

BEFORE THE
STATE OF WISCONSIN
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF SECURITIES

In the Matter of,

SUMMARY ORDER TO
CEASE AND DESIST

FX-BITTRADE and
FREDERICK SMITH,

Respondents.

DFI Case No. S-242022 (EX)

The Administrator of the State of Wisconsin, Department of Financial Institutions, Division of Securities (“Division”), having legal authority and jurisdiction to administer and enforce the Wisconsin Uniform Securities Law, Wis. Stats. Ch. 551 (“Ch. 551”) and rules and orders promulgated thereunder, and having determined that this action is necessary and appropriate in the public interest and for the protection of investors, hereby enters this Order as follows:

I.

Division staff have presented evidence sufficient for the Administrator to make the following findings of fact and conclusions of law:

A. Findings of Fact

Respondents

1. Upon information and belief, FX-Bittrade is an online business with a last known business address of “18 Fresno, CA 93727.” FX-Bittrade has a website address of <https://fx-bittrade.com>.
2. Upon information and belief, Frederick Smith (“Smith”) controls FX-Bittrade.

Conduct

3. Investor TK is an adult male resident of Wisconsin.
4. In or about June 2020, Investor TK received a message on LinkedIn about how Investor TK could earn passive income using FX-Bittrade. Investor TK understood that FX-Bittrade would use foreign currency exchange trading (“forex”) to grow his bitcoin investment into the company.
5. Investor TK subsequently opened an account on FX-Bittrade’s website and began communicating with Smith personally on WhatsApp regarding Investor TK’s account and investments.

6. FX-Bitrade's website represented that it was affiliated with numerous major corporations, including PayPal.
7. Smith directed Investor TK to purchase approximately \$9,500 worth of bitcoin to invest through FX-Bitrade. Upon information and belief, Smith represented to Investor TK that his investment was earning large returns through cryptocurrency and forex trading.
8. In late July and/or early August, Investor TK requested to make a withdrawal from his FX-Bitrade account.
9. On or about August 5, 2020, FX-Bitrade emailed Investor TK to request personal information and banking details to affect a withdrawal from his FX-Bitrade account. Investor TK responded with the information the following day.
10. On August 6, 2020, FX-Bitrade emailed Investor TK that he would need to pay a twenty percent (20%) withdrawal fee of \$3,600 on the total value of the \$18,000 in his account to affect the withdrawal. FX-Bitrade told Investor TK that he could only withdraw the entire value of his account, and that partial withdrawals were not possible.¹
11. Between August 6, 2020 and August 13, 2020, Investor TK paid approximately \$3,280 to FX-Bitrade as instructed by FX-Bitrade to pay the 20% withdrawal fee.
12. On August 15, 2020, FX-Bitrade informed Investor TK by email that due to the "delay of the complete deposit your profit has been sent into the blockchain mining system. Contact Mr Fredrick smith so he can guide you on how to proceed with it. Thanks for your cooperation" (sic). That same day, FX-Bitrade told investor TK by email, "Hello, due to the 20% deposit payment you made complete you will receive 3times more of your profits. Thanks for your Cooperation" (sic). Finally, FX-Bitrade told Investor TK by email that he would need to purchase a private key for his blockchain wallet in order to receive his withdrawal. FX-Bitrade told Investor TK that the private key would cost \$4,200, and that Smith would be able to guide Investor TK through the rest of the withdrawal process.
13. Around the same time, Investor TK purchased the "private key" for \$4,200, which he paid by buying and sending more bitcoin to Smith. On August 18, 2020, Investor TK emailed FX-Bitrade and told them that he had made the final payment for the private key as instructed by Smith.
14. The next day, FX-Bitrade emailed Investor TK that "to generate your Virtual wallet cost just \$1750. Ensure to make the payment so your profit can reflect in your blockchain wallet within the next 24hours thanks for your cooperation" (sic). Investor TK paid the additional fee that day.

¹ Shortly after, Investor TK asked FX-Bitrade to return the total of his deposited funds, minus the withdrawal fee from the profits earned on his investment, as he did not have any further funds to deposit. In response, FX-Bitrade said it would not release the funds until the additional fee was paid. FX-Bitrade subsequently provided a wallet address for Investor TK to send the additional funds to.

15. Early on August 20, 2020, FX-Bitrade emailed Investor TK that his transaction would be processed in the next twenty-four hours. Shortly after receiving notification that he would be receiving his withdrawal, Investor TK received a message from Smith through WhatsApp, which included a picture that purported to be a letter from the “United Nations Office of Terrorism and Financial Crime International Fund transfer Unit United States Zonal Command.” The letter was purportedly signed by “Rita Micheal Scoth” the “Director General IFTU US”.²
16. The UN letter stated that the \$65,000 belonging to Investor TK “has been declared withheld due to Anti-Terrorism investigation Activities. The beneficiary ALEXANDER JAKOBSEN is hereby charged the sum of \$6,550 with account number: 36108037291, for accreditation for free transfer of funds without any more charged incurred. This certificate confirms all the rights and obligations under UNITED NATION security service act (section 34b fund transfer) Note: This charge is refundable therefore the charges incurred is refunded after transfer has been completed. Security code NU/IMT/335E65N/17” (sic).
17. The UN Secretariat does not have an Office of Terrorism and Financial Crime, International Fund transfer Unit, United States Zonal Command, nor does the UN issue certificates of the kind described in ¶¶ 15-16.
18. Upon information and belief, the letter described in ¶¶ 15-16 is false and bears no relation to any document actually issued by the UN.
19. None of the respondents have ever been registered with the Division, Securities and Exchange Commission, Commodities and Futures Trading Commission, or Financial Regulatory Authority.
20. Neither FX-Bitrade nor its principals or affiliates were associated with PayPal in any capacity.

B. Conclusions of Law

Legal Authority and Jurisdiction

21. The Administrator has legal authority and jurisdiction over the conduct described above, pursuant to Wis. Stats. Ch. 551 and the rules and orders promulgated thereunder.
22. The FX-Bitrade transactions were investment contracts as defined by Wis. Stat. § 551.102(28)(d)(1), because Investor TK invested in a common enterprise with the

² Division staff performed a Google search for “Rita Micheal Scoth”, and found only one search result, <https://bitminersfx.com/security%20insurance%20%20BTMINERSFX.pdf>, which contained a purported March 18, 2014 letter from Scoth. Scoth was listed as “Director of Investment Management” for the “United States of America Securities and Exchange Commission”. The letter concerned a purported company named “BITMINERSFX LTD.” Division staff performed an online search for “Bitminersfx Ltd.” The first two results were for bitminersfx.com. The contact page falsely lists their address to be “322 hart senate building Washington D.C”, which is a building for the United States Senate.

expectation of profits to be derived through the essential managerial efforts of someone other than himself.

23. Investment contracts are included in the definition of security under Wis. Stat. § 551.102(28)(d)(1).
24. Pursuant to Wis. Stat. § 551.301(1), it is unlawful to offer or sell a security that is not registered under Ch. 551, federally covered, or exempted from registration under Ch. 551.
25. Pursuant to Wis. Stat. § 551.401(1), it is unlawful for a person to transact business in Wisconsin as a broker-dealer unless the person is registered under Ch. 551 as a broker-dealer or is exempt from registration as a broker-dealer under Ch. 551.
26. As described above in ¶¶ 1-20, the Respondents acted as a broker-dealer.
27. Pursuant to Wis. Stat. § 551.501(2), it is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly, to make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

Violations

28. Through the conduct described above in ¶¶ 1-20, Smith and FX-Bitrade violated Wis. Stat. § 551.301 when they offered and sold securities in Wisconsin without those securities being registered or exempted from registration.
29. Through the conduct described above in ¶¶ 1-20, Smith and FX-Bitrade violated Wis. Stat. § 551.401(1) when they transacted business as a broker-dealer in Wisconsin without being registered or exempted from registration under Ch. 551.
30. Through the conduct described above in ¶¶ 1-20, Smith and FX-Bitrade violated Wis. Stat. § 551.501(2) when they offered and sold securities while misrepresenting to investors that FX-Bitrade was affiliated with PayPal when in fact, it had no relationship with PayPal.

II.

In view of the above findings of fact and conclusions of law, the Administrator deems it necessary and appropriate in the public interest and for the protection of investors, and pursuant to its legal authority and jurisdiction under Ch. 551, to wit Wis. Stat. § 551.604, to issue the following orders and notices:

A. Summary Orders issued pursuant to Wis. Stat. § 551.604(2)

- (a) IT IS ORDERED summarily that RESPONDENTS, their agents, servants, officers, employees, successors, affiliates, and every entity and person directly or indirectly controlled or organized by or on behalf of any RESPONDENT, shall cease and desist

from making or causing to be made to any person or entity in Wisconsin any further offers or sales of securities unless and until such securities qualify as federal covered securities, federal exempt securities or are registered under Ch. 551 or successor statute, pursuant to Wis. Stat. §§ 551.604(1)(a) and (2).

- (b) IT IS FURTHER ORDERED that all exemptions from registration set forth at Ch. 551 or successor statute that might otherwise apply to any offer or sale of any security of or by any of the RESPONDENTS, their agents, servants, officers, employees, successors, affiliates, and every entity and person directly or indirectly controlled or organized by or on behalf of any RESPONDENT, are hereby revoked, pursuant to Wis. Stats. §§ 551.604(1)(b) and (2).
- (c) IT IS FURTHER ORDERED that all exemptions from registration set forth in Wis. Stat. §§ 551.201 and 551.202 that may otherwise apply to a specific security, transaction or offer of or by RESPONDENTS, their agents, servants, officers, employees, successors, affiliates, and every entity and person directly or indirectly controlled or organized by or on behalf of RESPONDENTS, are hereby revoked, pursuant to Wis. Stats. §§ 551.604(1)(c) and (2).
- (d) IT IS FURTHER ORDERED summarily that RESPONDENTS, their successors, affiliates, controlling persons, officers, agents, servants, employees and every entity and person directly or indirectly controlled or hereafter organized by or on behalf of any RESPONDENT, are prohibited from violating Wis. Stat. § 551.501 or successor statute.
- (e) IT IS FURTHER ORDERED summarily that RESPONDENTS, their successors, affiliates, controlling persons, officers, agents, servants, employees, and every entity and person directly or indirectly controlled or hereafter organized by or on behalf of either RESPONDENT, are prohibited from violating Ch. 551 or successor statute that might otherwise apply to any offer or sale of a security of or by RESPONDENTS.
- (f) PLEASE TAKE NOTICE that the summary orders of the Administrator are effective as of the issuance of this order, pursuant to Wis. Stat. § 551.604(2).

B. Service of Order

- (g) IT IS FURTHER ORDERED that this order shall be sent promptly by certified mail to each party named in the order at his or her last known address or to the party's attorney of record or shall be personally served upon the party or the party's attorney of record, pursuant to Wis. Admin. Code § DFI-Sec. 8.06. This order shall also be served upon the office of the administrator pursuant to Wis. Stat. § 551.611.
- (h) PLEASE TAKE NOTICE that if service is by certified mail, the date of the service of this order is the date it is placed in the mail. If service is by personal service, the date of the service of this order is the date personal service is completed.

C. Notice of Hearing Rights

- (i) PLEASE TAKE NOTICE that you have the right to request a hearing. Every request for a hearing shall be in the form of a written petition filed with the Division, pursuant to Wis. Admin. Code § DFI-Sec. 8.01 and Wis. Stat. § 227.42. A petition for a hearing to review the order shall:
 - (1) Plainly admit or deny each specific allegation, finding or conclusion in the order and incorporated papers. However, if the petitioner lacks sufficient knowledge or information to permit an admission or denial, the petition shall so state, and that statement shall have the effect of a denial; and
 - (2) State all affirmative defenses. Affirmative defenses not raised in the request for hearing may be deemed waived.
- (j) PLEASE TAKE FURTHER NOTICE that you may file your written petition:
 - (1) By mailing the written petition to:
Division of Securities
Wisconsin Department of Financial Institutions
P.O. Box 1768
Madison, Wisconsin 53701-1768
 - (2) By delivering the written petition in person to:

Division of Securities
Wisconsin Department of Financial Institutions
4822 Madison Yards Way, North Tower, 4th Floor
Madison, Wisconsin 53705
 - (3) By faxing the written petition to 608-264-7979.
- (k) PLEASE TAKE FURTHER NOTICE that the petition for hearing must be filed with the Division. Pursuant to Wis. Stat. § 551.102(8), "filing" means "receipt." Therefore, a petition is not "filed" with the Division until it is actually "received" by the Division. If the Division does not receive your written petition before midnight on the 30th day after the date of service of this order, your right to a hearing will be waived and the Summary Order shall become final by operation of law.
- (l) PLEASE TAKE FURTHER NOTICE that, within 15 days after receipt of a request in a record from you, the matter will be scheduled for a hearing or other public administrative proceedings, pursuant to Wis. Stats. §§ 551.604(2) and (3).
- (m) PLEASE TAKE FURTHER NOTICE that if you do not request a hearing and none is ordered by the Administrator within 30 days after the date of service of this order, the findings of fact, conclusions of law, and summary and proposed orders sought in the

statements in the order, becomes final as by operation of law, pursuant to Wis. Stat. § 551.604(2), and the order may be filed as a certified final order with the clerk of a court of competent jurisdiction pursuant to Wis. Stat. § 551.604(6).

- (n) PLEASE TAKE FURTHER NOTICE violations of this order may be enforced by any investor, or by the Division pursuant to Wis. Stat. § 551.604(7) whether acting in its own right or on behalf of the investor, by petitioning any court of competent jurisdiction to enforce the terms of the order.
- (o) PLEASE TAKE FURTHER NOTICE failure to provide a copy of this Order to prospective investors may be a material misrepresentation in violation of Ch. 551 and this Order.
- (p) PLEASE TAKE FURTHER NOTICE that any willful violation of an Order issued by the Division under Ch. 551 is a criminal offense punishable under the provisions of Wis. Stat. § 551.508.

EXECUTED at Madison, Wisconsin, and effective on this 27th of January, 2021.



Leslie M. Van Buskirk

Leslie M. Van Buskirk
Administrator

Division of Securities
State of Wisconsin
Department of Financial Institutions
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