

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10544 / September 11, 2018

INVESTMENT ADVISERS ACT OF 1940
Release No. 5004 / September 11, 2018

INVESTMENT COMPANY ACT OF 1940
Release No. 33222 / September 11, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18740

In the Matter of

CRYPTO ASSET MANAGEMENT, LP
and
TIMOTHY ENNEKING,

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, PURSUANT
TO SECTION 8A OF THE SECURITIES
ACT OF 1933, SECTIONS 203(e), 203(f),
AND 203(k) OF THE INVESTMENT
ADVISERS ACT OF 1940, AND
SECTION 9(f) OF THE INVESTMENT
COMPANY ACT OF 1940, MAKING
FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against Crypto Asset Management, LP and Timothy Enneking (“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 Administrative and Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933, Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, and Section 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and 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. Crypto Asset Management, LP (“CAM” or “Manager”) is a Delaware limited partnership with its principal place of business in La Jolla, California. CAM was formed in March 2017 to act as the managing member of and manager to Crypto Asset Fund, LLC. CAM has never been registered with the Commission in any capacity. As of December 31, 2017, CAM had approximately \$37 million in assets under management. Crypto Asset Management GP, LLC (“CAM GP”) serves as the general partner of CAM, and holds 1% of the limited partner interests in CAM.

2. Timothy Enneking (“Enneking”), age 59, is the founder and sole principal of CAM and holds 99% of its limited partner interests. He is the Managing Member of CAM GP and holds 90% of its membership interests. Enneking resides in La Jolla, California. Enneking has never been registered with the Commission in any capacity.

Other Relevant Entities

3. Crypto Asset Fund, LLC (“CAF”) is a Delaware limited liability company with its principal place of business in La Jolla, California. CAF is a pooled investment vehicle formed for the purpose of investing in digital assets. CAF has never been registered with the Commission in any capacity. As of December 31, 2017, CAF’s net asset value was approximately \$37 million.

Facts

4. Respondents formed CAF in March 2017 for the purpose of investing in digital assets. Respondent Enneking had previously operated private funds in foreign jurisdictions that invested in digital assets. CAF was Enneking’s first United States-based fund. Respondents engaged counsel to provide general and privileged advice to CAM on regulatory compliance matters in connection with launching and operating CAF.

5. From August 1, 2017 through December 1, 2017 (the “Relevant Period”), Respondents raised over \$3.6 million from 44 investors, primarily individuals, residing in at least 15 states. Respondents controlled and directed the investment of CAF’s assets. CAM earned incentive and management fees from CAF pursuant to the terms of its management agreement with

CAF, and Enneking received distributions from CAM pursuant to CAM's limited partnership agreement. Since CAF's inception, a portion of Enneking's distributions have been sourced from the incentive and management fees CAM earned from CAF.

6. Respondents did not have pre-existing relationships with these investors and engaged in a general solicitation of public interest in the offering through CAM's website, social media accounts, and traditional media outlet interviews. CAM did not file or cause to be filed a registration statement with the Commission, and no exemption from registration was available during the Relevant Period.

7. In addition, CAM caused CAF not to comply with the Investment Company Act. Section 3(a)(1)(C) of the Investment Company Act defines "investment company" as any issuer which "is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis."

8. During the Relevant Period, CAF engaged in the business of investing, holding, and trading certain digital assets that were investment securities, as defined in Section 3(a)(2) of the Investment Company Act, having a value exceeding 40% of the value of CAF's total assets (exclusive of Government Securities and cash items). Although CAF met the definition of "investment company" during the Relevant Period, it did not register with the Commission as an investment company, meet any statutory exemptions or exclusions from the definition of an investment company, or seek an order from the Commission declaring that it was primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities, or exempting it from complying with any provisions of the Investment Company Act or the rules thereunder. Thus, during the Relevant Period, CAF should have registered with the Commission as an investment company.

9. During the Relevant Period, Respondents also negligently misrepresented to actual and prospective investors in certain marketing materials that CAF was the "first regulated crypto asset fund in the United States" and had filed a registration statement with the Commission. Respondents failed to take reasonable steps to ensure the accuracy of these statements before disseminating them to actual and potential investors.

10. Respondents immediately halted the offering when contacted by the Commission staff and undertook a review of CAM's website, marketing materials, and offering procedures. In addition, Respondents verified the accredited status of investors who invested in CAF during the Relevant Period and, prior to institution of this Order, made a rescission offering pursuant to a valid exemption from registration to each of those investors. In connection with the rescission offering, Respondents disclosed their previous misstatements to investors and prospective investors. Finally, beginning in January 2018, Respondents began offering securities pursuant to the Regulation D Rule 506(c) exemption from registration.

Violations

11. As a result of the conduct described above, CAM willfully violated Section 5(a) of the Securities Act,¹ which prohibits the sale of securities through interstate commerce or the mails unless a registration statement is in effect, and Section 5(c) of the Securities Act, which prohibits the offer to sell any security through interstate commerce or the mails, unless a registration statement has been filed as to such security with the Commission.

12. As a result of the conduct described above, CAM caused CAF's violation of Section 7(a) of the Investment Company Act, which prohibits an investment company not registered with the Commission from engaging in any business in interstate commerce, including offering, selling, purchasing, or redeeming interests in the investment company.

13. As a result of the conduct described above, Respondents willfully violated Section 17(a)(2) of the Securities Act, which prohibits any person in the offer or sale of securities from obtaining money or property by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make the statements made not misleading.

14. As a result of the conduct described above, Respondents willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which make it unlawful for any investment adviser to a pooled investment vehicle to make any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle.

Respondents' Remedial Efforts

15. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondents and cooperation afforded the Commission staff.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act, Sections 203(e), 203(f), and 203(k) of the Advisers Act, and Section 9(f) of the Investment Company Act, it is hereby ORDERED that:

¹ "Willfully" as used in this Order means intentionally committing the act which constitutes the violation. *Cf. Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000); *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). There is no requirement that the actor also be aware that he is violating the relevant Rule or Act.

A. Respondent CAM cease and desist from committing or causing any violations and any future violations of Sections 5(a), 5(c), and 17(a)(2) of the Securities Act, Section 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder, and Section 7(a) of the Investment Company Act.

B. Respondent Enneking cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act, and Section 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder,

C. Respondents are censured.

D. Respondents, jointly and severally, shall pay a civil money penalty in the amount of \$200,000 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). Payment shall be made in the following installments: \$100,000 paid within 10 days of the entry of this Order; \$25,000 paid within 75 days of the entry of this Order; \$25,000 paid within 150 days of the entry of this Order; \$25,000 paid within 225 days of this Order; and \$25,000 paid within 300 days of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance, plus any additional interest accrued pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondents 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 Crypto Asset Management, LP and/or Timothy Enneking as a 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 C. Dabney O'Riordan, Co-Chief, Asset Management Unit, Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, California 90071.

E. 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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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 Respondents 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.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent Enneking, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Enneking under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent Enneking of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Brent J. Fields
Secretary