on the order book
10 when an asset’s price meets the pre-specified condition and price.

11 95. Bittrex also imposes certain trading limits, which include a minimum order size of
12 10,000 satoshis (each satoshi is one hundred millionth of a bitcoin). While there is no maximum trade
13 size, customers must have sufficient funds or crypto assets to cover an order at the time it is placed and
14 all funds and crypto assets are placed on reserve until the order is executed or cancelled.

15 96. Bittrex’s terms of service inform customers that, upon placement of an order, their
16 Bittrex account will be updated to reflect the order and the order will be included in Bittrex’s order
17 book for matching with orders from other customers. Customers are also informed that if all or a
18 portion of their order is matched with another Bittrex customer, Bittrex will execute the trade and
19 update the customer’s Bittrex account accordingly.

20 *iv. Bittrex and Bittrex Global Share an Order Book and Matching Engine.*

21 97. Bittrex Global operates a crypto trading platform similar to the Bittrex Platform but
22 purports to restrict U.S. customers from accessing the platform.

23 98. In late 2022, Bittrex Global made available for trading on its platform approximately
24 148 of the crypto assets that are available on the Bittrex Platform, including the crypto assets known as
25 “OMG” and “DASH,” which, as discussed in Section III.B below, were offered and sold as securities.
26

1 99. During the Relevant Period, Bittrex provided support, including shared personnel, to
2 Bittrex Global for a wide variety of services, including customer onboarding and services related to the
3 selection of crypto assets made available for trading.

4 100. During the Relevant Period, Bittrex and Bittrex Global combined their customers'
5 orders into a single, shared order book. Bittrex Global's website displays the order book it shares with
6 the Bittrex Platform.

7 101. The combined order book has a single matching engine with the pre-programmed rules
8 described above, which results in a combined liquidity pool for the hundreds of crypto assets that are
9 made available on both platforms.

10 102. As a result, an order from a Bittrex customer could match with an order from a Bittrex
11 Global customer.

12 103. The formation and operation of a combined liquidity pool reflects an agreement by
13 Bittrex and Bittrex Global to act in concert to provide a market place and facilities—the Bittrex
14 Platform—for bringing together buyers and sellers of crypto assets, including crypto asset securities.

15 104. During the Relevant Period, Bittrex and Bittrex Global shared control over the
16 combined liquidity pool and market place.

17 105. Pursuant to a licensing agreement, Bittrex has provided Bittrex Global the right to use
18 the technology underlying the shared order book and matching engine, with Bittrex personnel in the
19 United States responsible for maintaining the technology.

20 106. As such, though Bittrex and Bittrex Global act in concert in providing this market place
21 and facilities, Bittrex exercises operational control and unilateral discretion and decision-making over
22 the Bittrex Platform.

23 **D. Bittrex Settles Customers' Trades.**

24 107. Pursuant to trading rules posted on Bittrex's website, "Bittrex settles all filled orders
25 immediately, by debiting and crediting the relevant balances of assets in both traders' accounts."
26

1 108. During the Relevant Period, Bittrex held all crypto assets traded on the Bittrex Platform
2 in Bittrex-controlled wallets and settled trades by debiting and crediting Bittrex’s internal ledgers. If a
3 customer submitted a request to withdraw funds or crypto assets, Bittrex would transfer the funds or
4 assets from the Bittrex-controlled bank account or digital wallet to the customer’s designated account
5 or digital wallet.

6 **E. Bittrex Charges Fees on Executed Trades.**

7 109. Bittrex charges both the buyer and seller of each executed trade a varying fee or
8 “commission” depending on the trading pair, the price of the executed order, the user’s 30-day trading
9 volume, and other factors. As of February 2023, Bittrex’s fee rate ranges between 0.05% and 0.35% of
10 the principal amount traded. Bittrex’s website states: “[T]rading fees are reduced according to the
11 USD value of [the customer’s] total volume traded by [a customer’s] account over the previous 30
12 days.” Bittrex “reward[s] user[s] who drive liquidity to Bittrex” and Bittrex’s website states, “[t]he more
13 you trade, the more you save.”

14 **III. THE CRYPTO ASSETS TRADED ON THE BITTREX PLATFORM INCLUDE ASSETS THAT WERE OFFERED AND SOLD AS SECURITIES.**

15
16 110. Throughout the Relevant Period, the Bittrex Platform has made available for trading
17 crypto assets that were offered and sold as investment contracts, and thus securities, under Section
18 3(a)(10) of the Exchange Act and *Howey*. Set forth in Section III.B below are specific details regarding
19 six examples of crypto asset securities that have at various times been made available by Bittrex for
20 trading on the Bittrex Platform—a non-exhaustive list of such crypto asset securities.

21 111. In an effort to grow the Bittrex Platform and boost its own trading profits, Bittrex—
22 without registering with the SEC in any capacity—made strategic decisions to add new crypto assets to
23 the Bittrex Platform even though the assets had characteristics of securities. Even before the SEC
24 issued the DAO Report, Bittrex was in fact highly cognizant of the risk that it was permitting investors
25 to trade in securities available on the Bittrex Platform. In order to avoid scrutiny by the SEC, Bittrex
26 engaged in a coordinated effort with the issuers of those crypto assets to delete—or “scrub”—from the

1 issuers’ offering and marketing materials any “investment-related terms” that would reveal that these
 2 assets were offered and sold as securities, such as “price prediction[s]” and statements related to
 3 “expectation of profit”—without actually altering the economic substance of the offerings.

4 **A. In an Effort to Maximize Its Trading Profits, Bittrex Added Crypto Assets to the**
 5 **Bittrex Platform Despite Regulatory Concerns, While Coordinating a Campaign**
 6 **to “Scrub” Potentially Problematic Public Statements About These Assets.**

7 112. Bittrex had a strong financial incentive to make additional crypto assets available for
 8 trading on the Bittrex Platform because Bittrex’s primary source of income was trading fees paid by
 9 Bittrex customers (which amounted to over \$1.3 billion from 2017 to 2022). And adding new assets,
 10 according to a Bittrex employee responsible for managing the listing process for such assets, “kept user
 11 interest up.”

12 113. As a Bittrex shareholder, Shihara similarly had a personal financial incentive to add new
 13 assets to the Bittrex Platform because increased trading fees earned by Bittrex meant more revenues for
 14 Bittrex. This also resulted in higher compensation to Shihara, whose compensation was directly tied to
 15 Bittrex’s revenues. Indeed, between April 2017 and March 2020, Shihara received at least \$130 million
 16 in bonuses and profit distributions.

17 114. Bittrex and Shihara had in place monthly targets for the number of new crypto assets
 18 that would be made available on the Bittrex Platform.

19 115. When deciding whether to include an asset on the Bittrex Platform, Bittrex assessed
 20 whether the financial benefits of doing so outweighed the risk that the asset in question would be
 21 subject to scrutiny by regulators, including specifically the SEC. For example, in or around March
 22 2017, Shihara told the other Bittrex co-founders with regards to a particular crypto asset:

23 the problem is that its going to be seen by the SEC as a security. im
 24 meeting with these guys face to face to get specifics on how much they
 25 want to raise, who they are raising it from, and what they expect the after
 26 market to be. its a big enough opportunity that we might want to roll the
 dice on the sec investigation. we have a couple of paths forward but one
 idea was to have them take a position in bittrex and own the risk of an
 SEC investigation with us.

1 *i. Until 2017, Bittrex Did Not Have a Formal Process or Policy in Place for*
2 *Determining Whether to Make a Particular Crypto Asset Available on the*
3 *Bittrex Platform.*

4 116. For the first several years of its operation, Bittrex’s “compliance review” for prospective
5 crypto assets primarily consisted of informal review of the whitepaper published by the issuer of the
6 crypto asset and a request that the issuer provide Bittrex with any legal analysis it had performed as to
7 the asset.

8 117. In late 2017, Bittrex for the first time established a formal process for determining
9 which assets to admit to the Bittrex Platform which included analyzing whether the assets were offered
10 and sold as securities. As an initial step, issuers would submit a form on Bittrex’s website initiating a
11 “preliminary review” of the asset by Bittrex. Bittrex would then use this form to determine which
12 crypto assets should proceed to a “full evaluation.”

13 118. The “full evaluation” stage was conducted by Bittrex’s “Token Review Committee” (the
14 “Committee”). The Committee was formed in 2017 and was composed of at least five members with
15 Shihara as its chair. As part of the “full evaluation,” the Committee conducted an additional review of
16 the asset, including gathering information from the issuer of the asset such as a legal opinion from
17 counsel retained by the issuer as to whether the asset was offered and sold as a security, and then voted
18 on whether to include the asset on the Bittrex Platform.

19 119. In 2017, Bittrex engaged two law firms to conduct legal analyses of whether crypto
20 assets were offered and sold as securities and to advise Bittrex on whether to make the assets available
21 for trading on the Platform.

22 120. In or around August 2017—shortly after the SEC issued the DAO Report—Shihara,
23 along with two other members of the Committee, prepared a “coin compliance check list” concerning
24 the crypto assets then available for trading on the Bittrex Platform. Shihara instructed the other
25 Committee members that the checklist should include reviewing marketing materials for words like
26 “DAO, shareholder, shares, profit, dividends” that would cause the SEC to “want to investigate,” as
reflected in the below email:

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From: Bill Shihara <bill@bittrex.com>
Date: Thursday, August 10, 2017 at 11:33 AM
To: [REDACTED]
Subject: RE: Coin Compliance

I can't make the meeting but here are some things for the check list:

1. Was this an ICO?
2. Did Bittrex host the ICO?
3. Would a regulator skim this and want to investigate?
 - a. Does it say DAO, shareholder, shares, profit, dividends?
4. Did this go through a compliance review?
 - a. Do we have a regulatory memo from the team?

121. Bittrex was aware that if a crypto asset had been marketed as an investment, it would be more likely to satisfy the legal test for a security. For example, in or around July 2017, Shihara instructed an issuer that it “should not market [its token] as any kind of investment. Stick to utility token so none of us get into trouble.”

ii. Bittrex Coordinated with Issuers of Crypto Assets to “Scrub” Public Documents in an Effort to Avoid “Unwanted Attention from the SEC.”

122. To further its dual goals of making more crypto assets available on the Bittrex Platform and avoiding regulatory scrutiny, starting in at least May 2017, Bittrex routinely directed that crypto asset issuers “scrub” their offering and marketing materials of “investment-related terms,” including language that would “get unwanted attention from the SEC.” Bittrex regularly asked issuers to remove “problematic statements” from their marketing materials—statements indicating that the asset was marketed as a security—as a prerequisite for making the issuers’ crypto assets available for trading on the Bittrex Platform. Bittrex unofficially dubbed this practice the “problematic statement cleanup.”

123. The “problematic statement cleanup” was nearly always done *after* the initial offering of the crypto asset—*i.e.*, *after* the crypto asset had already been offered and sold to investors. In other

1 words, the issuers of the crypto assets had already marketed, offered, and sold the crypto assets to the
2 investing public by using the very “problematic statements” that Bittrex recognized were “investment-
3 related terms” that indicated the assets could be securities. In requiring issuers to “scrub” their
4 documents, Bittrex did not actually change the economic reality of those offers and sales, but rather
5 simply attempted to remove or “scrub” any evidence of these public statements without changing the
6 actual characteristics of the offering or asset even assuming the deletions were successful.

7 124. For example, in a discussion on Slack between Bittrex and the issuer for the crypto asset
8 security known as “NGC” in or about April 2018—months after the NGC ICO—NGC’s issuer told
9 Bittrex:

10 We have removed everything related to growth, indication as
11 “investment,” coin price or any posts in relation to projections, growths
12 or forecasts This was pure legacy and we are moving fast to ensure
13 delivery of our roadmap Also we updated the roadmap and
14 whitepaper. We removed all old links that were posted in threads over
15 the last 4 months. Everything is deployed to production, our entire team
16 feels that everything is removed related to the raised concerns.

17 125. In another example, in connection with making the crypto asset security known as
18 “TKN” available for trading on the Bittrex Platform, Shihara reminded the TKN issuer team (on the
19 very same day that it completed its initial public sale of TKN tokens) to “scrub” its documents of
20 “investment related terms”:

21 On 2 May 2017 11:42 am, "Bill Shihara" <bill@bittrex.com> wrote:
22 Hi guys!

23 Congratz on the crowdsale. Were you able to follow up on the action items from the last meeting?

- 24 1. Scrub the docs of investment related terms
- 25 2. Memo from your legal team on why this isn't a security

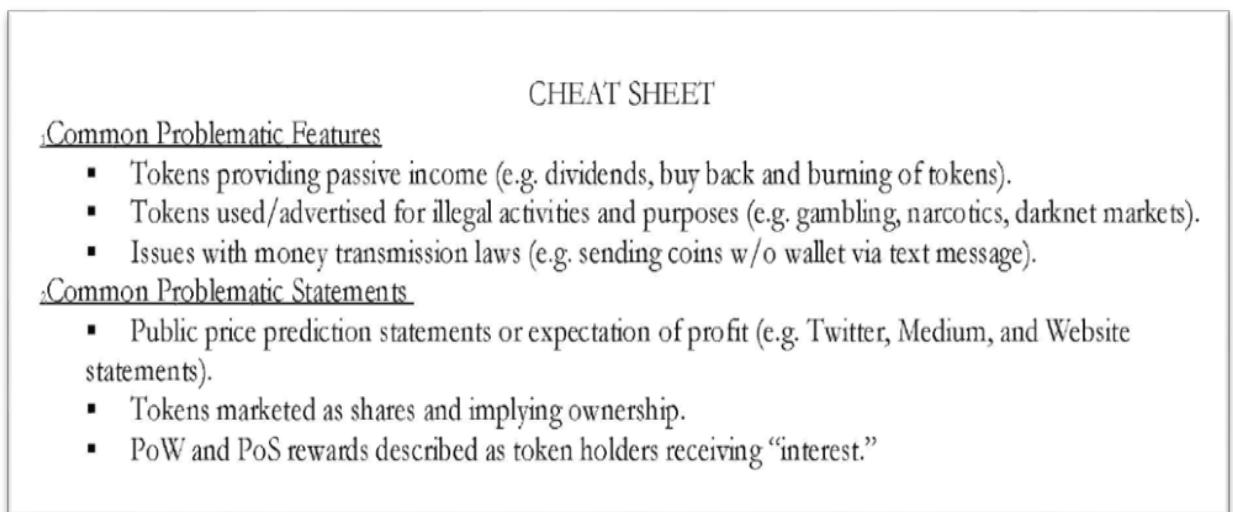
26 I'd like to move onto our plans to list TKN and partner further.

Bill

126. As part of the “problematic statement cleanup,” Shihara and other Bittrex employees
also reviewed issuers’ whitepapers and marketing materials, including social media communications,

1 and then instructed the issuers, usually in messages through private Slack channels, to remove or
 2 “scrub” “problematic statements.” As chair of the Committee until at least November 2019, Shihara
 3 directed the “problematic statement cleanup.”

4 127. As part of the “scrubbing” campaign, Bittrex even provided its employees with a “cheat
 5 sheet” as a guide to identifying and addressing “problematic features” and “problematic statements.”
 6 The “cheat sheet,” excerpted below, was affixed to the checklist that Bittrex used
 7 to document its review of issuer applications and accompanying documentation, as well as the final
 8 recommendation of the Committee:



18 128. Other examples of Bittrex’s “problematic statement cleanup” include:

- 19 a. On or about May 24, 2018, two Bittrex employees told a different issuer team:
 20 “[O]ur attorney was a little concerned about any statements on your social media
 21 that can be related to price forecasting ... we can work with you folks to clean up
 22 any statements viewed as problematic ... things that can be considered pumping
 23 price is speculating about price or volume in social media. Make sure stuff like
 24 that is cleaned up.”
- 25 b. On or about July 26, 2018, a Bittrex employee told the issuer team for a crypto
 26 asset: “please be sure to review all social media postings and remove any tweets,
 or retweets of items that are speculative or encouraging increasing the price of
 the token trading on exchanges ... Please go through the feed and clean up
 anything problematic/speculative.”
- c. On or about August 20, 2018, a Bittrex employee told a different issuer team:
 “when we look at listing projects, we also review social media feeds, white paper
 and website for problematic statements that are speculative in nature. The

1 following are statements/comments identified by our outside counsel that they
2 would like to see removed or cleaned up.”

3 129. Bittrex made dozens of crypto assets available for trading on the Bittrex Platform after
4 directing such “problematic statement cleanup” of the issuer’s public statements, including the crypto
5 asset securities NGC and TKN, as well as the crypto asset security known as “IHT.”

6 *iii. Bittrex Removed from the Bittrex Platform Certain Problematic Assets
7 and Later Made Them Again Available on the Platform in an Effort to
8 “Remain Relevant.”*

9 130. In April 2019, SEC staff issued the “Framework for ‘Investment Contract’ Analysis of
10 Digital Assets.” Shortly thereafter, starting in April 2019, Bittrex removed from the Bittrex Platform a
11 number of crypto assets, including crypto assets that had been subject to Bittrex’s “problematic
12 statement cleanup.”

13 131. However, in an effort to “remain relevant” among other crypto trading platforms,
14 Bittrex later restored for trading certain crypto asset securities that it had previously removed from the
15 Bittrex Platform due to regulatory concerns, including DASH and OMG.

16 *iv. Bittrex Made Available for Trading a Number of Crypto Assets that
17 Bittrex Recognized Had the Characteristics of Securities.*

18 132. Bittrex made numerous crypto assets available for trading on the Bittrex Platform, while
19 ignoring factors indicating that various crypto assets were likely offered and sold as securities.

20 133. For example, as part of its evaluation of the crypto asset security known as “MANA,”
21 Bittrex recognized that the token had multiple factors that indicated it was likely offered and sold as a
22 security, including that the issuer “raised approximately \$5M USD from investors ... [who] ... received
23 a discount ranging from 5 to 15%,” and that the issuer purportedly prohibited U.S. persons from
24 participating in the offering because the issuers had “not yet made a final determination as to the status
25 of MANA Tokens under U.S. federal securities laws.” Shihara and other Committee members
26 nevertheless voted to approve MANA for admission to the Bittrex Platform.

134. Similarly, in deciding to make the crypto asset security known as “POWR” (which
Shihara described at the time as #3 on his “token priority list”) available on the Bittrex Platform,

1 Bittrex ignored clear indications that POWR was marketed, offered, and sold as a security. In an e-mail
2 to the Committee on or about October 11, 2017, a Bittrex employee told Shihara that there were “some
3 controversial statements for [the POWR] offering,” including the “Asset Germination Events”
4 described in the Power issuer’s whitepaper, which defined such events as: “the sale or crowdfunding of
5 an autonomous renewable energy asset which allocates ownership and distribution of income.” Shihara
6 acknowledged but ignored the issuer’s “controversial statements,” and Bittrex subsequently made the
7 crypto asset security POWR available for trading on the Bittrex Platform.

8 **B. The Bittrex Platform Makes Available for Trading Assets that Were Offered and**
9 **Sold as Securities.**

10 135. Each unit of a particular crypto asset on the Bittrex Platform trades at the same price as
11 another unit of that same asset. Because these assets are interchangeable (*e.g.*, any OMG or fraction
12 thereof is just like any other), all tokens of the same issuance increase or decrease in value in the same
13 amounts and to the same extent, such that one token is equal in value to any other one token of the
14 same name and issuance. The purchase of any particular token does not appear to give an investor any
15 special rights that are not available to any other investor in that type of token, such as separately
16 managed accounts, or to capital appreciation or returns that are independent of the returns that may
17 inure to other investors in the same token.

18 136. The tokens on the Bittrex Platform are available for sale broadly, to any person who
19 creates a trading account with the Bittrex Platform, regardless of whether that person treats it as
20 anything other than as an investment. In other words, the Bittrex Platform does not restrict crypto
21 asset purchasers to those who might purchase the token for purported consumptive use or who acquire
22 it for any other purported non-investment purpose. To the contrary, the “Trade” page displays
23 changes in prices for the crypto assets similarly to trading platforms that allow investors to transact in
24 securities registered under the Exchange Act. (Again, the difference is that, unlike with the Bittrex
25 Platform, investors transacting in registered securities on trading platforms are doing so through
26 regulated brokers in regulatory-compliant securities markets, not directly with exchanges).

1 137. The Bittrex Platform does not restrict how many units of a crypto asset any given
2 investor may purchase. Investors are not required to purchase quantities tied to any purported non-
3 investment “use,” if any, that may exist for the asset.

4 138. The assets available for sale on the Bittrex Platform are transferable, and eligible for
5 resale on the Bittrex Platform or other crypto asset trading platforms immediately upon purchase and
6 without any apparent restrictions on resale.

7 139. It is therefore not surprising that many of the tradeable crypto assets on the Bittrex
8 Platform have characteristics indicating that they may be available to U.S. investors who make an
9 investment of money in a common enterprise with a reasonable expectation of profits derived from the
10 efforts of others.

11 140. Indeed, Bittrex made available for trading on the Bittrex Platform crypto assets that
12 have been the subject of prior SEC enforcement actions, including but not limited to EOS, Enigma,
13 Unikrn, SALT, and HYDRO.

14 141. For purposes of prevailing on the Exchange Act claims set forth herein, the SEC need
15 only establish that Bittrex transacted in a single crypto asset security. Nevertheless, set forth below are
16 specific details regarding a non-exhaustive list of six examples of crypto asset securities available for
17 trading on the Bittrex Platform:

18 **i. OMG**

19 142. The so-called OMG Network, previously known as OmiseGO, was founded in 2017.
20 In or around December 2020, Genesis Block Ventures (“GBV”), a Hong Kong-based venture capital
21 firm, acquired the OMG Network. In or around February 2021, the OMG Network partnered with
22 another entity to develop the so-called Boba Network. In or around August 2021, the OMG Network
23 changed its name to the “OMG Foundation” and the following year became the “BOBA Foundation.”

24 143. The OMG token was issued by the OMG Network as a “proof-of-stake” token on the
25 OMG Network. The OMG Network held an ICO on or about June 24, 2017, raising approximately
26 \$25 million through the sale of OMG tokens to the public in exchange for ether. The OMG Network

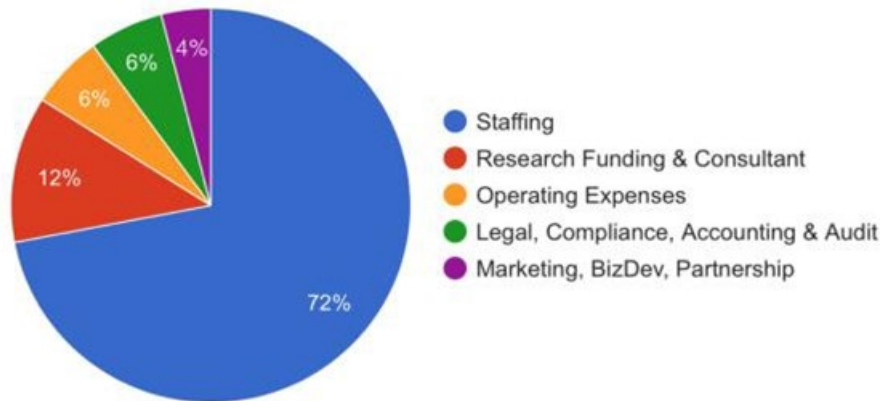
1 issued a maximum supply of approximately 140.2 million OMG tokens, and sold approximately 65.1%
 2 of this supply to the public in the ICO.

3 144. Today, OMG tokens are available for buying, selling, and trading on several crypto asset
 4 trading platforms in exchange for fiat currency (namely U.S. Dollars) or certain crypto assets. OMG
 5 was made available for trading on the Bittrex Platform in or around July 2017. After being removed
 6 from the Bittrex Platform in June 2019, OMG was again made available for trading on or about April 9,
 7 2021. OMG was also available for trading on the Bittrex Global platform.

8 145. From the time of its offering and continuing through the Relevant Period, OMG has
 9 been offered and sold as an investment contract and therefore a security. After it was listed on Bittrex
 10 for trading, the ever-changing management of the OMG Network continued to tout its efforts to grow
 11 the value of OMG and the investment opportunities OMG presented.

12 *Purchasers of OMG invested in a common enterprise.*

13 146. The OMG Network pools the proceeds from OMG token sales to fund the
 14 development, marketing, business operations, and growth of the OMG Network, as reflected in
 15 OMG’s “Crowdfunding Whitepaper,” which used the following chart to explain how funds raised
 16 during the ICO would be used to develop the network:



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 24 147. Specifically, the OMG whitepaper explained that the “[m]ajority of the funds raised will
 25 go towards the development of open source software. Overall fund usage will be split approximately
 26 2:1 ratio between network and end-user application development.” The whitepaper also detailed how

1 the “budget” would be used, which included items such as “[c]onstruct and roll-out blockchain,
2 including full node client,” and “[c]onstruct and roll-out decentralized custody of funds.”

3 148. The stated distribution of the OMG tokens tied the fortunes of the OMG token holders
4 together and to the fortunes of the promoters. For instance, the OMG tokens were allocated as
5 follows: 65.1% for purchase by the public; 20% for “future costs and uses including use for network
6 validation as part of the development and execution of the project” as a “reserve”; 9.9% for OMG
7 “team members and key contributors who worked to develop the ideas, supporting structures and
8 actual implementation of the OmiseGO Project”; and 5% for an airdrop to ether token holders to
9 “encourage incentive alignment with the Ethereum mainnet.” Even after the ICO, and through
10 changes in management, the promoters of OMG continued to tout the connected fortunes of OMG
11 token holders and the promoters.

12 149. The price of all OMG tokens goes up or decreases together.

13 *Investors in OMG had a reasonable expectation of profits based on the efforts of others.*

14 150. In addition to the public statements cited above, in connection with the ICO and
15 continuing after OMG was listed on the Bittrex Platform, OMG’s promoters disseminated information
16 that led OMG token holders to reasonably expect to profit from the promoters’ efforts to grow the
17 OMG Network.

18 151. For example, the whitepaper touted the experience of the parent holding company
19 (Omise Holdings Pts. Ltd.), the OMG Network team, and advisors that would contribute to building a
20 successful blockchain network—the usage of which would derive value to the OMG token holders.
21 The whitepaper stated that “[o]ur technical team is led by experienced professionals who have track
22 records in high growth technology startups” and that they had the “best setup to implement this
23 project” given the parent holding company’s “established track record in building a fast-growing fintech
24 startup in the payments and value-transfer landscape.”

25 152. Further, materials available at the time of the ICO indicated that the development of the
26 platform by the OMG Network team could lead to profits for OMG token holders. For instance, the

1 whitepaper provided that “[a]t the OmiseGo Network layer, token holders will be eligible to earn
2 transaction fees for interchange payments and decentralized exchange. Activity ‘on-chain’ will pay
3 transaction fees to token holders for validating the network.”

4 153. Moreover, the OmiseGo website at the time of the ICO indicated that OMG token
5 holders could anticipate receiving a share of the fee revenue generated on the platform, and a document
6 purporting to establish the terms under which users purchased OMG during the ICO clarified that
7 potential for profit was linked to efforts of the OMG Network team (“[W]hile the individuals and
8 entities . . . assigned to [create the network] will make reasonable efforts to develop and complete
9 OmiseGO, *it is possible that such development may fail and User’s OMG may become useless and/or valueless due to*
10 *technical, commercial, regulatory or any other reasons*” (emphasis in original)).

11 154. Even after the OMG Network released a beta version of its platform in mid-2020
12 (which did not exist at the time of the ICO), the OMG Network team continued to emphasize their
13 commitment to developing the network. For instance, in or around June 2020 (more than two years
14 after OMG was listed on the Bittrex Platform), the OMG Network team expressed an intended focus
15 on future marketing for the platform: “We’ve always followed the mantra that our work will speak for
16 itself in the market place and we’ve gone very light on the marketing—focusing instead on top-notch
17 engineering and solid business development.” In or around October 2020, the OMG Network’s CEO
18 wrote that for the remainder of 2020 the OMG Network “team remains focused on onboarding our
19 CeFi partners to build out the Layer-2 value transfer use-case and improve the protocol and UX” and
20 that the “goal is to get OMG Network technology embedded into a network of merchants and
21 enterprises, so it becomes the go-to protocol for value transfer.”

22 155. Similarly, while the management of the OMG Network continued to change hands, the
23 new teams still stated publicly that they would focus on making efforts to achieve growth for OMG.
24 For example, at the time of the acquisition by GBV in or around December 2020, the OMG Network
25 stated, “Today, @genesisblockhk acquires OMG Network. We’ll work together to grow our ecosystem
26 and accelerate the adoption of OMG Network as the value transfer layer for #Ethereum!” And in

1 November 2021, the new team touted, “OMG was trading around \$3-4 when the current team took
2 over. Fair to say quite a bit of value has been created since then between OMG and BOBA.”

3 156. Upon acquisition of the OMG Network in December 2020, GBV promised to continue
4 to “promote the accelerated growth of OMG Network, and further enhance the adoption of OMG
5 blockchain in Asia and beyond.”

6 157. These statements led reasonable OMG investors to expect that the demand for OMG
7 would likely increase based on the OMG Network’s efforts to increase demand for its technology,
8 thereby potentially resulting in a price increase for OMG.

9 **ii. DASH**

10 158. Dash is a blockchain protocol that was launched on or about January 18, 2014 by
11 founder Evan Duffield. According to its website, www.dash.org, Dash is a crypto payment platform
12 forked from the Bitcoin source code.

13 159. “DASH” is the native token of the Dash blockchain and is the token used to pay
14 transaction fees required to propose transactions on the blockchain. The platform has built proprietary
15 mobile and desktop wallet applications available on the Google Play store and Apple’s App Store.
16 There is a maximum supply of approximately 18.92 million DASH tokens.

17 160. Dash’s initial distribution of DASH tokens was in the form of rewards to miners that
18 provided value to the DASH network by mining blocks for the blockchain.

19 161. Today, DASH tokens are available for buying, selling, and trading on several crypto
20 asset trading platforms in exchange for fiat currency (namely, U.S. Dollars) or certain crypto assets,
21 including bitcoin. DASH has been available for trading on the Bittrex Platform since 2014. After
22 being briefly removed on or about December 29, 2020, DASH was again made available for trading on
23 the Bittrex Platform on or about September 1, 2021. DASH has also been available for trading on the
24 Bittrex Global platform.

25 162. From the time of its offering and continuing through the Relevant Period, DASH was
26 offered and sold as an investment contract and therefore a security.

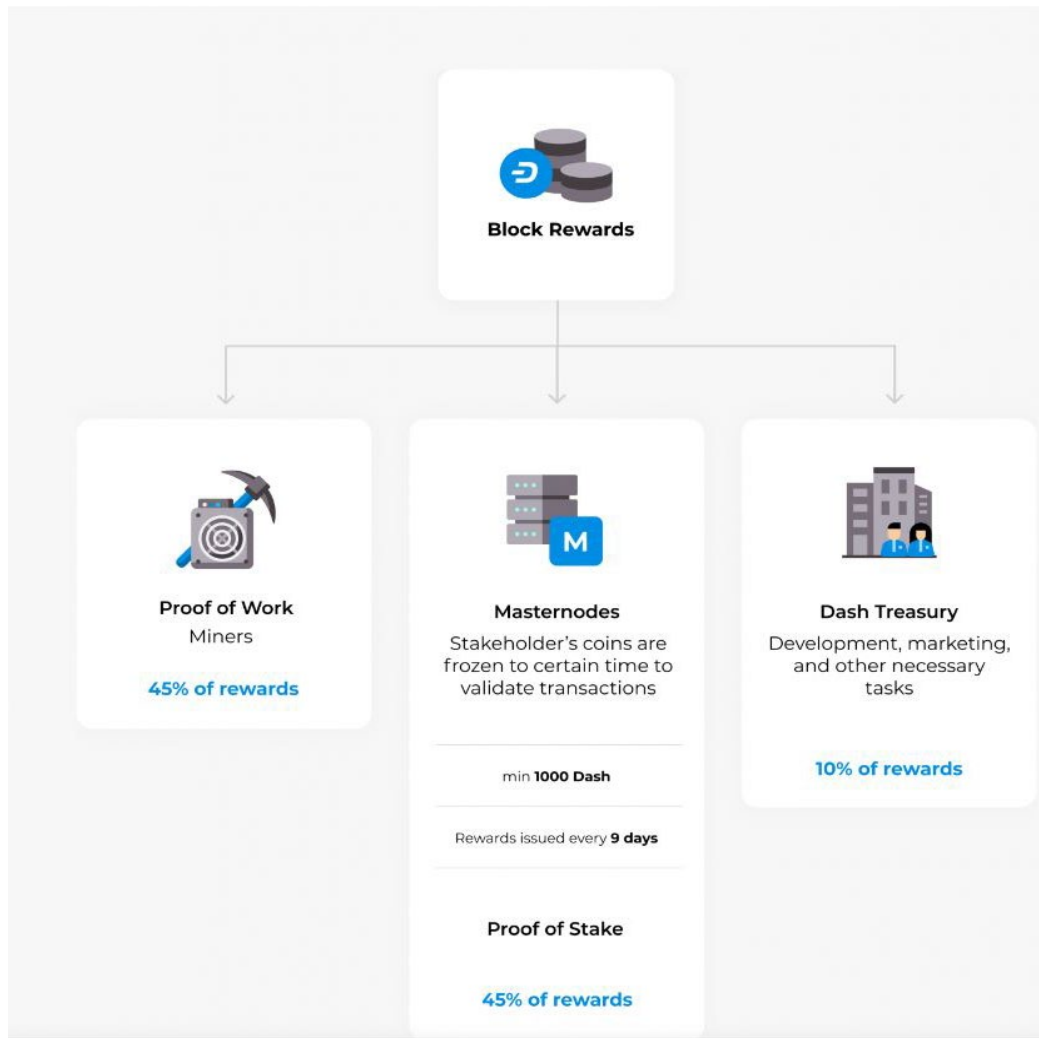
1 *Purchasers of DASH invested in a common enterprise.*

2 163. Today, Dash claims to be run by a subset of its users, which are called “masternodes.”²
3 Masternodes are servers that provide a second layer of services and governance on the Dash blockchain
4 on top of the services provided by standard nodes. Ten percent of the block rewards that are generated
5 from mining each month are sent to the Dash Treasury to fund improvements to the Dash platform
6 and DASH token. The bulk of the 10% of the block rewards are distributed to DCG (Dash Control
7 Group), an entity controlled by the Masternodes. (The Masternodes and the regular nodes split the
8 remaining 90% of the block rewards, with the Masternodes receiving a little over half of that 90%).
9 The Masternodes vote on all funding proposals, so the Masternodes are in essence voting to fund
10 DCG, since DCG submits the majority of the proposals that get approved and funded from the Dash
11 treasury. The Masternodes also indirectly control DCG through the Masternodes’ voting control over
12 the trust which is the sole shareholder of DCG. DCG’s improvements to the Dash platform and the
13 DASH token increase the DASH token’s value, thereby benefitting all token holders. Accordingly, the
14 fortunes of the investors (*i.e.*, the non-Masternode token holders) are tied to the fortunes of the
15 Masternodes and DCG.

16 164. Below is a breakdown of how rewards are purportedly distributed on the Dash
17 platform:
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25 ² A “node” on a blockchain generally means one of the computers that run the blockchain software to
26 validate and store the history of transactions on the network. Only those who stake 1,000 DASH and
have the sufficient server capacity to provide the advanced services offered by Dash can become a
“masternode” owner.

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165. The price of all DASH tokens increases or decreases together.

1 *Investors in DASH had a reasonable expectation of profits based on the efforts of others.*

2 166. From the founding of the Dash platform, Dash has created a business model and
3 disseminated information that led DASH holders to reasonably expect to profit from Dash’s efforts to
4 develop, expand, and grow the protocol.

5 167. For instance, Duffield purportedly launched DASH to improve on Bitcoin’s relatively
6 slow transaction times and privacy issues. To address this, he invented an algorithm used for
7 calculations on the DASH blockchain, which Dash touts as “one of the safest and more sophisticated
8 cryptographic hashes in use by modern cryptocurrencies.” Subsequently, Duffield also invented
9 “InstantSend,” which Dash touts as enhancing DASH’s speed by allowing users to transfer DASH
10 without waiting for the transactions to be confirmed on the blockchain, and “PrivateSend,” which Dash
11 touts as enhancing DASH’s privacy by making transactions more difficult to trace.

12 168. Further, DCG uses the DASH it receives from the Dash treasury to fund performance
13 enhancements and to add features to the Dash platform. For instance, DCG works to advance DASH
14 as a medium of payment. Dash’s website states that DASH can be spent at “thousands” of retailers
15 through a “DashDirect” consumer app and, in or around May 2022, Dash tweeted, “DCG is a [Dash
16 Funded Organization] with a dedicated team working for the Dash network that is responsible for the
17 main development of Dash. Its mission is to provide greater financial freedom by delivering and
18 improving financial solutions which are secure, reliable, decentralized, and usable for all.”

19 169. Dash also promotes its token’s superiority over other tokens due to the attributes it has
20 developed, namely greater scalability of the protocol (which increases usability), short processing times,
21 and low transaction costs. Accordingly, as the use of DASH expands, the demand for DASH will
22 increase, and its value will rise.

23 170. Finally, the value of DASH is further enhanced by the fact that the token has a limited
24 supply and is deflationary in nature. For example, the Dash website explains that the block reward is
25 reduced by approximately 7% every 210,240 blocks (approximately every 380 days).

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1 **iii. ALGO**

2 171. Algorand is a blockchain protocol founded by Silvio Micali. The Algorand blockchain
3 uses a consensus algorithm it calls “pure proof-of-stake,” in which each user’s ability to influence the
4 choice of a new block is proportional to its stake (number of tokens) in the system.

5 172. “ALGO” is the native token of the Algorand blockchain, and has a maximum supply of
6 10 billion ALGO minted at the launch of the Algorand network. Because ALGO is the native token of
7 the Algorand blockchain, those utilizing the Algorand blockchain need to hold (and potentially stake)
8 certain amounts of ALGO.

9 173. The Algorand Foundation Ltd. (the “Algorand Foundation”) conducted an initial
10 ALGO token sale on or about June 19, 2019, selling 25 million tokens at \$2.40 per ALGO, raising
11 approximately \$60 million. In advance of the token sale, the Algorand Foundation promoted the token
12 sale on Twitter, and included a link to its website.

13 174. The Algorand Foundation promoted the June 19, 2019 token sale in part with a refund
14 policy that allowed ALGO investors to return the ALGO to the Algorand Foundation one year later at
15 90% of the original purchase price. The Algorand Foundation explained the economic rationale behind
16 the refund policy by noting its own belief in and commitment to the value of ALGO, stating: “We
17 believe in the underlying value of the Algorand blockchain, the Algo, and the potential of the borderless
18 economy. Our goal is to invest in the growth, sustainability and performance of that economy.”

19 175. In other words, in promoting the ALGO token sale, the Algorand Foundation tied the
20 potential growth of the Algorand blockchain to potential demand for the ALGO token itself, and to its
21 own commitment to preserving a price floor for ALGO.

22 176. In or around August 2019, the Algorand Foundation publicly offered ALGO investors
23 an early refund opportunity, and ALGO investors returned a total of approximately 20 million ALGO
24 tokens to the Algorand Foundation in exchange for a refund that was 85% of the original purchase
25 price. In or around June 2020, ALGO investors who did not refund their ALGO tokens in August
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1 2019 were publicly offered a second refund window. ALGO investors returned a total of
2 approximately 5 million ALGO tokens for a refund that was 90% of the original purchase price.

3 177. Through its rewards programs and incentive structures, the Algorand Foundation
4 continued distributing tokens after the June 2019 token sale. As of September 2022, approximately 6.9
5 billion ALGO were in circulation.

6 178. Today, ALGO is available for buying, selling, and trading on crypto asset trading
7 platforms in exchange for fiat currency (namely, U.S. Dollars) or certain crypto assets, including bitcoin.
8 ALGO was available for trading on the Bittrex Platform and the Bittrex Global platform from
9 approximately April 2020, and is currently available on both platforms.

10 179. From the time of its offering and continuing through the Relevant Period, ALGO was
11 offered and sold as an investment contract and therefore a security.

12 *Purchasers of ALGO invested in a common enterprise.*

13 180. Today, two entities are responsible for Algorand: (1) the Algorand Foundation, an
14 organization purportedly focused on Algorand “protocol governance, token dynamics and supporting
15 grassroots, open-source development on the Algorand ecosystem,” which was incorporated in
16 Singapore; and (2) Algorand, Inc., a company purportedly focused on “layer-1 development of the
17 Algorand Protocol and enabling Enterprise adoption of Algorand blockchain technology.”

18 181. The Algorand Foundation and Algorand, Inc. purportedly collaborate on projects and
19 initiatives for the Algorand community.

20 182. Shortly before the June 19, 2019 ALGO token sale, Steven Kokinos, the CEO of
21 Algorand, Inc., posted a publicly-available article stating: “(a) We will be holding our founder’s tokens
22 for the long term and will not be selling them. (b) We will use our founder’s tokens to participate in
23 consensus and assist in securing the network, though we will never represent more than 49% of the
24 voting. (c) We will use our founder’s tokens to support the ecosystem and encourage development.”

1 183. The Algorand Foundation purportedly owns 500 million ALGO tokens and the
2 participation and governance rewards associated with those tokens. Also, members of the Algorand
3 Foundation’s board of directors and its advisory committees receive ALGO as compensation.

4 184. In addition to the tokens it owns, as of September 2022, the Algorand Foundation also
5 controls over 3 billion ALGO tokens in wallets publicly identified as for “Community & Governance
6 Rewards,” “Ecosystem Support,” and “Foundation Endowment,” signaling to the public that the
7 Algorand Foundation would use the ALGO tokens to support the ALGO economy or ecosystem as
8 well as to reward itself and participants in this ecosystem.

9 185. The price of all ALGO tokens goes up or decreases together.

10 *Investors in ALGO had a reasonable expectation of profits based on the efforts of others.*

11 186. The publicly available information disseminated by Algorand, Inc. and the Algorand
12 Foundation led ALGO investors to reasonably expect to profit from Algorand, Inc.’s and the Algorand
13 Foundation’s efforts to grow the Algorand protocol, which would in turn potentially increase demand
14 for, and therefore the value of, the ALGO token itself.

15 187. In public statements on Twitter, as well as on their respective websites, Algorand, Inc.
16 and the Algorand Foundation promote the Algorand protocol.

17 188. Until approximately May 14, 2022, the Algorand Foundation promoted that ALGO
18 investors could receive participation rewards (purportedly a form of staking by delegation) by
19 “participation in the Algorand ecosystem via holding Algo in an online wallet.”

20 189. As of approximately May 14, 2022, the Algorand Foundation publicly stated that it
21 would replace the participation rewards that ALGO holders were entitled to receive with so-called
22 governance rewards. The Algorand Foundation described “Governance” as a way for investors to
23 make investment returns on their ALGO purchases—stating it is “a decentralized program which
24 allows Algo holders to vote on the future of Algorand” and “the best way to earn rewards for holding
25 Algo, with APY% of 10.02% - 14.05% seen in previous periods.”

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1 190. The Algorand, Inc. and Algorand Foundation websites tout their teams’ technical
2 experience and expertise in the areas of cryptography and business development. For example,
3 Algorand, Inc.’s website states: “Blending technical mastery and professional stability, the Algorand
4 team consists of internationally recognized researchers, mathematicians, cryptographers, and
5 economists along with proven business leaders from global technology companies.”

6 191. In a March 2022 report, the Algorand Foundation publicly stated that it had started a
7 new program to incentivize the “growth of the ecosystem, which is the fundamental need of a maturing
8 blockchain. The program includes a series of loans to help the growth of our DeFi network and to
9 expand the institutional investments in the ecosystem ... The Algorand Ecosystem team facilitates the
10 development and growth of the ecosystem and developer pipeline including undiluted funding,
11 technical onboarding and standardization conventions for ASAs, Wallets and AVM.”

12 192. Algorand, Inc. and the Algorand Foundation also take steps to incentivize third parties
13 to participate in and attract users to the ALGO protocol. For example, in or around February 2022,
14 the Algorand Foundation announced a \$10 million incentive for developers that can make the Algorand
15 blockchain compatible with applications built on the Ethereum blockchain.

16 193. Also in or around February 2022, the Algorand Foundation announced a section of its
17 website called AlgoHub, “a virtual community designed to grow the pipeline of #Algorand
18 developers.”

19 194. These statements led reasonable ALGO investors throughout the Relevant Period to
20 expect that the demand for ALGO would likely increase based on Algorand, Inc.’s and Algorand
21 Foundation’s efforts to increase demand for the Algorand technology, thereby resulting in a price
22 increase for ALGO.

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1 iv. TKN

2 195. In 2017, Monolith Studio, based in London, England, announced the launch of
3 “TokenCard,” purporting to be “the first debit card powered by smart contracts incorporating the
4 VISA payments network with Ethereum.” TokenCard also created and issued the TKN token.

5 196. According to TokenCard’s whitepaper, TokenCard would be usable anywhere VISA
6 debit cards could be used, including at ATMs. The whitepaper further explained that TokenCard
7 would allow users to fund their card with ether and up to five other crypto assets which users would
8 select. The whitepaper noted that there would be a 1% licensing fee assessed to card swipes which
9 would be used to fund the TokenCard smart contract.

10 197. In the whitepaper, TokenCard stated that it would create a fixed number of TKN prior
11 to an ICO for TKN, and would not create any more TKN thereafter. The whitepaper stated that TKN
12 holders would be entitled to a proportion of the licensing fees accrued by the TokenCard smart
13 contract. TKN holders purportedly also received a number of benefits from the TokenCard smart
14 contract, including free debit card usage for TKN-backed swipes and discounted fees.

15 198. In 2017, TokenCard conducted an ICO of TKN and raised approximately \$16.7 million
16 through offers and sales of TKN. Shortly after the ICO, at some point during the period between May
17 2 and May 7, 2017, Bittrex first made TKN available on the Bittrex Platform. Bittrex removed TKN
18 from the Bittrex Platform on or about December 8, 2017.

19 199. From the time of its offering and throughout the period it was listed on the Bittrex
20 Platform, TKN was offered and sold as an investment contract and therefore a security.

21 *Purchasers of TKN invested money in a common enterprise.*

22 200. TokenCard’s whitepaper stated that proceeds from the TKN sale would be pooled to
23 develop TokenCard’s business, noting that “[f]unds raised during the crowdsale [ICO] will be used
24 solely for the development and benefit of the Token platform.” The whitepaper also stated that the
25 funds would be used specifically to “finance development, partnership programs, float ... operations,
26 regulatory and most importantly, marketing and customer acquisition.”

1 201. The price of all TKN tokens goes up or decreases together.

2 *Investors in TKN reasonably expected to profit from the efforts of others.*

3 202. TokenCard’s whitepaper indicated that investors could expect a direct return on their
4 TKN investment through the efforts of the company and its affiliates. For example, the whitepaper
5 made the following statements regarding the expected growth and success of TKN:

- 6 • “TKN is designed to be the single token one might consider in order to
7 reap the benefits of the coming industry growth;” and
- 8 • “[W]e intend to put as much money and time into these as we possibly
9 can in order to maximize the value of TokenCard and TKN and dominate
this post-bank era.”

10 203. The whitepaper described a mechanism called “Cash and Burn” that, functionally,
11 amounted to a pro-rata sharing in fees generated on the platform. Per this mechanism:

12 Fees from card swipes will be assessed in the token being used to fund
13 the swipe. These fees will be sent directly to the TKN Asset Contract.
14 Over time, this contract will accrue tokens in proportion to the tokens
15 held and used by TokenCard customers around the world. At any time,
a holder of TKN can “Cash and Burn” the TKN for her pro-rata share
of each token held by the TKN Asset Contract.

16 204. According to the whitepaper, “Cash and Burn” ensured that the TKN token would
17 have a market value at or above the assets contained in the TKN smart contract, noting further that if
18 the value dropped below those assets, “arbitrageurs will purchase TKN and burn it, yielding a
19 dividend.” The whitepaper promised that through this mechanism, TKN holders would get “higher
20 average returns and lower volatility than they would trying to invest individually in tokens.” The
21 whitepaper further described the “Cash and Burn” feature as follows:

22 7.2 Cash and Burn

23 A TKN holder can redeem her **current pro-rata** claim on the accumulated assets by calling TKN’s
24 **burn** function. Doing so will permanently destroy the TKN, forgoing any share of future accumulated
25 assets and leaving remaining TKN holders with a proportionally larger claim on future assets, but the
26 same claim on existing assets.]

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v. **NGC**

205. NAGA Development Association Ltd. (“NAGA”) is a corporation formed in Belize in or around October 2017, in partnership with the NAGA Group AG, a German holding company founded in 2015 that was purportedly listed on the German Stock Exchange.

206. NGC is an ERC-20 token that NAGA issued on the Ethereum blockchain. NAGA claimed that “NGC is a decentralized cryptocurrency for trading and investing in financial markets, virtual goods and cryptocurrencies.”

207. NAGA conducted what it described as a NGC “pre-sale” in or around November 2017 and an NGC “initial token sale” in or around December 2017, in which it raised approximately \$25 million from more than 36,000 investors.

208. To promote its NGC token sale, NAGA issued a whitepaper to prospective investors. In the whitepaper, NAGA described that a total of 400 million NGC tokens would be issued on the Ethereum blockchain via a smart contract, and that this would be a “hard cap,” such that no additional NGC would be created. NAGA stated in the whitepaper that “issuing a token allows NAGA to be backed by investors from all over the world who will have access to NGC right after its creation.” It also described its plans to be “traded on major exchanges.”

209. According to the whitepaper, 55% of the tokens were to be offered during the pre-sale and initial token sale. The remaining 45% were to be divided among NAGA’s team and advisors, and a reserve pool purportedly meant to ensure sufficient liquidity and help create a market for NGC.

210. NGC was made available for trading on the Bittrex Platform from approximately May 22, 2018 through approximately June 14, 2019.

211. From the time of its offering and throughout the period it was listed on the Bittrex Platform, NGC was offered and sold as an investment contract and therefore a security.

1 *Purchasers of NGC tokens invested in a common enterprise.*

2 212. NAGA described to investors that it would pool the funds it raised in the token sales to
3 build and promote the NAGA ecosystem, noting it wanted investors to share in the potential profits
4 from the efforts it would fund with these proceeds, *i.e.*, to “be able to participate in its future growth
5 through this form of funding, as compared to traditional venture funding.”

6 213. NAGA described in detail how the proceeds from the funds raised from investors
7 supposedly would be used to build its ecosystem:

Allocation of Raised Funds	
User Acquisition / Marketing	50%
Salaries & Wages	6%
Regulatory License Acquisition	4%
Research & Development	7%
Bank-grade Security & Code Audit	8%
IT team & Infrastructure	4%
Licensing & Regulatory Compliance	8%
External Legal Services	3%
Blockchain Engineering & Testing	3%
Other Costs	7%

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18 214. The price of all NGC tokens goes up or decreases together.

19 215. NAGA’s distribution of tokens among investors and NAGA’s team and advisors
20 aligned their incentives in building a successful NGC platform, as any increase in NGC’s market price
21 would yield profits to NAGA’s team and advisors as well as other NGC investors.

22 *Investors in NGC had a reasonable expectation of profits based on the efforts of others.*

23 216. NAGA marketed NGC such that NGC investors reasonably expected to profit from
24 NAGA’s efforts to grow its platform. NAGA’s whitepaper contained explicit statements indicating
25 that token holders should expect an increase in token price based on the efforts of the company in
26 developing the business and its “ecosystem.”

1 217. NAGA described in its whitepaper that it would work to develop the NGC platform,
2 thereby “building the value of the ecosystem for the benefit of long time holders and token sale
3 participants.” NAGA further explained that “NGC is backed and additional NGC demand is
4 accelerated and generated by the multi-hundred million publicly listed NAGA AG.” In fact, NAGA
5 tied the purported success of its publicly traded German partner to the success it expected to achieve
6 with the NGC token, posing “if [NAGA Group AG’s] stock already did 400% after three months,
7 what will its token do?”

8 218. In a section of its whitepaper entitled “Why the NAGA Initial Token Sale Will Be a
9 Success Story,” NAGA touted the strength of its team and resources in growing the value of the NGC
10 token.

11 219. NAGA described how the “extensive experience” of its team in developing trading
12 platforms would assist the growth of the platform. NAGA also expressed its confidence that the NGC
13 token price would “grow exponentially,” due to its efforts at growing the number of users of its
14 platform.

15 **vi. IHT**

16 220. I-House Token or “IHT” was launched through Aladdin Fintech Company Ltd.
17 (“Aladdin”), an LLC formed in the Cayman Islands in or around February 2018. Aladdin described
18 IHT as a “Global Real Estate Blockchain Cloud Platform” with a mission to integrate global real estate
19 markets with the blockchain. The company’s whitepaper described that “[t]hrough joining blockchain
20 and real estate, the real estate developer, financial institutions and their users can be connected and the
21 transaction of real estate can be made a part of the ‘digital credit society,’” and further promised that all
22 “owners and investors will become beneficiaries of i-house.com real estate blockchain.”

23 221. Aladdin conducted an ICO of the IHT token in or around January 2018, raising
24 approximately \$40 million. The token was thereafter available on the Bittrex Platform from
25 approximately October 2, 2018 through approximately June 7, 2019.

26

1 222. From the time of its offering and throughout the period it was listed on the Bittrex
2 Platform, IHT was offered and sold as an investment contract and therefore a security.

3 *Purchasers of IHT invested money in a common enterprise.*

4 223. The IHT whitepaper stated that the IHT platform was not yet developed and that the
5 proceeds from the token sale would be used to fund development of various aspects of the platform
6 and business. Investor funds raised during the ICO were pooled in a designated digital wallet address
7 to fund the business, which included creating and supporting a platform for the IHT token, and
8 business development and operations.

9 224. Specifically, according to IHT's Bittrex listing application, investor funds would be
10 pooled and used as follows:

- 11 • 10% legal fees on token sale raising
- 12 • 10% domestic and international publicity and ecological construction
- 13 • 15% existing R&D team's operation
- 14 • 15% recruiting new R&D operators
- 15 • 50% prepaying the tokenized assets to speed up assets acquisition

16 225. Moreover, at least 15% of tokens would be reserved for Aladdin staff and employees
17 for compensation purposes or incentives.

18 226. The price of all IHT tokens goes up or decreases together.

19 *Investors in IHT reasonably expected to profit from the efforts of others.*

20 227. The whitepaper outlined a plan and timeline for development and growth of various
21 aspects of the supposed business model, including an official "launch event" in Hong Kong,
22 "Blockchain Summit Forum" marketing events in the United States and elsewhere, and global
23 expansion.

24 228. The whitepaper also highlighted the purported expertise of the team behind IHT,
25 including its technical and engineering expertise. Members of the team were also marketed as experts
26

1 in “blockchain,” with titles such as “blockchain consultant” and “Chief Blockchain Officer” with
2 purportedly deep industry knowledge and experience.

3 229. Moreover, the whitepaper indicated that real estate developers and financial institutions
4 have shown “great enthusiasm” and are “willing to actively participate in the i-house.com project and
5 look forward to the i-house.com blockchain project IHT on-line as soon as possible.”

6 230. After the ICO, the company continued to make statements highlighting the efforts it
7 was taking to develop the business using proceeds from the token sale. For example, in April 2018,
8 following a period of decline in the crypto asset market, the CEO and founder of Aladdin/I-House
9 reiterated IHT’s plans for expansion into global markets and noting that “[o]ur hope is that investors
10 will not worry about market fluctuations and continue to support IHT. Our vision for the world’s first
11 real estate blockchain transaction cloud platform, is to become a leader in the blockchain industry and
12 to develop our own unique business model, despite market influxes.” He concluded: “We will
13 continue to work hard no matter what lies ahead to position IHT as a leader in the blockchain
14 industry.” The company also offered a “reward” program that encouraged IHT investors to “lock up”
15 their IHT tokens and rewarded this “lock up” with additional IHT tokens.

16 **IV. BITTREX AND BITTREX GLOBAL WERE REQUIRED TO REGISTER AS A**
17 **NATIONAL SECURITIES EXCHANGE, AND BITTREX WAS ALSO REQUIRED**
18 **TO REGISTER AS A BROKER-DEALER AND CLEARING AGENCY.**

19 231. Throughout the Relevant Period, Bittrex, and since 2019 Bittrex and Bittrex Global,
20 used the means and instrumentalities of interstate commerce to bring together the orders of multiple
21 buyers and sellers of crypto assets that were offered and sold as securities using a trading facility
22 programmed with non-discretionary rules for orders to interact and buyers and sellers to agree upon the
23 terms of trades in these securities. As a result, Bittrex and Bittrex Global, as a group of persons,
24 maintained and provided a market place for bringing together purchasers and sellers of securities.
25 Bittrex and Bittrex Global were therefore required to register with the Commission as a national
26 securities exchange or operate pursuant to an exemption to such registration, but did not do so.

1 236. By reason of the conduct described above, Bittrex and Bittrex Global, directly or
2 indirectly, violated, are violating, and, unless enjoined, will continue to violate Exchange Act Section 5
3 [15 U.S.C. § 78e].

4 **SECOND CLAIM FOR RELIEF**
5 **Violations of Exchange Act Section 15(a)**
6 **(Bittrex)**

7 237. The Commission realleges and incorporates by reference here the allegations in
8 paragraphs 1 through 233.

9 238. By engaging in the acts and conduct described in this Complaint, Bittrex, a person other
10 than a natural person under the Exchange Act, is a broker and made use of the mails and the means
11 and instrumentalities of interstate commerce to effect transactions in, or to induce or attempt to induce
12 the purchase or sale of, securities, without registering as a broker, and without being exempted from
13 such registration.

14 239. By reason of the conduct described above, Bittrex, directly or indirectly, violated, is
15 violating, and, unless enjoined, will continue to violate Exchange Act Section 15(a) [15 U.S.C. § 78o(a)].

16 **THIRD CLAIM FOR RELIEF**
17 **Violations of Exchange Act Section 17A(b)**
18 **(Bittrex)**

19 240. The Commission realleges and incorporates by reference here the allegations in
20 paragraphs 1 through 233.

21 241. By engaging in the acts and conduct described in this Complaint, Bittrex, directly or
22 indirectly, made use of the mails and the means and instrumentalities of interstate commerce to
23 perform the functions of a clearing agency with respect to securities, without registering in accordance
24 to Section 17A(b) of the Exchange Act and without being exempted or excluded from such
25 registration.

26 242. By reason of the conduct described above, Bittrex, directly or indirectly, violated, is
violating, and, unless enjoined, will continue to violate Exchange Act Section 17A(b) [15 U.S.C. § 78q-
1(b)].

1 **FOURTH CLAIM FOR RELIEF**
2 **Violations of Exchange Act Sections 5, 15(a), and 17A(b)**
3 **(Shihara as Control Person over Bittrex)**

4 243. The Commission realleges and incorporates by reference here the allegations in
5 paragraphs 1 through 233.

6 244. As alleged above, Bittrex violated Exchange Act Sections 5, 15(a), and 17A(b) [15
7 U.S.C. §§ 78e, 78o(a), 78q-1(b)].

8 245. Shihara was a control person of Bittrex for purposes of Exchange Act Section 20(a) [15
9 U.S.C. § 78t(a)] at least through November 2019.

10 246. At all relevant times, Shihara exercised power and control over Bittrex, including by
11 managing and directing Bittrex, and by directing and participating in the acts constituting Bittrex's
12 violations of the securities laws.

13 247. By reason of the foregoing, Shihara is liable as a control person under Exchange Act
14 Section 20(a) [15 U.S.C. § 78t(a)] for Bittrex's violations of Exchange Act Sections 5, 15(a), and 17A(b)
15 [15 U.S.C. §§ 78e, 78o(a), 78q-1(b)]. Shihara is, therefore, jointly and severally liable with and to the
16 same extent as Bittrex for violations of Section 5, 15(a), and Section 17A(b) of the Exchange Act.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, the Commission respectfully requests that the Court enter a Final Judgment:

19 **I.**

20 Permanently enjoining Defendants, and each of their respective agents, servants, employees,
21 attorneys and other persons in active concert or participation with any of them, from violating, directly
22 or indirectly, Section 5 of the Exchange Act [15 U.S.C. § 78e]; and Bittrex and Shihara, and each of
23 their respective agents, servants, employees, attorneys and other persons in active concert or
24 participation with any of them, from violating Sections 15(a) and 17A(b) of the Exchange Act [15
25 U.S.C. §§ 78o(a), 78q-1(b)];
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II.

Ordering Defendants to disgorge on a joint and several basis all ill-gotten gains, with prejudice interest thereon, pursuant to Sections 20(a), 21(d)(3), 21(d)(5) and 21(d)(7) of the Exchange Act [15 U.S.C. §§ 78u(a), 78u(d)];

III.

Prohibiting, pursuant to Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)], Bittrex and Shihara from continuing to use means or instrumentalities of interstate commerce to (i) accept and display orders in crypto asset securities from U.S. persons, (ii) act as broker or dealer with respect to crypto asset securities, or (iii) perform the functions of a clearing agency with respect to crypto asset securities, without registering with the Commission; and Bittrex Global from continuing to use means or instrumentalities of interstate commerce to accept orders in crypto asset securities from U.S. persons;

IV.

Ordering Defendants to pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; and

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V.

Granting any other and further relief this Court may deem just and proper for the benefit of investors.

JURY DEMAND

The Commission demands trial by jury.

Dated: New York, New York
April 17, 2023

By: s/Jorge G. Tenreiro
Jorge G. Tenreiro*

By: s/Ladan F. Stewart
Ladan F. Stewart*

By: s/Christopher J. Carney
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By: s/Ben N. Kuruvilla
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