

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE
COMMISSION

SECURITIES ACT OF 1933
Release No. 10914 / December 23, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-20188

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| <p>In the Matter of</p> <p style="text-align:center">Tierion, Inc.,</p> <p>Respondent.</p> |
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ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, MAKING FINDINGS, AND IMPOSING PENALTIES AND 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 8A of the Securities Act of 1933 (“Securities Act”) against Tierion, Inc. (“Tierion” or “Respondent”).

II.

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

III.

On the basis of this Order and Respondent’s Offer, the Commission finds that¹:

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

Summary

Tierion, a startup blockchain technology company then based in California, raised approximately \$25 million by selling 350 million digital tokens (“Tierion Network Tokens,” or “TNT”) via a “Token Sale” in July 2017. Tierion and its promoters told investors that Tierion would continue its development of the Tierion Network, a distributed network which allowed users to create blockchain receipts using Tierion’s existing technology protocol, Chainpoint, to verify the existence and integrity of digital data, checked against a contemporaneous recording on the Bitcoin blockchain, as well as other applications to be developed in the future. Tierion also told investors that it planned that TNT would be used as a medium of exchange to access Chainpoint and in those future applications. In promoting its Token Sale, Tierion touted its founders’ and early investors’ backgrounds and experience in the blockchain industry, and publicized its past history of partnerships with prominent companies. Tierion took steps to ensure that TNT would be made available to trade on secondary markets, and touted TNT to digital asset enthusiasts and other members of the general public.

Based on the facts and circumstances set forth below, TNT were offered and sold as investment contracts, and therefore securities, pursuant to *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) and its progeny, including the cases discussed by the Commission in its *Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO* (Exchange Act Rel. No. 81207) (July 25, 2017). A purchaser in the Token Sale would have had a reasonable expectation of obtaining a future profit based on Tierion’s statements that it would use the funds raised to continue to develop the Tierion Network by adding partners, infrastructure, and services. Tierion violated Sections 5(a) and 5(c) of the Securities Act by offering and selling these securities without having a registration statement filed or in effect with the Commission or qualifying for exemption from registration with the Commission.

Respondent

Tierion, Inc. is a privately owned Delaware corporation based in Austin, Texas. Neither Tierion nor its securities are registered with the Commission in any capacity. Tierion issued TNT to investors through its wholly owned George Town, Cayman Islands-based subsidiary, Tierion International Ltd.

Facts

1. Tierion is a digital technology company established in 2015 as a SaaS (software-as-a-service) company focused on an application to create “blockchain receipts” by using Tierion’s Chainpoint protocol to cryptographically link data to the Bitcoin blockchain. Tierion marketed its SaaS application to potential customers in multiple industries, including insurance, healthcare, real estate, financial services, education, logistics, e-commerce, and government. Customers did not have to own or utilize any digital asset in order to use the service. The majority of users accessed a free version of the service. Tierion also offered a paid version of the service, for which it charged U.S. dollars. At least one prominent company – Company A, a large, multinational healthcare and technology conglomerate – paid Tierion in 2016 for the use of an on-premises server containing Tierion’s software which Company A used in prototype

applications. Another prominent company – Company B, a large, U.S.-based technology company – utilized a free version of Tierion’s service in prototype applications.

2. In early 2017, Tierion sought to raise additional capital to continue to fund its business. At that time, Tierion was aware that other blockchain companies had recently launched successful token offerings. In an internal communication, a Tierion officer observed, “Companies that use a token (even in a trivial manner) are raising \$millions.” On July 10, 2017, Tierion announced that it would launch a new “Tierion Network” for creating and verifying blockchain receipts using the Chainpoint protocol, and that it was conducting a Token Sale to fund the continued development of the Tierion Network. In connection with the Token Sale, Tierion told the public that “Chainpoint is the first service on the Tierion Network and serves as the technical foundation for future services” and that “[f]uture additions to the Tierion Network may include services for securing and sharing verifiable data, document notary and archival, and attestations related to blockchain verifiable identities.” Tierion also told the public that it planned for TNT to be used as a medium of exchange for Chainpoint and for future services on the Tierion Network.

Tierion Promoted Its Securities Offering

3. Between approximately July 10, 2017 and July 28, 2017, Tierion and an advisory services firm that Tierion retained promoted Tierion’s Token Sale on websites that Tierion maintained and through other media, including blog posts, social media posts, online videos, and online discussion boards popular with digital asset investors. In its promotional materials, Tierion highlighted the technology and blockchain experience, credentials, abilities, and management skills of its employees and advisors. Tierion posted written promotional documents online, including a “whitepaper” and a “one-pager,” among others. The whitepaper and the one-pager described the technology Tierion said it would continue developing and the “problem” Tierion proposed to “solve.” Tierion also publicized its work with prominent companies, including Company A and Company B, as evidence of Tierion’s strong track record and bright future. As a Tierion officer said to a reporter at the announcement of the Token Sale, “The reality is that startups are all always locked in an arms race for talent and capital, and there’s a lot of people who are walking out the door, hanging out a white paper and no product and they’re raising \$15m to \$20m. We’re a company that’s been around for 18 months and we have enterprise partnerships.” Tierion told prospective investors that it intended to continue to pursue high-profile partners to increase the adoption and use of Chainpoint and the Tierion Network.

4. Tierion promoted TNT to members of the general public and to digital asset investors. The advisory services firm that Tierion engaged launched a so-called “signature campaign” on Tierion’s behalf, offering Bitcoin to third parties in exchange for promotion of the Tierion Token Sale and the Tierion Network on an online message board frequented by digital asset investors. That advisor also communicated directly with hundreds of prospective Token Sale participants on Tierion’s behalf to gauge their interest in the Token Sale and secure commitments to participate in the Token Sale.

5. The advisory services firm that Tierion engaged told prospective TNT investors

that Tierion was engaged in efforts to have TNT traded on secondary market digital asset trading platforms, noting on at least one online discussion platform that Tierion anticipated TNT “trading” sometime after the September 1, 2017 token distribution deadline. Tierion engaged in communications with two of Tierion’s existing seed investors that Tierion hoped would become investors in the Token Sale about the prospect that TNT would be traded after the Token Sale. Tierion requested their assistance to help Tierion get TNT listed on well-known, high-volume secondary market digital asset trading platforms following the Token Sale. Tierion also promoted the fact of these investors’ participation in the Token Sale.

Terms of Tierion’s Token Sale

6. In July 2017, Tierion created approximately one billion TNT. Tierion announced the Token Sale on July 10, 2017, and the Token Sale took place between July 22, 2017 and July 28, 2017. During the Token Sale, which was accessible to investors in the U.S. and worldwide through websites controlled by Tierion, Tierion sold approximately 350 million TNT to approximately 4,800 people, including people in the United States, raising approximately \$25 million (comprised of digital assets such as Bitcoin or Ether). In the first five days of the Token Sale, Tierion secured investment commitments from certain large digital asset investors, and then members of the general public bought TNT on the final two days of the sale. Investors did not provide information that would have enabled Tierion to determine whether any of the investors qualified as accredited investors. Investors transferred Ether or Bitcoin to digital wallets controlled by Tierion. On August 25, 2017, Tierion distributed TNT to all individuals and entities that purchased tokens in the Token Sale, with no restrictions on the tokens’ transfer or re-sale. Since August 25, 2017, TNT has traded on secondary market digital asset trading platforms.

The TNT Purchasers Invested Money So That Tierion Could Fund Its Business

7. While Tierion had been in business as a SaaS company since 2015, the Tierion Network was still in development at the time of the Token Sale. Reasonable investors would have understood that their money was funding the Tierion Network’s continued development. For example, in its whitepaper, Tierion told investors that, “we have plans for future services that will be built on top of Chainpoint and will announce these services in the future.” A Tierion officer also told a reporter that funds raised during the Token Sale would be used to pay transaction fees associated with anchoring Chainpoint data to the Bitcoin blockchain. The TNT investors’ money – the approximately \$25 million invested in Tierion by token holders who contributed digital assets of value during the Token Sale – was pooled and funded the continued development of the Tierion Network.

The TNT Purchasers Reasonably Relied on the Efforts of Tierion for a Return on Their Investment

8. Reasonable investors would have understood that Tierion was the developer of, and was responsible for maintaining, the Tierion Network, and that investors would have to rely on Tierion to improve the network and increase the value of TNT, and in that way return a profit

for investors. Tierion’s management had previously developed relationships with prominent corporate partners and customers and touted those relationships to investors as a basis to invest in TNT. Reasonable investors would have known that Tierion’s management – not TNT investors – would be responsible for the success or failure of those relationships and the future development of other partnerships. As Tierion articulated in the risk disclosures that Tierion required investors to acknowledge before purchasing TNT, Tierion’s business structure and plans could change at any time and “[a]ny expectations regarding the form and functionality of Tokens or the Tierion Network held by the purchaser may not be met, for any number of reasons, including a change in the design and implementation plans and execution of the Tierion Network.” Tierion also advised that “The Tierion Network is presently under development and its governance structure, fees, [and] purpose . . . may undergo significant changes without notice.” Tierion also advised that the value of TNT will change over time. Similarly, in the “Terms of Sale” document that Tierion also required investors to acknowledge before purchasing TNT, Tierion noted that it retained all right, title and interest in all hardware, software, and intellectual property interests, and that in the event TNT investors made any particularly helpful “suggestions” – that is, “all suggested modifications, improvements, additions or subtractions to our business that you [the investor] provide to us [Tierion]” – those belonged to Tierion as well. Reasonable investors would have known that they were reliant on the efforts of management to develop the Tierion Network and thus increase the value of TNT.

9. TNT had no consumptive use at the time of the Token Sale or at the time when the tokens were delivered to investors on August 25, 2017. Tierion told potential investors and the general public that it planned for TNT to be used as a medium of exchange for Chainpoint services. Ultimately, over a longer-term horizon, Tierion planned to build additional applications that would accept TNT as a medium of exchange.

Tierion Failed to Register the Offer and Sale of Its Securities

10. Tierion’s offer and sale of TNT was not registered with the Commission, nor did Tierion’s offer and sale of TNT satisfy any valid exemption from registration.

Violations

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

2. Also as a result of the conduct described above, Tierion violated Section 5(c) of the Securities Act, which states that it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or

otherwise any security, unless a registration statement has been filed as to such security.

Undertakings

Respondent makes the following undertakings:

1. As of the date of this Order, Respondent will permanently disable all TNT transfers by revising TNT's code.
2. As of the date of this Order, Respondent will also make reasonable efforts to contact all digital asset market trading platforms where TNT trades, notifying them of this Order and requesting that platforms halt all trading in TNT. Respondent will also issue a press release ("Press Release"), in a form not objected to by Commission staff, notifying the public of this Order and containing a link to the Order. Respondent will prominently post the Press Release and link to the Order on Tierion's company website, and maintain it there until the "Deadline" (as defined in Paragraph 4 below).
3. Within seven (7) days from the date of this Order, Respondent will issue the following four Notices to the general public, in a form and through means not objected to by Commission staff:
 - a. Notice of Claims Process for Token Sale Purchasers That Hold Any TNT That They Purchased in the Token Sale. This notice will inform all Token Sale Purchasers that hold any TNT that they purchased in the Token Sale of Tierion's offer to pay them the \$USD value of the total TNT they purchased in the Token Sale based on the price paid by Token Sale Purchasers at the time of the Token Sale, with interest thereon, minus the total \$USD value of their sales of TNT purchased in the Token Sale. For purposes of these Undertakings, Token Sale Purchasers means persons who purchased TNT directly from Tierion in Tierion's Token Sale.
 - b. Notice of Claims Process for Token Sale Purchasers That Sold All TNT That They Purchased in the Token Sale at an Aggregate Loss. This notice will inform all Token Sale Purchasers who purchased TNT from Tierion in Tierion's Token Sale and subsequently sold all such TNT at an aggregate loss, of Tierion's offer to pay them the \$USD value of the total TNT they purchased in the Token Sale based on the \$USD price paid by Token Sale Purchasers at the time of the Token Sale, minus the total \$USD value of the sales of all TNT purchased in the Token Sale, with interest thereon.
 - c. Notice of Claims Process for Secondary Market Purchasers That Currently Hold TNT. This notice will inform all Secondary Market Purchasers of Tierion's offer to

pay them the \$USD value of the TNT purchased and currently held, based on the price paid per token by the Secondary Market Purchasers not to exceed the original Token Sale price of \$.072USD per token, minus the \$USD value of any gains made from sales of their TNT purchased in secondary markets and the \$USD value of the sale of any TNT they received as rewards for operating a public Tierion Node. For purposes of these Undertakings, Secondary Market Purchasers means persons who currently hold TNT that was purchased in a secondary trading market transaction.

- d. Notice of Claims Process for Tierion “Node Operators.” This notice will inform all token holders who received TNT from Tierion as rewards for operating a public Tierion Node of Tierion’s offer to pay them \$.01USD per such token they currently hold, minus the \$USD value of the sale of any TNT received as rewards and the \$USD value of any gains made from sales of their TNT purchased in secondary markets.

4. All Notices will describe the verification criteria Tierion proposes to establish eligibility for participation in the above Claims Processes, including passing a KYC/AML check, criteria to establish ownership of TNT, the price(s) paid for TNT, the dates of all such purchases, and the price(s) for which TNT was sold and the dates of all such sales, in a form not objected to by Commission staff. All Notices will advise each person or entity who qualifies under any or all of the categories outlined in the Notices (the “Claimants”) that they have sixty (60) days to submit these materials (“Deadline”). Respondent may require that a Claimant submit additional documentation supporting Claimant’s qualification to receive payment. Upon receiving such a request, a Claimant will have ten (10) days to provide the requested documentation to the Respondent. For any claims not paid, Respondent will provide the claimant with a written explanation of the reasons for non-payment.

5. Within sixty (60) days of the Deadline, Respondent will make all payments to Claimants the Respondent deems to be due and adequately substantiated.

6. Beginning thirty (30) days after the Deadline, Respondent will submit to the Commission staff a monthly report of all claims received and all claims paid under Paragraph 4 above, including: (a) identifying information about each Claimant; (b) the amount of each claim; (c) the resolution of each claim, including the amount of each payment; (d) identification of all claims not paid and the reasons for all non-payment of claims; and (e) a list of all complaints received (if any) and the manner in which Respondent addressed each complaint. Respondent will provide Commission staff with any related additional information or documentation reasonably requested by Commission staff, such as documentation submitted by the Claimant and documentation supporting Respondent’s decision regarding the claim. In response to any objections by Commission staff to Respondent’s handling of one or more claims, Respondent will reconsider its decision(s) in light of the objection and will provide a written explanation to Commission staff of its decision following such reconsideration. Respondent will also submit to Commission staff a final report of its handling of all claims received under Paragraph 4 within six (6) months of the Deadline, including all information listed in this paragraph above.

7. Respondent will certify, in writing, compliance with the undertakings set forth above within sixty (60) days of their completion. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance, and shall include a final report of Respondent's handling of all claims received under Paragraph 4. The certification and supporting material shall be submitted to: John T. Dugan, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 33 Arch Street, 24th Floor, Boston, Massachusetts 02110, or such other person or address (including electronic address) as the Commission staff may identify, with a copy to the Office of Chief Counsel of the Enforcement Division. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence, as applicable.

8. Respondent will retain all records and communications relating to the Token Sale for a period of at least one year after the date it submits the certification of compliance as described in Paragraph 6 above, or until such time as otherwise required by law.

9. Respondent may apply to Commission staff for an extension of the deadlines described above before their expiration and, upon a showing of good cause by Respondent, Commission staff may, in its sole discretion, grant such extensions for whatever time period it deems appropriate.

10. In determining whether to accept the Offer, the Commission has considered the Respondent's cooperation and these undertakings.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondent cease and desist from committing or causing any violations and any future violations of Section 5(a) and (c) of the Securities Act.

B. Respondent shall, within 90 days of the entry of this Order, pay a civil money penalty in the amount of \$250,000.00 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 31 U.S.C. §3717.

Payment must be made in one of the following ways:

a. Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

b. Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

c. 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 Tierion as a Respondent in this proceeding, and the file number of this proceeding; a copy of the cover letter and check or money order must be sent to John T. Dugan, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 33 Arch Street, 24th Floor, Boston, Massachusetts 02110, or such other person or address as the Commission staff may provide.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary