

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 78282 / July 11, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17335

In the Matter of

**BITCOIN INVESTMENT
TRUST and
SECONDMARKET, INC.,**

Respondents.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Bitcoin Investment Trust (“BIT”) and SecondMarket, Inc. (“SecondMarket”) (together, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds that:

Respondents

1. **BIT** is a private Delaware trust whose sole assets are bitcoins.¹ In September 2013, pursuant to Rule 506(c) of Regulation D under the Securities Act of 1933 ("Securities Act"), BIT began offering its shares to accredited investors. On March 25, 2015, BIT shares began being quoted on the OTC Market Group Inc.'s OTCQX U.S. marketplace ("OTCQX") under its Alternate Reporting Standards, and BIT shares began trading under the symbol "GBTC" on May 4, 2015. BIT has never been registered with the Commission in any capacity, nor has BIT registered offerings of or classes of its securities with the Commission. BIT's sponsor is Grayscale Investments, LLC ("Grayscale"), formerly known as Alternative Currency Asset Management, LLC ("ACAM"). Grayscale is a wholly-owned subsidiary of Digital Currency Group, Inc. ("DCG") and an affiliate of SecondMarket. Neither Grayscale nor ACAM have ever been registered with the Commission in any capacity.

2. **SecondMarket** (a/k/a Genesis Global Trading, Inc.), headquartered in New York, New York, is a wholly-owned subsidiary of DCG, and is a broker-dealer registered with the Commission since 2005. SecondMarket is BIT's sole Authorized Participant ("AP") and, as such, is the only entity that may place orders to create and redeem BIT shares.

BIT's Offering of Shares

3. On September 13, 2013, ACAM formed BIT as a private Delaware trust, whose sole assets are bitcoins. According to its Private Placement Memorandum ("PPM"), BIT's investment objective is for its shares to reflect the performance of the market price of bitcoin, less the trust's expenses.

4. On September 25, 2013, an affiliate of SecondMarket capitalized BIT by contributing 17,800 bitcoins (valued at \$2.25 million at the time) to BIT in exchange for 178,000 BIT shares. Also on September 25, 2013, pursuant to Rule 506(c) of Regulation D under the Securities Act, BIT began offering shares to accredited investors on a continuous basis. BIT shares are restricted securities and, therefore, subject to resale restrictions. BIT issues shares in "baskets," or 100-share blocks, in exchange for deposits of bitcoins. BIT shares are offered by the AP at BIT's net asset value per share, which is calculated based on the market price of

¹ Bitcoin is a form of "virtual currency." A "virtual currency" is a digital representation of value that can be digitally traded and functions as a medium of exchange; a unit of account; and/or a store of value, but does not have legal tender status (*i.e.*, when tendered to a creditor, is a valid and legal offer of payment) in any jurisdiction. It is not issued or guaranteed by any jurisdiction, and fulfills the above functions only by agreement within the community of users of the virtual currency. Virtual currency is distinct from fiat currency, which is the coin and paper money of a country that is designated as its legal tender; circulates; and is customarily used and accepted as a medium of exchange in the issuing country. It also is distinct from e-money, which is a digital representation of fiat currency used to electronically transfer value denominated in fiat currency, *i.e.*, e-money electronically transfers value that has legal tender status.

bitcoin using a formula established by the PPM. As of April 29, 2016, BIT had a total of 1,557,300 shares outstanding.

5. Investors in BIT acquire shares in the offering through SecondMarket, BIT's sole AP. As BIT's AP, SecondMarket acts as intermediary for the creation and redemption of shares by investors. There is no limit to the number of BIT shares offered and both BIT and SecondMarket stand ready to transfer BIT shares from the issuer to investors at any time.

6. BIT employed the following special selling efforts and methods to facilitate the offering of its shares:

a. Along with the PPM, BIT provided prospective investors with a multipage power point presentation, also known as an "investor deck," that pitched an investment in BIT. The investor deck contained information about BIT's structure, investment terms and, later, its historical performance. It also contained informational slides titled "What is Bitcoin?", "Why is Bitcoin Transformative?" and "Why Invest in the BIT Instead of Buying Bitcoin?"

b. SecondMarket maintained an account on Facebook, a social networking service that allows a registered user, including a business, to post information on a publicly-available webpage. On September 25 and 26, 2013, on SecondMarket's Facebook page, SecondMarket announced BIT's launch.

c. SecondMarket executives discussed the BIT during various television appearances, which included interviews with FOX Business News, CBS Evening News, CNBC's Closing Bell, CNBC Squawk Box, and Bloomberg TV.

d. Beginning in March 2014, BIT provided prospective investors with a "BIT Fact Sheet," a two-page document summarizing its historical performance and fund information, and describing the advantages of investing in BIT over buying bitcoin directly.

e. ACAM maintained an account for BIT on Twitter, a website that allows a registered user to post (or "Tweet") publicly-available short text messages and hyperlinks. BIT's Tweets provided prospective investors with updated information about BIT and hyperlinks to news articles and other online sources that contained information about BIT. BIT's Tweets regularly contained information about the ability for investors to purchase shares of BIT, including through IRA or 401K accounts.

f. SecondMarket, as well as employees of SecondMarket and BIT, also maintained Twitter accounts in which they routinely Tweeted information about BIT.

Redemptions of BIT Shares

SecondMarket's Redemptions

7. From BIT's inception and without limitation, the PPM established that SecondMarket was permitted to redeem shares (purchased in its capacity as BIT's AP and for its own proprietary account). During the period November 4, 2013 through September 4, 2014, BIT purchased a total of 6,479 BIT shares from SecondMarket in connection with redemptions made by SecondMarket.

Shareholder Redemptions

8. BIT shares purchased by anyone other than an AP had limited liquidity. As explained in a footnote in the investor deck, liquidity was limited due to the fact that neither BIT nor its offering of shares are registered with the Commission and at the time, there was no public trading market for BIT shares. Nevertheless, BIT intended to offer liquidity for shares held less than one year through some undetermined mechanism. The investor deck stated that liquidity for shares is "to commence no later than March 2014." Beginning in November 2013, SecondMarket received requests for liquidity from shareholders. In response to those requests, BIT sought and received legal advice from outside counsel regarding the development of a shareholder redemption program.

9. On March 19, 2014, BIT announced to shareholders that it would implement a shareholder redemption program for shares redeemed within one year of purchase. Under this program, shareholders could request redemptions; however, SecondMarket had sole discretion to set and thereby limit the number of shareholders' shares redeemed during each month. On March 19, 2014, BIT also announced that it had begun the process of applying to qualify BIT shares that have been held for a minimum of one year for public trading on the OTCQX, and it anticipated that the shares would qualify for public trading during the fourth quarter of 2014.

10. On April 1, 2014, BIT, via SecondMarket, began accepting orders to redeem shares from BIT shareholders. During the period April 2, 2014 through September 4, 2014, SecondMarket, in its capacity as BIT's AP, purchased a total of 85,721 BIT shares in connection with redemptions made by BIT shareholders.² SecondMarket earned a total of \$51,650.11 in fees in connection with these shareholder redemptions.

11. In September 2014, the Commission notified SecondMarket of potential violations of Regulation M by the operation of the shareholder redemption program. On October 28, 2014, in response to the Commission staff's investigation, BIT announced to shareholders that it had suspended its shareholder redemption program.

² SecondMarket honored all shareholder requests for redemption under the redemption program.

Legal Analysis

12. BIT shares are securities as defined by Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act, and would be considered investment contracts under SEC v. W.J. Howey Co., 328 U.S. 293 (1946).

13. Regulation M is intended to prevent manipulative conduct in connection with an offering by persons with an interest in the outcome of an offering. See Anti-Manipulation Rules Concerning Securities Offerings, Rel. No. 34-38067 (Dec. 20, 1996), 62 FR 520 (Jan. 3, 1997) (Final Rule). Regulation M attempts to accomplish this goal by “precluding activities that could influence artificially the market for the offered security.” Id.

14. Accordingly, Regulation M does not require proof that the subject activities actually affected the market or that the subject activities were engaged in with manipulative intent. See Commission Guidance Regarding Prohibited Conduct in Connection with IPO Allocations, Rel. No. 34-51500 (Apr. 7, 2005), 70 FR 19672 (Apr. 13, 2005) (Interpretive Release).

15. Rule 101 of Regulation M prohibits any “distribution participant” and its “affiliated purchasers” from directly or indirectly bidding for, purchasing, or attempting to induce any person to bid for or purchase any covered security during the applicable restricted period in connection with a distribution of securities. 17 C.F.R. §242.101. The provisions of Rule 101 of Regulation M apply to underwriters, prospective underwriters, brokers, dealers, and other persons who have agreed to participate or are participating in a distribution of securities, and affiliated purchasers of such persons. Id.; see also 17 C.F.R. §242.100.

16. Rule 102 of Regulation M prohibits issuers, selling security holders, or any affiliated purchaser of such person from directly or indirectly bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder. 17 C.F.R. §242.102.

17. Rule 100 of Regulation M defines “distribution” to mean any offering of securities that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. 17 C.F.R. §242.100.

18. “[F]actors relevant to the magnitude element are: the number of shares to be registered for sale by the issuer, and the percentage of the outstanding shares, public float, and trading that those shares represent.” See Review of Anti-manipulation Regulation of Securities Offerings, Rel. No. 34-33924 (April 19, 1994), 59 FR 21681 (Apr. 26, 1994) (Concept Release). Also according to the Concept Release, “providing greater than normal sales compensation arrangements . . . , delivering a sales document, such as a prospectus or market letters, and conducting “road shows” are generally indicative of special selling efforts and selling methods.” Finally, the Concept Release lists several transactions, including private placements, that, based upon an analysis of their individual characteristics, have been viewed as meeting the Rule 100 definition of “distribution.”

19. Rule 100 of Regulation M defines “restricted period” as “the period beginning on the later of five business days prior to the determination of the offering price or such time that a person becomes a distribution participant, and ending upon such person’s completion of the distribution.” Rule 100 defines “completion of participation in a distribution” to occur, for an issuer, “when the distribution is completed” and, for any other person participating in the distribution, “when such person’s participation has been distributed.” 17 C.F.R. §242.100.

20. As described above, BIT’s offering constitutes a distribution due to its magnitude and the special selling efforts and methods used to facilitate the distribution. SecondMarket, as BIT’s AP, is a “distribution participant” and BIT’s shares are “covered securities,” as defined by Regulation M. Further, the restricted period for purposes of Rules 101 and 102 of Regulation M is also continuous.

21. As described above, during the period April 2, 2014 through September 4, 2014, SecondMarket purchased 85,721 BIT shares from shareholders during the restricted period in violation of Rule 101 of Regulation M of the Exchange Act.

22. As described above, during the period November 4, 2013 through September 4, 2014, BIT purchased 6,479 BIT shares from SecondMarket during the restricted period in violation of Rule 102 of Regulation M of the Exchange Act.

Respondents’ Reliance on Advice of Counsel

In determining to accept the Offers, the Commission considered Respondents’ reliance on counsel. Specifically, prior to the implementation of BIT’s shareholder redemption program, SecondMarket sought and received legal advice regarding the development and implementation of that program.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents’ Offers.

Accordingly, it is hereby ORDERED that:

A. Pursuant to 21C of the Exchange Act, Respondent SecondMarket cease and desist from committing or causing any violations and any future violations of Rule 101 of Regulation M of the Exchange Act.

B. Pursuant to 21C of the Exchange Act, Respondent BIT cease and desist from committing or causing any violations and any future violations of Rule 102 of Regulation M of the Exchange Act.

C. Respondent SecondMarket shall, within ten days of the entry of this Order, pay disgorgement of \$51,650.11 and prejudgment interest of \$2,105.68, for a total of \$53,755.79, to the Securities and Exchange Commission for transfer to the general fund of the United States

Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

D. Payments must be made in one of the following ways:

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

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

Payments by check or money order must be accompanied by a cover letter identifying SecondMarket as Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Valerie A. Szczepanik, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281-1022, or such other person or address as the Commission staff may provide.

By the Commission.

Brent J. Fields
Secretary