SECURITIES EXCHANGE ACT OF 1934
Release No. 84553 / November 8, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18888

In the Matter of ZACHARY COBURN, **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 ("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 Zachary Coburn ("Coburn" or "Respondent").

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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, 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 ("Order"), as set forth below.

III.

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

<u>Summary</u>

1. As described more fully below, EtherDelta is an online platform that allows buyers and sellers to trade certain digital assets – Ether and "ERC20 tokens" – in secondary market trading. ERC20 tokens refer to digital assets issued and distributed on the Ethereum Blockchain using the

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[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.

ERC20 protocol, which is the standard coding protocol currently used by a significant majority of issuers in Initial Coin Offerings ("ICOs").[2]

2. EtherDelta's website, launched by Coburn on July 12, 2016, provides a user-friendly interface to EtherDelta and resembles online securities trading platforms. For example, the website makes token "pairs"[3] available for trading, provides access to the EtherDelta order book, and displays the current, top 500 firm bids and offers by symbol, price, and size. The website also displays account information for users of the EtherDelta platform ("Users") (tracked by the User's Ethereum address and maintained in an internal ledger) and provides fields for Users to input trading interest in any token pair. Users may enter orders to buy or sell specified quantities of any ERC20 token at a specified price (in Ether) and with a specified time-in-force. The website also displays to Users market depth[4] charts and a list of confirmed trades.

3. On July 25, 2017, the Commission issued 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) (the "DAO Report"). In the DAO Report, the Commission advised that a platform that offers trading of digital assets that are securities and operates as an "exchange," as defined by the federal securities laws, must register with the Commission as a national securities exchange or be exempt from registration.

4. From July 12, 2016 to December 15, 2017 (the "Relevant Period"), more than 3.6 million buy and sell orders in ERC20 tokens that included securities as defined by Section 3(a)(10) of the Exchange Act were traded on EtherDelta, of which approximately 92% (3.3 million) were traded during the period following the DAO Report.

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[2] An ICO is a term that describes the offer and sale of digital assets issued and distributed on a blockchain. A blockchain is a type of distributed ledger, or peer-to-peer database spread across a network, that records all transactions in the network in theoretically unchangeable, digitally-recorded data packages called blocks. Each block contains a batch of records of transactions, including a timestamp and a reference to the previous block, linking the blocks together in a chain. The system relies on cryptographic techniques for secure recording of transactions. A blockchain can be shared and accessed by anyone with appropriate permissions. The Ethereum Blockchain is an open, or permissionless, blockchain that is a record of events resulting from the execution of code (smart contracts) on the Ethereum Blockchain. ERC20 refers to a specific Ethereum token issuing protocol, formally adopted by the Ethereum network in September 2017, and used on the Ethereum Blockchain. (ERC stands for Ethereum Request for Comments and 20 is the unique identification used to distinguish this coding standard from other standards.) The ERC20 token standard, created in November 2015, "allows any token on Ethereum to be re-used by other applications: from wallets to decentralized exchanges" and "provides basic functionality to transfer tokens, as well as allow tokens to be approved so they can be spent by another on-chain third party." See Fabian Vogelsteller and Vitalik Buterin, ERC-20 Token Standard, November 19, 2015, https://github.com/ethereum/EIPs/blob/master/EIPS/eip-20.md. The widespread adoption of the ERC20 token standard has also led developers to design applications, such as EtherDelta, that are compatible with any ERC20 token.

[3] Token pair refers to a trade between one digital asset and either another digital asset or fiat currency. On EtherDelta, the only token pairs available for trading were those between a particular ERC20 token and Ether.

[4] The term "market depth" refers to the number of open buy and sell orders for a particular token at different prices, and provides an indication of a particular token's liquidity.

5. As discussed further below, EtherDelta meets the criteria of an "exchange" as defined by Section 3(a)(1) of the Exchange Act and Rule 3b-16 thereunder. During the Relevant Period, EtherDelta was not registered with the Commission as a national securities exchange and it did not operate pursuant to any exemption from registration. As a result, and as discussed further below, Coburn should have known that his actions would contribute to EtherDelta's violations and thus, under Exchange Act Section 21C(a), caused EtherDelta to violate Section 5 of the Exchange Act.

<u>Respondent</u>

6. <u>Coburn</u>, age 31, is a resident of Chicago, Illinois. From September 2010 to June 2015, Coburn was a registered representative with a Chicago-based options trading firm that was a broker-dealer registered with the Commission. In approximately June 2015, Coburn left that firm to pursue his own business interests. In March 2016, he created EtherOpt, an online platform for trading options and, in July 2016, he created EtherDelta.[5] In November 2017, Coburn entered into an agreement to sell EtherDelta to foreign buyers and, as of December 16, 2017, Coburn ceased to collect any fees from Users of the platform. Coburn does not currently operate EtherDelta.

<u>Facts</u>

<u>The EtherDelta Website and Hours of Operations</u>

7. As seen below, the EtherDelta website had features similar to online securities trading platforms. For each Ether/ERC20 token pair available for trading on EtherDelta, the website provided access to the EtherDelta order book and displayed the top 500 orders to buy and orders to sell, sorted by price and color (buy orders are green and sell orders are red). The website provided User account information and provided fields for Users to input deposit, withdrawal, and trading interest. The website also provided Users' daily transaction volumes per token, market depth charts, and a list of User's confirmed trades.

8. During the Relevant Period, the EtherDelta platform was available to anyone, including U.S. persons, and had no specified hours of operation. As long as EtherDelta's website was operational, Users could interact directly with the EtherDelta smart contract or enter orders and trade tokens through the website 24 hours a day, seven days a week.

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[5] In late 2016, Coburn shut down EtherOpt's operations.
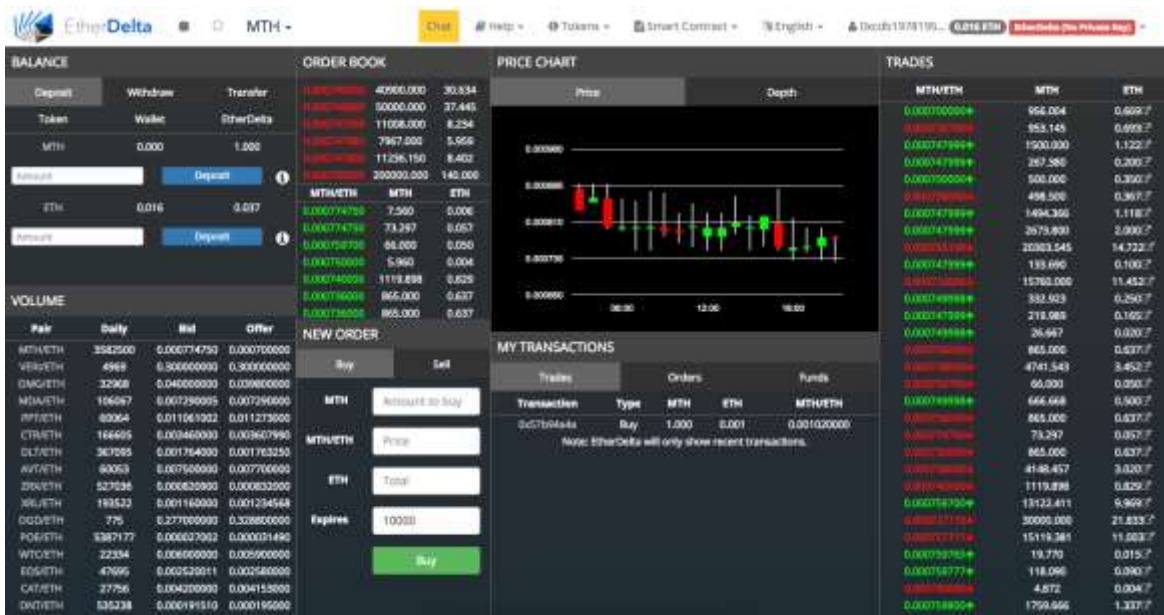
The EtherDelta Smart Contract

9.   EtherDelta's business operations are defined and executed by EtherDelta's "smart contract"[6] that runs on the Ethereum Blockchain. The EtherDelta smart contract consists of coded functions[7] that allow for, among other things, the trading of any Ether/ ERC20 token pair.[8] On July 8, 2016, Coburn deployed the code for the first EtherDelta smart contract, written in the programming language Solidity, onto the Ethereum Blockchain. When it was deployed, the EtherDelta smart contract created an Ethereum Blockchain address, where the smart contract "resides."[9]

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[6] A "smart contract" has been defined as:

> a computerized transaction protocol that executes terms of a contract. The general objectives of smart contract design are to satisfy common contractual conditions (such as payment terms, liens, confidentiality, and even enforcement), minimize exceptions both malicious and accidental, and minimize the need for trusted intermediaries. Related economic goals include lowering fraud loss, arbitrations and enforcement costs, and other transaction costs.

See Nick Szabo, *Smart Contracts*, 1994, http://www.virtualschool.edu/mon/Economics/SmartContracts.html.

[7] A function is the name given to pieces of code or a group of programming statements for easy reference or use.

[8] Users who are nodes (or connected to nodes) on the Ethereum Blockchain can interact directly with the EtherDelta smart contract, which is publicly-available on github.com. Alternatively, during the Relevant Period, Users could interact with the EtherDelta smart contract through a user-friendly interface created by Coburn, called The EtherDelta Graphic User Interface ("EtherDelta GUI" or "website") (accessible at the URL www.etherdelta.com). EtherDelta's website, allowed Users to interact with the EtherDelta smart contract without having to be a node on the Ethereum Blockchain and without having to understand the details of blockchain technology.

[9] Only the person with access to the private key for the "administrator account" identified in the EtherDelta smart contract can alter the EtherDelta smart contract; this access was limited to changing the permissible fees or the

10.   Because the EtherDelta smart contract runs on the Ethereum Blockchain, every interaction with EtherDelta by a User requires the User to send a message to the Ethereum Blockchain mining network to be executed on the EtherDelta smart contract.[10] When Ethereum Blockchain miners run the EtherDelta smart contract, the smart contract applies a preexisting set of rules (i.e., its code) to given inputs. If the User's message results in a change of state to the Ethereum Blockchain, such as through a User request to move or withdraw ERC20 tokens to and from the EtherDelta smart contract, or through a User request to trade on the EtherDelta platform, among other things, the Ethereum Blockchain miners then record that change of state, i.e., reflecting the transfer of Ether and/or ERC20 tokens to and from addresses, to the Ethereum Blockchain. If the User's message does not result in a change of state, such as through a User request to check the balance of the User's Ethereum address on EtherDelta, there is no change of state recorded to the Ethereum Blockchain.

EtherDelta User Eligibility

11.   As a prerequisite for submitting an order to the platform, a User must first have an Ethereum wallet address that is capable of sending messages to the Ethereum Blockchain. Users may create a new wallet address through EtherDelta's website or by using other wallet software that is compatible with EtherDelta. Users trade on EtherDelta pseudonymously by using one or more Ethereum addresses, each a unique string of numbers and letters. Users must also demonstrate that they have available ERC20 tokens or Ether to trade on EtherDelta.

Tokens Eligible for Trading and EtherDelta's "Official Listings"

12.   Users may enter orders to buy or sell *any* token that is ERC20 compliant. Coburn purposely wrote the EtherDelta smart contract to include the ERC20 token coding standard and there are no rules set forth in the smart contract that limit a User from trading any particular ERC20 token on EtherDelta.

13.   During the Relevant Period, EtherDelta maintained a list of "official [token] listings, a select list of ERC20 Tokens that were available for trading on EtherDelta." Prior to identifying a token as an official listing, Coburn requested certain information from a token issuer (e.g., the token's name, associated website URL, and a paragraph describing the token) and performed his own due diligence on these tokens. Official listings appeared on a drop down menu on a sidebar

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address of the fee account. At all times during the Relevant Period, Coburn was the only person with access to that private key and therefore, was the only person that had the ability to alter the EtherDelta smart contract.

[10] Anyone can interact with the Ethereum Blockchain by transmitting a cryptographically-secured message to the Blockchain. That message can be "state-changing" in that it can request that a particular smart contract on the Ethereum Blockchain perform a certain function that results in a change of state of the Blockchain. A state-changing message is also referred to as a "Send." Alternatively, a message can simply request information already written to the Blockchain, and not result in a change to the state of the Blockchain. That type of message is referred to as a "Call." Any Send must first be validated and the resulting change of state recorded to the Blockchain by the "mining" activities of a network of Ethereum "miners," which are computing nodes on the Blockchain. A Send generally requires the payment of "gas," or a fee paid in Ether to the Ethereum miners. Generally (but not always), the speed at which a transaction is mined on the Ethereum Blockchain is determined by the amount of gas paid by the sender of a transaction to the mining network; the higher the gas price paid for the transaction, the faster a transaction is likely to be mined. The gas price is set by the sender at the time the message is sent to the network.

on EtherDelta's website for easy User accessibility. During the Relevant Period, EtherDelta had approximately 500 official token listings.

<center>The EtherDelta Order Book</center>

14. With respect to a given order, an EtherDelta User is identified as either a "maker" or "taker" on the EtherDelta platform. A maker is someone that posts an order to buy or sell a particular ERC20 token on the EtherDelta website, which signals to other Users their intention to trade a particular token at a specific price, size, and time. A taker is someone seeking to become the counterparty to a maker's order on the platform.

Order Types and Order Entry

15. The only order type available on EtherDelta is a limit order to buy or sell a token at a specific price. There are no market orders.[11] Users indicate their interest to buy or sell a token by entering a buy or sell order. At the time an order is entered, Users provide the following information onto the EtherDelta's website: token symbol, size, price and time-in-force (measured in "blocks").[12]

16. Unlike other operations on EtherDelta, entering an order on EtherDelta does not change the state of the Ethereum Blockchain and, as a result, there is no gas fee (paid in Ether to the Ethereum miners) associated with entering an order on EtherDelta. Rather, all orders are stored in EtherDelta's order book, which resides on a centralized server maintained by EtherDelta and not on the Ethereum Blockchain.[13] As discussed above, for each token pair, EtherDelta's website displays only the top 500 buy and sell orders, sorted by price and order type (buy or sell).

Order Execution and the Order Book

17. All orders on EtherDelta must be acted upon by a taker for a trade to occur. When a taker seeks to trade with a maker's order, the taker, through the EtherDelta website interface, clicks on an order displayed on EtherDelta's order book and enters the size of the order. This pairs the maker's cryptographically-signed intent to trade (i.e., the maker order) with the taker's cryptographically-signed intent to trade (i.e., the taker's order) and instructs the Ethereum Blockchain miners to run the EtherDelta smart contract, which automatically performs certain checks.

18. No further confirmation or action is required by the taker for the taker's message to be executed by the smart contract and for a trade to occur. The smart contract checks that the messages are valid (contain valid cryptographic signatures), confirms the conditions of the orders (i.e., orders have not expired or been canceled) and that both Users have sufficient funds and/or

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[11] A market order is an order to buy or sell a stock at the best available price.

[12] As blocks are written to the Ethereum Blockchain, they are sequentially numbered. A User can specify that an order expire after a certain numbered block is written to the Ethereum Blockchain.

[13] To promote trade volume, EtherDelta did not charge fees to enter maker orders.

tokens to complete the trade. If the messages are valid and there are sufficient funds and/or tokens, the trade is executed and the smart contract will update the smart contract's internal ledger to reflect the trade. The maker order will remain displayed on EtherDelta's website until the miners write the trade and post it to the Ethereum Blockchain. Thereafter, information displayed on the EtherDelta order book and website is updated.

19. When a taker clicks on a maker's order, this action will automatically result in a trade unless: (1) there are insufficient funds and/or tokens to complete the trade or pay the gas fee; (2) a competing taker's order is confirmed on the Blockchain first; (3) the maker's order has expired; or (4) the maker or taker's order has been cancelled.[14]

Notices to Users

20. During the Relevant Period, EtherDelta Users were kept apprised of key events and other announcements regarding the platform's operations through an official EtherDelta Twitter handle and Coburn's posts on Reddit.[15] Coburn also responded to User questions through an official "Gitter channel," a public internet forum for Users and EtherDelta representatives to post written questions and answers about EtherDelta's operations.

21. In posts on Reddit, Coburn explained that: "[a]t a high level, EtherDelta functions just like a normal exchange" and "[l]ike any other exchange, EtherDelta has an order book of resting orders."[16] However, unlike a traditional exchange, "[t]here is no 'exchange owner' holding your funds. Hence, [EtherDelta is] decentralized.... Centralized exchanges won't be able to show you verified business logic [in a publicly verified smart contract]."

Platform Fees

22. To promote trade volume, EtherDelta did not charge a fee to a maker for placing an order. Takers, on the other hand, were charged 0.3% of a transaction's trade volume.[17]

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[14] In order to test a trade's availability, Users can send a "Call" message to the Ethereum Blockchain requesting the size available for a particular order or the amount of funds and/or tokens available in a particular User's Ethereum address.

[15] See Coburn, *EtherDelta Guides for First Time Users*, Reddit, https://www.reddit.com/r/EtherDelta/comments/6hrxjw/etherdelta_guides_for_first_time_users/.

[16] See Coburn, *Smart contract overview*, Reddit, https://www.reddit.com/r/EtherDelta/comments/6kdiyl/smart_contract_overview/; Coburn, *Announcing EtherDelta: a decentralized trading platform for Ethereum tokens*, Reddit, https://www.reddit.com/r/ethtrader/comments/4sk25y/announcing_etherdelta_a_decentralized_trading/.

[17] Platform fees paid by Users were held in an Ethereum address identified as the "fee account" in the EtherDelta smart contract and were paid in the digital asset being given by the taker of a transaction.

<u>Legal Analysis</u>

A.   EtherDelta Violated Section 5 of the Exchange Act

23. Section 5 of the Exchange Act makes it unlawful for any broker, dealer, or exchange, directly or indirectly, to effect any transaction in a security, or to report any such transaction, in interstate commerce, unless the exchange is registered as a national securities exchange under Section 6 of the Exchange Act, or is exempted from such registration. Section 3(a)(1) of the Exchange Act defines an "exchange" as "any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange." 15 USC § 78c(a)(1).

24. Exchange Act Rule 3b-16(a) provides a functional test to assess whether a trading system meets the definition of exchange under Section 3(a)(1) of the Exchange Act. Exchange Act Rule 3b-16(a) provides that an organization, association, or group of persons shall be considered to constitute, maintain, or provide "a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by an exchange" as those terms are used in Section 3(a)(1) of the Exchange Act if such an organization, association, or group of persons: (1) brings together the orders for securities of multiple buyers and sellers; and (2) uses established, non-discretionary methods (whether by providing a trading facility or by setting rules) under which such orders interact with each other, and the buyers and sellers entering such orders agree to the terms of the trade.[18]

25. A system that meets the criteria of Exchange Act Rule 3b-16(a), and is not excluded under Exchange Act Rule 3b-16(b), must register, pursuant to Section 5 of the Exchange Act, as a national securities exchange under Section 6 of the Exchange Act[19] or operate pursuant to an appropriate exemption. One of the available exemptions is for alternative trading systems ("ATSs").[20] Exchange Act Rule 3a1-1(a)(2) exempts from the definition of "exchange" under

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[18] <u>See</u> 17 CFR 240.3b-16(a). The Commission adopted Exchange Act Rule 3b-16(b) to explicitly exclude certain systems that the Commission believed did not meet the exchange definition. These systems include systems that merely route orders to other execution facilities and systems that allow persons to enter orders for execution against the bids and offers of a single dealer system. <u>See</u> Securities Exchange Act Rel. No. 40760 (Dec. 8, 1998), 63 FR 70844 (Dec. 22, 1998) (Regulation of Exchanges and Alternative Trading Systems, hereinafter "Regulation ATS Adopting Release"), at 70852.

[19] <u>See</u> 15 U.S.C. §§ 78e and 78f. A "national securities exchange" is an exchange registered as such under Section 6 of the Exchange Act.

[20] Rule 300(a) of Regulation ATS provides that an ATS is "any organization, association, person, group of persons, or system: (1) [t]hat constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of [Exchange Act Rule 3b-16]; and (2) [t]hat does not: (i) [s]et rules governing

Section 3(a)(1) an organization, association, or group of persons that complies with Regulation ATS.[21] Regulation ATS requires an ATS to, among other things, register as a broker-dealer, file a Form ATS with the Commission to notice its operations, and establish written safeguards and procedures to protect subscribers' confidential trading information. An ATS that complies with Regulation ATS and operates pursuant to the Rule 3a1-1(a)(2) exemption would not be required by Section 5 to register as a national securities exchange.

26. EtherDelta satisfied the criteria of Exchange Act Rule 3b-16(a) and is not excluded under Rule 3b-16(b). During the Relevant Period, EtherDelta operated as a market place for bringing together the orders of multiple buyers and sellers in tokens that included securities as defined by Section 3(a)(10) of the Exchange Act. The purchasers of such digital tokens invested money with a reasonable expectation of profits, including through the increased value of their investments in secondary trading, based on the managerial efforts of others. *See* DAO Report; *SEC v. Edwards,* 540 U.S. 389, 393 (2004); *SEC v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946). As discussed above, EtherDelta brought together orders by receiving and storing orders in tokens in the EtherDelta order book and displaying the top 500 orders (including token symbol, size, and price) as bids and offers on the EtherDelta website. EtherDelta provided the means for these orders to interact and execute through the combined use of the EtherDelta website, order book, and pre-programmed trading protocols defined in the EtherDelta smart contract. These established non-discretionary methods allowed Users to agree upon the terms of their trades in tokens on EtherDelta during the Relevant Period.

27. Despite operating as a Rule 3b-16(a) system, EtherDelta did not register as a national securities exchange or operate pursuant to an exemption from such registration. Accordingly, EtherDelta violated Section 5 of the Exchange Act.

B. Coburn Caused EtherDelta to Violate Section 5 of the Exchange Act

28. During the relevant period, Coburn founded EtherDelta, wrote and deployed the EtherDelta smart contract to the Ethereum Blockchain, and exercised complete and sole control over EtherDelta's operations, including over the operations constituting the violations described above. Coburn should have known that his actions would contribute to EtherDelta's violations and thus, under Exchange Act Section 21C(a), caused EtherDelta to violate Section 5 of the Exchange Act.

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the conduct of subscribers other than the conduct of subscribers' trading on such [ATS]; or (ii) [d]iscipline subscribers other than by exclusion from trading."

[21] See 17 CFR 240.3a1-1(a)(2). Rule 3a1-1 also provides exemptions from the definition of "exchange" for any ATS operated by a national securities association, and any ATS not required to comply with Regulation ATS pursuant to Rule 301(a) of Regulation ATS. See 17 CFR 240.3a1-1(a)(1) and (3). Neither of these exemptions are applicable in the present matter.

29. In determining to accept the Offer, including the decision not to impose a greater penalty, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff. Coburn's efforts facilitated the staff's investigation involving an emerging technology.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest 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 Coburn cease and desist from committing or causing any violations and any future violations of Section 5 of the Exchange Act.

B. Respondent Coburn shall pay disgorgement of $300,000 and prejudgment interest of $13,000, for a total of $313,000, to the Securities and Exchange Commission for transfer to 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.

C. Respondent Coburn shall, within 10 days of this Order, pay a civil money penalty of $75,000 to the Securities and Exchange Commission for transfer to 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.

D. Payments under this Order 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 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 Zachary Coburn 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 Robert A. Cohen, Chief, Cyber Unit,

Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549, or such other person or address as the Commission staff may provide.

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, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he 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 he 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.

F.   Respondent acknowledges that the Commission is not imposing a civil penalty in excess of $75,000 based upon his cooperation in a Commission investigation and his agreement to testify in any related enforcement action. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay an additional civil penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether he knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

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 Coburn, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Coburn 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 Coburn 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