UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 99676 / March 5, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-21891

In the Matter of **ShapeShift AG,** **Respondent.**	**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 (the "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 (the "Exchange Act") against ShapeShift AG ("Respondent" or "ShapeShift").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") 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 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 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (the "Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Summary

1. From August 2014 until early 2021, ShapeShift operated an online platform through which it bought and sold crypto assets from and to users. At its peak, the ShapeShift platform allowed customers to effect exchanges of at least 79 crypto assets. ShapeShift acted as a market-maker for these assets by serving as the counterparty to every transaction, marketing itself as a crypto "vending machine." ShapeShift generated revenue by effecting exchanges with customers at an exchange rate favorable to ShapeShift, generally by charging its customers more for the crypto assets than it paid to acquire them (i.e., through the "spread" on its customer transactions).

2. The crypto assets bought and sold by ShapeShift included crypto assets that were offered and sold as securities as defined in Section 3(a)(10) of the Exchange Act. *See also 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). ShapeShift's operations, as discussed further below, met the criteria for a dealer under Section 3(a)(5)(A) of the Exchange Act, so ShapeShift was required to register as a dealer with the Commission. It failed to do so, thereby violating Section 15(a) of the Exchange Act.

Respondent

3. ShapeShift is a privately held company incorporated in Switzerland and formerly operated out of Denver, Colorado, including out of an office located there from October 2017 through at least February 2020. It was founded on July 1, 2014. It operated ShapeShift.io—an online platform through which until early 2021 customers could buy and sell certain crypto assets. On July 14, 2021, ShapeShift announced that it was dissolving its corporate entity. ShapeShift does not currently have any revenue or full-time employees.

Background

A. ShapeShift's Dealer Operations

4. After its launch on August 1, 2014, ShapeShift.io allowed users to trade certain crypto assets owned by the investor for other crypto assets owned by ShapeShift. ShapeShift did not arrange exchanges between customers, but instead effected exchanges from its own inventory, serving as the customer's counterparty in every transaction (*i.e.*, ShapeShift purchased the crypto asset that the customer sought to sell and sold to the customer the crypto asset that the customer sought to buy).

[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.

5. To conduct a transaction, a ShapeShift customer would navigate to ShapeShift.io, select the crypto asset pair they wished to exchange, and the platform would generate an exchange rate for the pair. The customer could accept or decline the transaction at the stated exchange rate. If the customer accepted, the customer would send their crypto assets to ShapeShift from the customer's external wallet, and ShapeShift would send a corresponding amount of its crypto assets from ShapeShift's wallet to the customer's external wallet. ShapeShift did not accept or exchange any fiat currency.

6. ShapeShift's revenue generally came from the spread it would charge on each customer transaction.

7. ShapeShift regularly bought and sold crypto assets for and from its own accounts, carrying inventory in—and holding itself out to customers as willing to buy and sell—the crypto assets offered on ShapeShift.io. At ShapeShift.io's peak, ShapeShift engaged in as many as 20,000 daily transactions, and customers could exchange at least 79 crypto assets.

8. The crypto assets offered by ShapeShift included those that were offered and sold as investment contracts and, therefore, securities, under *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946).

9. ShapeShift never registered as a dealer with the Commission or operated pursuant to any exception or exemption from registration.

B. ShapeShift's Dissolution

10. In January 2021, ShapeShift announced that it would be changing its business model. Customers would no longer be able to exchange crypto assets directly through the ShapeShift.io platform, and ShapeShift would no longer act as the counterparty to any customer transactions.

11. On July 14, 2021, ShapeShift announced that it was winding down its corporate structure.[2]

Violations

12. Section 3(a)(5)(A) of the Exchange Act defines a "dealer" as "any person engaged in the business of buying and selling securities . . . for such person's own account through a broker or otherwise." Based on the conduct described above, ShapeShift was a dealer and, as a result, violated Section 15(a) of the Exchange Act, which provides that, absent an exception or exemption, it is unlawful for any "dealer" to "make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to

[2] This Order applies only to ShapeShift's operations as a dealer prior to early 2021, and does not address any other conduct.

induce the purchase or sale, of any security" unless the dealer is registered in accordance with Section 15(b) of the Exchange Act.

IV.

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

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 15(a) of the Exchange Act.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of $275,000 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). 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:

(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 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 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 ShapeShift as a Respondent in these proceedings, and identifying the file number of these proceedings. A copy of the cover letter and check or money order must be sent to Sheldon L. Pollock, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 100 Pearl Street, Suite 20-100, New York, NY 10004.

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 (a "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 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