

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11179 / April 28, 2023

SECURITIES EXCHANGE ACT OF 1934
Release No. 97401 / April 28, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21398

In the Matter of

**Up, Global SEZC, Coinme Inc., and
Neil Bergquist**

Respondents.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 8A OF THE SECURITIES ACT
OF 1933 AND 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 public cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Up, Global SEZC (“Up Global”), Coinme Inc. (“Coinme”), and Neil Bergquist (“Bergquist”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have each submitted an Offer 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, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and 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 Respondents' Offers, the Commission finds that:

Summary

1. From October 16, 2017, to December 15, 2017, Respondents conducted an initial coin offering that they described as a "token sale," in which they offered and sold securities to the public in the United States and abroad, in the form of a crypto asset called "UpToken," which was issued on the Ethereum blockchain (the "ICO").

2. The purpose of the ICO was to raise funds to globally expand Coinme's bitcoin Automated Teller Machine ("ATM") network, which at the time of the ICO already consisted of 39 ATMs, most of which were located in the Pacific Northwest. Following the ICO, Coinme used ICO proceeds for several corporate purposes, including deploying an additional 30 Coinme ATMs. UpToken holders could, and did, receive certain benefits, including discounted transaction fees and rewards in the form of UpToken when they used Coinme's ATMs. In total, in exchange for UpToken, Respondents raised crypto assets during the ICO valued at approximately \$3.65 million at the time of receipt.

3. Based on the facts and circumstances set forth below, UpToken were offered and sold as investment contracts and therefore securities under *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). As discussed in more detail below, an UpToken investor would have had a reasonable expectation of obtaining a future profit from the rise in value of UpToken based upon Respondents' efforts.

4. Respondents violated Sections 5(a) and 5(c) of the Securities Act by offering and selling securities without having a registration statement filed or in effect with the Commission or qualifying for an exemption from registration. Up Global and its Chief Executive Officer ("CEO"), Neil Bergquist, also violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder because they made materially false and misleading statements, and engaged in other fraudulent conduct, in the offer and sale, and in connection with the purchase and sale, of UpToken.

5. Up Global and Bergquist claimed that Up Global would limit the supply of UpToken and that Coinme would create constant demand for UpToken because Coinme would need to purchase UpToken after the ICO to fund an ATM rewards program in which Coinme would return 1% of an individual's total Coinme ATM transaction amount back to them in the form of UpToken. Up Global and Bergquist told prospective UpToken investors that the limited supply and constant demand for UpToken would lead to an increase in UpToken's price. These claims were misleading because unbeknownst to UpToken investors, Bergquist and Up Global took steps before and throughout the ICO to obtain a supply of UpToken that would substantially reduce Coinme's need to purchase UpToken after the ICO for the ATM rewards program. They

obtained this supply of UpToken, first, by directing an internal transaction between Up Global and Coinme and, second, by directing a round-trip transaction between Up Global and an unaffiliated Hong Kong-based entity.

6. Bergquist and Up Global also publicly touted during the ICO amounts raised in the ICO that they knew, or were reckless in not knowing, were misleading because they included the two transactions through which they obtained a supply of UpToken for Coinme, neither of which consisted of money raised for Coinme. Up Global and Bergquist also knowingly or recklessly stated amounts raised that included purchases that had not been made at the time of their statements and were based on the crypto asset exchange rates at the time, which had become more favorable than the exchange rates at the time Up Global received crypto assets from UpToken investors. Bergquist and Up Global touted amounts raised that were as high as \$18.9 million. Excluding the two transactions and applying the value of the crypto assets when they were received however, the amount raised during the ICO was approximately \$3.65 million worth of crypto assets.

Respondents

7. **Up Global** is a Cayman Islands Special Economic Zone Company (“SEZC”) that was incorporated in September 2017. It is a wholly-owned subsidiary of Coinme. Neither Up Global nor its securities have ever been registered with the Commission in any capacity.

8. **Coinme** is a Delaware corporation with its principal place of business in Seattle, Washington. Coinme commenced operations in February 2014 as a company registered in Washington State under the name “Western Coin, LLC.” In February 2017, it converted to a Delaware corporation under the name “Coinme Inc.” Coinme currently has 59 employees and 26 contractors. Neither Coinme nor its securities have ever been registered with the Commission in any capacity.

9. **Bergquist**, age 35, is a resident of the Seattle area in Washington State. He has been the CEO of Coinme since February 2014 and of Up Global since September 2017. Bergquist has never held securities licenses or been associated with any entity registered with the Commission in any capacity.

Respondents Conducted The ICO To Raise Money For Coinme’s Bitcoin ATM Business

10. In the fall of 2017, Coinme was a licensed money services business, had approximately 20 employees and contractors, operated 39 bitcoin ATMs, and provided crypto asset wallet services. Customers could buy or sell bitcoin at Coinme ATMs with U.S. dollars. Bitcoin purchased through a Coinme ATM was deposited into a crypto asset wallet associated with the customer that Coinme hosted. Coinme’s engineers wrote the software used to operate the company’s bitcoin ATMs and its crypto asset wallets. At this time, Coinme’s ATMs averaged approximately \$100,000 in monthly transaction volume per ATM. The company, however, was not profitable and was generating substantial losses.

11. Respondents never provided UpToken investors with information concerning Coinme's financial condition or significant existing debts. Issuers of securities include such information in the registration statement that they file when soliciting public investment, but Respondents never filed a registration statement for their offer and sale of UpToken. From its founding in 2014 through the end of the ICO, Coinme's operating expenses exceeded its total revenue and in 2017 its operating expenses were more than three times larger than its total revenue. In Coinme's 2017 financial statements, completed in March 2019, its auditor noted that from inception and until the ICO, Coinme had primarily relied on debt and equity financing to fund its operations.

12. In addition to venture capital funding, Coinme relied on debt financing for its operations, including three loans that it entered into shortly before the ICO. On June 30, 2017, Coinme borrowed from one of its directors 111 bitcoin (worth approximately \$278,000 as of the date of the loan), for which repayment was due in bitcoin, without interest, within one year. In October 2017, Coinme took out two short-term loans from third parties, one for 2,000 ether (worth approximately \$667,000 as of the date of the loan) and one for \$670,000 in U.S. dollars, for which repayment was due by the end of the ICO, in ether and U.S. dollars respectively, plus 10% interest. Coinme repaid the three loans after the ICO using some of the ICO proceeds totaling more than \$3.2 million based on the value of the crypto assets at time of repayment.

13. In September 2017, Up Global published a white paper (the "white paper") for potential investors in UpToken, describing Coinme's ATM business, touting the professional experience of Bergquist and other key Coinme personnel, and detailing Coinme's plans to improve and expand its ATM network. The white paper and other information provided to potential UpToken investors did not, however, disclose any financial information, including the fact that Coinme was incurring operating losses that were several times larger than its revenue.

Respondents Marketed UpToken As An Investment

14. Up Global and Bergquist offered and sold UpToken seeking funds to expand Coinme's ATM network and to create "the largest global crypto ATM network in the world." The white paper emphasized the efforts that Coinme would undertake to make the business successful, highlighting that "our engineers write all aspects of the software code," and that "Coinme plans to continue to acquire new hardware, develop software to support new cryptocurrencies, integrate additional payment methods, and maintain the infrastructure, operational management, regulatory compliance, state and federal licensing, and other business-related activities that Coinme's customers have come to expect."

15. In the white paper, Up Global and Bergquist also cited the following four benefits that would be provided to UpToken holders: (1) a customer rewards program that returns 1% of an individual's total ATM transaction amount back to them in the form of UpToken, (2) a 30% discount on ATM transaction fees when transaction fees are paid using UpToken, (3) a customer voting protocol to determine new crypto assets to add to the Coinme ATM platform; and (4) the ability for customers to sell their UpToken to Coinme at any of the Coinme ATMs for U.S. dollars. Though an Up Global terms of sale document provided to UpToken investors stated that UpToken was "not for speculative investment purposes or financial gain," Respondents marketed

UpToken as an investment.

16. Up Global and Bergquist took steps to support a market for UpToken. During the ICO, Up Global and Bergquist told prospective UpToken investors that UpToken would soon be available to buy and sell on secondary crypto asset trading platforms and on Coinme's ATMs. Also during the ICO, Coinme discussed with crypto asset trading platforms making UpToken available for trading. Coinme first applied to make UpToken available for trading approximately two weeks after the ICO concluded and some secondary platforms made UpToken available for trading by March 2018, about three months after Up Global began distributing UpToken to UpToken investors.

17. As part of the public UpToken offering terms, neither Up Global nor Coinme received a free or discounted allotment of UpToken. Instead, Up Global and Bergquist told prospective UpToken investors that Coinme would have to buy UpToken after the ICO in the secondary market (including from those who had invested during the ICO) equivalent to 1% of the total Coinme ATM transaction volume "forever," in order to fund the rewards program and would therefore generate constant demand that would increase the price of UpToken. Up Global and Bergquist created an expectation among prospective purchasers that the price of UpToken would appreciate as the ATM network expanded and ATM transaction volume increased. During the ICO, Up Global and Bergquist projected that in 2018 alone, Coinme would deploy over 1,000 ATMs, exceed \$1 billion in annual transaction volume, and purchase between \$10 and \$18 million dollars' worth of UpToken, thus creating demand. Up Global and Bergquist also projected that hundreds of thousands of Coinme customers would create additional demand by buying UpToken on Coinme's ATMs.

18. Up Global offered to all prospective investors a price discount from the base price of \$0.10 per token of up to 20% for early ICO investments and a 30% discount for ICO investments over \$1 million. This would have incentivized investors to purchase UpToken early in the ICO and in substantial amounts, and created the appearance that investors would soon profit from having purchased UpToken at a discount.

19. Up Global and Bergquist also told prospective UpToken investors that there was a cap on the amount of UpToken available for sale, and that any unsold UpToken would be destroyed. At the beginning of the ICO, the cap was \$100 million; later it was reduced to \$35 million. These steps, which limited the supply of UpToken, would have led UpToken investors to reasonably conclude that they could profit if there were increased demand for UpToken.

The ICO Generated Fewer UpToken Purchases Than Expected

20. On October 16, 2017, Coinme issued a press release announcing the start of the ICO and stating that after the first twelve hours of the ICO, the amount of UpToken available for

purchase would not exceed \$100 million. In the ensuing weeks, however, UpToken sales were below Respondents' expectations.

21. Attempting to raise more funds, Up Global twice extended the ICO, and Bergquist undertook a "roadshow" to offer and sell UpToken, including in New York, Hong Kong and several other locations. Up Global also lowered the amount of UpToken available for sale to \$35 million, in part because it determined that amount to be a more realistic funding goal that would allow it to expand its ATM network and in part because Respondents thought that UpToken investors would value owning a larger share of the available UpToken, which could spur investments.

Up Global And Bergquist Created A Materially False And Misleading Impression Of Demand For UpToken During The ICO

22. Leading up to and throughout the ICO, Bergquist, through Up Global, knowingly or recklessly took steps that misrepresented to the public the amount raised and the demand for UpToken to spur additional sales.

A. Up Global And Bergquist Created The Misleading Impression That \$1 Million Previously Borrowed By Coinme Was Raised In The ICO

23. Days before the start of the ICO, Bergquist proposed to a third party that the third party use \$1 million worth of bitcoin to purchase approximately 14.3 million UpToken, which Coinme would buy back at the end of the ICO for the same price, plus 10%. This transaction would create the misleading impression of a large third party purchase of, and demand for, UpToken, while also allowing Coinme to acquire 14.3 million UpToken at only approximately one-tenth of the \$1 million that ICO investors would have to pay to obtain the same amount of UpToken. While that proposed transaction did not come to fruition, Bergquist and Up Global, as detailed further below, undertook other actions throughout the ICO that misrepresented the demand for UpToken to potential UpToken investors and that provided Coinme with a large supply of UpToken at a discount to the price paid by UpToken investors. These actions were inconsistent with Up Global's and Bergquist's statements to potential UpToken investors regarding the purported demand for UpToken and corresponding price increase that would result from Coinme needing to purchase large amounts of UpToken in the secondary market after the ICO.

24. After the third party did not move forward with the \$1 million round-trip transaction, Bergquist directed a similar, internal transaction, whereby Coinme transferred \$1 million worth of its crypto assets to the crypto asset wallets that Up Global used to receive proceeds from the ICO. Bergquist stated in an internal email that this transfer was beneficial for Coinme and Up Global because Coinme "gets the \$1M discount AND so that the wallets show that we have momentum and are bringing in money (which I'm learning will bring in more money)."

25. On November 14, 2017, at Bergquist's direction, Coinme sent 160 bitcoin—valued at the time at just over \$1 million and largely derived from crypto assets that Coinme had

borrowed in June and October 2017, as described above—from one of its crypto asset wallets to an Up Global crypto asset wallet used to receive investor funds during the ICO. Up Global, applying the discounted rate of \$0.07 per token, then sent 14.46 million UpToken to Coinme. Up Global and Bergquist knowingly or recklessly created a misleading impression that a third party had made a large UpToken purchase in the ICO by including the 160 bitcoin both on the public counter on Up Global’s website that reported the amount raised and when telling potential investors how much had been raised during the ICO, without disclosing that the amount included Coinme’s own funds. Moreover, this internal transaction made misleading Up Global’s and Bergquist’s statements to UpToken investors that Coinme would purchase UpToken in the secondary market after the ICO to fund the ATM rewards program.

B. Up Global And Bergquist Falsely Included Nearly \$10 Million From A Fraudulent Round-Trip Transaction In The Amount Raised In The ICO

26. In the final week of the ICO in December 2017—as Bergquist was telling potential UpToken investors that Coinme would buy large amounts of UpToken in 2018 and beyond to fund the ATM rewards program and that investors should buy UpToken immediately to avoid paying a “massive premium” for it on secondary trading platforms after the ICO concluded—Bergquist negotiated a 500 bitcoin round-trip transaction with an unaffiliated Hong Kong company (the “HK Company”). As with the earlier 160 bitcoin transaction, Up Global and Bergquist used this transaction to knowingly or recklessly create a false and misleading impression of the demand for UpToken and the success of the ICO. It also generated millions of UpToken for Coinme during the ICO at a large discount to the standard \$0.10 offering price paid by UpToken investors, and rendered Up Global’s and Bergquist’s statements about the scope and timing of Coinme’s need to purchase UpToken in the secondary market after the ICO misleading.

27. Initially, Bergquist attempted to convince the HK Company to invest in the ICO, but it declined to make an investment. Bergquist then negotiated and entered into an agreement through which the HK Company would temporarily place 500 bitcoin in a multi-signature crypto asset wallet over which the HK Company and Up Global jointly had control,¹ in exchange for a 25 bitcoin fee paid by Up Global and approximately 13 million UpToken.

28. On December 15, 2017, the last day of the ICO, the HK Company sent 500 bitcoin to the multi-signature crypto asset wallet. Bergquist directed a colleague to add the 500 bitcoin from the HK Company to the public counter on Up Global’s website tracking amounts raised in the ICO, but to do so gradually, in tranches, because “people are watching the counter religiously” and “[o]ptics are important.” During the last forty minutes of the ICO, the 500 bitcoin was added to the public counter in several different increments of approximately \$1 million to \$2 million each. Bergquist then told the colleague to “fix the counter at \$18,934,021.33.” He then also noted, “We need to publish the [address for the multi-signature crypto asset] wallet on the website somehow that has the 500BTC . . . People are going to investigate.”

¹ Two or more private keys are required to authorize and send any funds from a multi-signature crypto asset wallet.

29. On December 22, 2017, Up Global sent 13.27 million UpToken and, seven days later, 25 bitcoin of ICO proceeds (worth approximately \$358,000 at the time), to the HK Company. On January 4, 2018, Up Global sent 75.19 million UpToken to Coinme. The HK Company always maintained joint control with Up Global over the multi-signature crypto asset wallet that held the 500 bitcoin and never authorized the release to Up Global of the 500 bitcoin. The 500 bitcoin was sent back in full to the HK Company on January 17, 2018.

30. The net result of the round-trip transaction was that Up Global and Bergquist raised no money from the HK Company. To the contrary, they paid the HK Company 25 bitcoin from the ICO proceeds and 13.27 million UpToken, and sent 75.19 million UpToken to Coinme. These actions effectively allowed Coinme to obtain UpToken at an average price of \$0.005 per token, just one twentieth of the base price of \$0.10 per token that third parties paid for UpToken during the ICO.

31. Bergquist described the round-trip transaction internally as a “bargain,” telling a Coinme employee just hours after the ICO ended on December 15, 2017, that “25 BTC was a bargain for \$8M UP.” When describing the transaction to third parties, however, Bergquist and Up Global knowingly or recklessly misrepresented the 500 bitcoin received from the HK Company by describing it as an UpToken purchase made by the HK Company and by including the full amount when publicizing the total ICO raise.

32. Furthermore, approximately one year after the round-trip transaction, Bergquist, as CEO of Up Global, signed an “UpToken Purchase and Sale Agreement” with the HK Company. The agreement, which was not provided to investors, misrepresented the round-trip transaction by indicating that Up Global paid 525 bitcoin to purchase 75.19 million UpToken that the HK Company had purchased during the ICO. In fact, Up Global had released 500 bitcoin held in a jointly controlled multi-signature crypto asset wallet back to the HK Company, and had paid an additional 25 bitcoin plus approximately 13 million UpToken to the HK Company.

33. Throughout the ICO, Up Global and Bergquist emphasized the value that UpToken investors would receive from Up Global limiting the supply of UpToken and Coinme purchasing UpToken in the secondary market after the ICO. Although Coinme purchased approximately 14 million UpToken in the secondary market after the ICO, it obtained approximately 90 million UpToken through the 500 bitcoin round-trip transaction and the 160 bitcoin internal transaction. Those two transactions amounted to nearly half of the total supply of approximately 185 million UpToken that Up Global had created and did not destroy. Up Global’s and Bergquist’s actions during the ICO greatly increased Coinme’s supply of UpToken, at a significant discount to the standard \$0.10 price paid by most UpToken investors.

C. Up Global And Bergquist Inflated The Amounts Raised In The ICO In Public Communications

34. In a November 4, 2017 internal email, Bergquist wrote, “More recently I tell people we raised \$4M in the last two weeks in order to show that the sale has momentum and to

encourage them to experience Fear of Missing Out.” However, by November 4, 2017, Up Global had only received approximately \$2.7 million worth of crypto assets (valued as of the date of receipt).

35. In the last few days of the ICO, Up Global and Bergquist repeatedly made misleading public statements about the amount raised during the ICO to generate additional interest. On December 12, 2017, Up Global published a post on the social media site Twitter that stated, “We just passed \$10 million USD raised . . .” and later, “[I]ess than 72 hours left and \$11 million USD raised! Who is going to help us get to \$12 million?” That same day, Up Global published a press release announcing that over \$10 million of UpToken had been sold during the ICO. Bergquist helped draft the press release and approved the quote attributed to him stating that, “we’ve sold \$10 million in UpToken so far . . .”

36. In internal communications on December 12, 2017, a Coinme employee and a Coinme contractor discussed how Bergquist had calculated the \$10 million amount, and speculated that the number included purchases that had not taken place and funds that Coinme would need to repay as debt. The Coinme contractor stated, “Neil’s taking the risk . . . hoping that it drives additional sales . . . \$10M is a nice round number that people will pay attention to.”

37. In communications with potential UpToken investors from December 12, 2017 through the end of the ICO on December 15, 2017, Bergquist used the \$10 million number, and sometimes higher amounts, to solicit investments, stating for example, “the community has purchased in **excess of \$11 million USD of UpToken** and we are finalizing commitments which will see us reach the token sale hard cap [of \$35 million] shortly.” (emphasis in original). Up Global and Bergquist however knew, or were reckless in not knowing, that the UpToken purchase commitments that Up Global or Bergquist were finalizing were unlikely to result in \$35 million being raised in the ICO.

38. Following the ICO, Bergquist and Up Global—including on Up Global’s UpToken website and social media accounts—publicly stated that over \$18.9 million had been raised from selling UpToken in the ICO. A pitch deck that Bergquist provided to potential equity investors stated that the ICO generated \$13.5 million. However, Bergquist and other Coinme employees privately acknowledged that the total raise was substantially lower.

39. All of the numbers—from \$10 million to \$18.9 million—that Bergquist and Up Global touted as the amount raised were inflated. Over \$10 million of the purported \$18.9 million raised consisted of the 500 bitcoin round-trip transaction and the 160 bitcoin internal transaction. The \$10 million number announced on December 12, 2017 included both the 160 bitcoin internal transaction and purchases that Bergquist purportedly thought may be made in the future, but that had not in fact been made at the time of the public announcement. Further, both the \$10 million number and the \$18.9 million number were based on then-current crypto asset exchange rates at or around the time of the respective announcements, which made the dollar value of the crypto assets higher than the dollar value at the time the crypto assets were received from UpToken investors.

40. During the ICO, Up Global raised approximately \$3.65 million worth of crypto assets when valued as of the time of receipt and when excluding the 160 bitcoin internal transaction and the 500 bitcoin round-trip transaction with the HK Company.

Coinme And Bergquist Made Additional Unregistered UpToken Sales After The ICO

41. Following the ICO, Coinme continued to offer and sell UpToken without having a registration statement filed or in effect with the Commission or qualifying for an exemption from registration. Coinme also purchased UpToken in the secondary market and in private transactions after the ICO. In total, Up Global and Coinme received at least \$4.53 million in net proceeds as a result of their violative sales of UpToken during and after the ICO. Bergquist personally purchased and sold some UpToken after the ICO, with the value of his total purchases being larger than his total sales. Both Coinme's and Bergquist's unregistered UpToken sales included sales made on a crypto asset trading platform.

Coinme Ceased Operating Its ATMs and UpToken Holders No Longer Received Benefits

42. Following the ICO, Coinme used the ICO proceeds to deploy an additional 30 Coinme ATMs, to repay loans, and for other corporate purposes. Coinme held a supply of approximately 90 million UpToken and in or about June 2018, it began accepting UpToken from Coinme ATM customers who used it to pay ATM transaction fees. In total, Coinme ATM customers used approximately 750,000 UpToken to pay fees at a 30% discount. In or about January 2018, Coinme also began awarding UpToken to Coinme ATM customers. In total, Coinme awarded approximately 6.4 million UpToken to Coinme ATM customers. Although the voting protocol was enabled, it was never utilized.

43. In January 2019, Coinme pivoted its business model and now offers its services over a third-party's network of kiosks rather than Coinme's ATMs. By July 2019, Coinme had shut down all of its own ATMs. There is currently no use for UpToken, and UpToken holders can no longer use UpToken to obtain the benefits that were described in the UpToken offering materials.

Violations

44. As a result of the conduct described above, Respondents violated Section 5(a) of the Securities Act, which states that “[u]nless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly, (1) 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 (2) 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.”

45. As a result of the conduct described above, Respondents violated Section 5(c) of the Securities Act, which states that “[i]t 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.”

46. As a result of the conduct described above, Up Global and Bergquist violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

Undertakings

47. Respondent Coinme has undertaken to:

A. Destroy, and cause Up Global to destroy, all UpToken in the possession or control of Coinme or Up Global within 30 days of the date of this Order.

B. Within 10 days of the date of this Order, publish notice of the Order on Coinme’s and Up Global’s websites and social media channels for a period of two (2) years, in a form not unacceptable to Commission staff.

C. Within 10 days of the date of this Order, issue requests to remove UpToken from any further trading on all crypto asset trading platforms where UpToken are or may be trading, including any that Respondents previously contacted to request trading of UpToken, and publish notice of such requests on Coinme’s and Up Global’s websites and social media channels for a period of two (2) years, in a form not unacceptable to Commission staff.

D. Refrain from participating, directly or indirectly, in any offering of a crypto asset security.

E. Certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertaking, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent Coinme agrees to provide such evidence. The certification and supporting material shall be submitted to Steven D. Buchholz, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104, with a copy to the Office of Chief Counsel of the Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549, no later than thirty (30) days from the date of the completion of the undertaking.

48. Respondent Up Global has undertaken to:

A. Destroy all UpToken in its possession or control within 30 days of the date of this Order.

B. Within 10 days of the date of this Order, publish notice of the Order on Up Global's websites and social media channels for a period of two (2) years, in a form not unacceptable to Commission staff.

C. Within 10 days of the date of this Order, issue requests to remove UpToken from any further trading on all crypto asset trading platforms where UpToken are or may be trading, including any that Respondents previously contacted to request trading of UpToken, and publish notice of such requests on Up Global's websites and social media channels for a period of two (2) years, in a form not unacceptable to Commission staff.

D. Refrain from participating, directly or indirectly, in any offering of a crypto asset security.

E. Certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertaking, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent Up Global agrees to provide such evidence. The certification and supporting material shall be submitted to Steven D. Buchholz, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104, with a copy to the Office of Chief Counsel of the Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549, no later than thirty (30) days from the date of the completion of the undertaking.

49. Respondent Bergquist has undertaken to:

A. Destroy all UpToken in his possession or control within 30 days of the date of this Order.

B. Refrain from participating, directly or indirectly, in any offering of a crypto asset security for a period of three (3) years from the date of this Order. This undertaking shall not prevent Bergquist from purchasing or selling crypto asset securities for his own personal account.

C. Certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertaking, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent Bergquist agrees to provide such evidence. The certification and supporting material shall be submitted to Steven D. Buchholz, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104, with a copy to the Office of Chief Counsel of the Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549, no later than thirty (30) days from the date of the completion of the undertaking.

50. Coinme has submitted a sworn Statement of Financial Condition dated September 30, 2022 and other evidence concerning its financial condition and Coinme's state money services business licenses, and asserted Coinme's and Up Global's inability to pay a greater civil penalty, all of which the Commission has considered in determining whether to accept the Offers.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondents cease and desist from committing or causing any violations and any future violations of Sections 5(a) and 5(c) of the Securities Act.

B. Up Global and Bergquist cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

C. Respondent Coinme shall comply with the undertakings enumerated in Section III, Paragraph 47 above, Respondent Up Global shall comply with the undertakings enumerated in Section III, Paragraph 48 above, and Respondent Bergquist shall comply with the undertakings enumerated in Section III, Paragraph 49 above.

D. Bergquist be, and hereby is:

for a period of three (3) years from the date of this Order prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 781, or that is required to file reports pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

E. Within 14 days of the entry of this Order, Coinme shall pay a civil money penalty in the amount of \$250,000 to the Securities and Exchange Commission. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

F. Bergquist shall pay a civil money penalty of \$150,000 to the Securities and Exchange Commission. Payment shall be made in the following installments: (1) \$20,000 within 7 days of entry of this Order; (2) \$20,000 within 180 days of entry of this Order; and (3) the remainder within 365 days after the entry of this Order. Payments shall be applied first to post-

Order interest, which accrues pursuant to 31 U.S.C. § 3717. Prior to making the final payment set forth herein, Bergquist shall contact the staff of the Commission for the amount due. If Bergquist fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-Order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury.

G. Up Global shall pay a civil money penalty, for which Coinme shall be liable on a joint-and-several basis, in the amount of \$3,520,000 to the Securities and Exchange Commission. Payment shall be made in the following installments: (1) \$250,000 within 14 days of entry of this Order; (2) \$750,000 within 90 days of entry of this Order; (3) \$1,260,000 within 180 days of entry of this Order; and (4) the remainder within 365 days after the entry of this Order. Payments shall be applied first to post-Order interest, which accrues pursuant to 31 U.S.C. § 3717. Prior to making the final payment set forth herein, Up Global shall contact the staff of the Commission for the amount due. If Up Global fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-Order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury.

H. 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 Respondent's name 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 Steven D. Buchholz, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104.

I. Based upon Coinme's sworn representations in its Statement of Financial Condition dated September 30, 2022 and other documents submitted to the Commission, the Commission is not imposing a greater penalty against Coinme and Up Global.

J. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondents Coinme and Up Global provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondents Coinme and Up Global was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondents Coinme and Up Global may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of a penalty should not be ordered; (3) contest the imposition of the maximum penalty allowable under the law; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

K. Regardless of whether the Commission in its discretion orders the creation of a Fair Fund for the penalties ordered in this proceeding, 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 penalties, 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 Bergquist, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Bergquist 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 Bergquist 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.

Vanessa A. Countryman
Secretary