

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11306 / September 18, 2024

SECURITIES EXCHANGE ACT OF 1934
Release No. 101075 / September 18, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22143

In the Matter of

**Rari Capital Infrastructure
LLC,**

Respondent.

**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 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 Rari Capital Infrastructure LLC (“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 Respondent 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 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 Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise from Respondent's operation and eventual wind down in 2022 of a crypto asset trading platform called Fuse that allowed individual users to create pools for the depositing and borrowing of crypto assets.

2. Fuse users depositing crypto assets into these pools received a pro rata share of interest earned from borrowing activity in the pools. Respondent advertised Fuse's services through its public website, social media channels, and direct communications. The interests in the Fuse pools, represented by crypto assets called "fTokens," were offered and sold as investment contracts and thus securities. Respondent did not register the offerings or sales of interests in the Fuse pools with the Commission, and the interests did not qualify for an exemption from registration. As a result, Respondent violated Sections 5(a) and 5(c) of the Securities Act.

3. In addition, Fuse held crypto assets deposited by users in smart contracts deployed on the Ethereum blockchain, and received transaction instructions from users and executed those transactions. Additionally, Fuse assigned a letter-graded "Rari Safety Score" to each pool based on a risk assessment of each pool. Respondent maintained control over the Fuse platform, and also created and administered several of the larger Fuse pools. Respondent generated revenue by charging a performance-based fee of approximately 10 percent of the interest earned from depositing and borrowing activity in each pool. The crypto assets held and handled by Respondent in connection with transactions that were effected on the Fuse platform included crypto assets that were offered and sold as investment contracts, and thus securities, as defined under Section 2(a)(1) of the Securities Act and 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). Respondent, therefore, operated as a broker under Section 3(a)(4)(A) of the Exchange Act. As such, Respondent was required to register as a broker with the Commission absent an applicable exemption or exception from registration. It failed to do so and thus violated Section 15(a) of the Exchange Act.

Respondent

4. **Rari Capital Infrastructure LLC** is a Delaware limited liability company that was formed in March 2022 to facilitate development of, among other things, the Fuse platform. Respondent has never been registered with the Commission in any capacity and has never had any securities registered with the Commission.

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.

Other Entity

5. **Rari Capital, Inc.** (“Rari Capital”) is a Delaware corporation principally based in Los Angeles, California and created in June 2020 by three co-founders. Rari Capital created the Fuse platform and operated the web-based user interface that enabled users to access and interact with the smart contracts underlying the Fuse platform, among other things. Rari Capital has never been registered with the Commission in any capacity and has never had any securities registered with the Commission.

Facts

6. Rari Capital created and launched the Fuse platform in March 2021. The Fuse platform allowed individual users to create unique pools to facilitate the depositing and borrowing of crypto assets, including crypto assets offered and sold as securities. The Fuse platform enabled pool creators to customize the depositing and borrowing parameters for the pools, such as the types of crypto assets that could be deposited and lent, fee amounts, interest rate curves, and collateral requirements. After creating a pool on the Fuse platform, the pool creator retained administrator rights to alter the parameters for the given pool, sometimes referred to as a “liquidity pool.” Meanwhile, Fuse users could make deposits into any Fuse pool.

7. The Fuse platform was based on a set of smart contracts created by Rari Capital that were deployed and run on the Ethereum blockchain, and that held the crypto assets deposited by Fuse platform users. Rari Capital also developed and provided a web-based user interface that enabled users to access and interact with the smart contracts underlying the Fuse platform. Through the Fuse platform, users could either deposit crypto assets into a pool and earn their respective share of interest on borrowing activity in that pool, or, after depositing collateral, borrow from a pool by withdrawing other crypto assets. For each specific Fuse pool, the smart contracts pooled together the crypto assets deposited by users into that pool, and made those crypto assets available for borrowing from that pool. Users who borrowed crypto assets paid interest, which funded returns to the users who deposited the crypto assets in the pool. Users who deposited the crypto assets received a token, at times called an “fToken” and tradeable on secondary crypto asset trading platforms, that evidenced their interest in their specific Fuse pool and their right to receive a pro rata share of the interest earnings.

8. Through the smart contracts created by Rari Capital, Fuse received depositing and borrowing transaction instructions from users and executed those instructions, if the conditions for such requests were met within a given Fuse pool. Rari Capital, through permissions it established in the Fuse platform’s smart contracts, maintained the ability to shut down the platform, replace the platform’s underlying smart contracts, and revoke the pool creators’ administrator rights.

9. Through Rari Capital’s public website, social media channels, and direct communications, Rari Capital and its employees solicited users to deposit crypto assets into and borrow crypto assets from the pools on the Fuse platform. Rari Capital also promoted Fuse and specific Fuse pools by highlighting the purportedly high annual percentage yields associated with certain pools.

10. In addition, Rari Capital and its employees engaged in certain services to support depositing and borrowing on the Fuse platform. For example, Rari Capital assigned a “Rari Safety Score,” graded from A to F, to each Fuse pool that purported to provide a risk assessment of each pool. Fuse users could view these “Rari Safety Scores” on both the platform’s user interface and Rari Capital’s website. Rari Capital also created and administered several of the larger Fuse pools.

11. For its services, Rari Capital charged a performance-based fee of approximately 10 percent on the interest earned in each Fuse pool. Interest earned in each pool depended on the interest rate curve selected by the pool creator and fluctuated based on the depositing and borrowing transactions within a given pool. A smart contract created by Rari Capital automatically calculated these fees, and once accrued, Rari Capital maintained the authority to collect them. Rari Capital at times exercised this authority and collected fees.

12. Starting in December 2021, the co-founders of Rari Capital took less active roles in developing the Fuse platform. In March 2022, certain other Rari Capital personnel created Respondent separately from Rari Capital and its co-founders to operate and further develop the Fuse platform. This change in leadership was completed in June 2022, when the CEO of Rari Capital resigned. Respondent and its employees solicited users over the internet to deposit and borrow crypto assets on the Fuse platform. Respondent also obtained the ability to shut down the platform, replace the platform’s underlying smart contracts, and revoke the pool creators’ administrator rights. Respondent operated and developed the Fuse platform with the same services and features described above, including the assignment of letter grades to pools, the administration of several larger Fuse pools, and the collection of fees from interest accrued from depositing and borrowing activity on the Fuse platform.

13. In May 2022, a malicious actor exploited the code of the Fuse platform and stole crypto assets purportedly having a market value of approximately \$80 million. Soon after the exploit, Respondent halted new depositing activity on the Fuse platform, began winding down operations, and provided reimbursements to users harmed in the exploit. Ultimately, Respondent used the approximately \$2.32 million of performance-based fees it had collected from the pools to compensate Fuse users and suspended its operation of the Fuse platform.

14. At Fuse’s peak, the smart contracts for the Fuse platform held crypto assets purportedly having a market value of approximately \$1 billion. Over the life of the Fuse platform, approximately 180 Fuse pools were created and over 10,000 users used the platform at one time or another.

15. The crypto assets that were deposited and borrowed on the Fuse platform included those that were offered and sold as investment contracts, and thus securities, under *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946).

16. Respondent never registered as a broker with the Commission or operated pursuant to any exception or exemption from registration.

17. No registration statement was filed or in effect for Respondent's offers and sales of Fuse pool interests, nor were any exemptions from registration available.

Violations

18. Under Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act, a security includes "an investment contract." *See* 15 U.S.C. §§ 77b(a)(1) and 78c(a)(10). Based on the facts set forth above, a user's depositing of crypto assets into a Fuse pool in exchange for a token that evidenced the user's interest in the pool and right to receive a pro rata share of the interest earned through the pool's activity constituted the offer and sale of investment contracts. *See Howey*, 328 U.S. at 301. Investors in the Fuse pools tendered money, in the form of crypto assets, to the Fuse platform to participate in the Fuse pools. Investors' crypto assets were pooled and were made available for borrowing. Users who borrowed assets paid interest to the specific pools that supported returns to the investors in those Fuse pools. The returns earned by Fuse pool investors were a function of the pooling of the crypto assets deposited by investors and the ways in which the smart contracts deployed those assets. In this way, each pool investor's fortune was tied to the fortunes of the pool's other investors. In addition, because Respondent earned revenue for itself from interest paid by borrowers, the Fuse pool investors' fortunes were also linked to those of Respondent. Through its public statements and the economic structure of the Fuse pools, Respondent invited Fuse pool investors to reasonably expect that they would earn profits derived from the efforts of Respondent and others.

19. Section 5(a) of the Securities Act 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 a 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."

20. Section 5(c) of the Securities Act 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."

21. As a result of the conduct described above, Respondent violated Sections 5(a) and 5(c) of the Securities Act.

22. Section 3(a)(4)(A) of the Exchange Act defines a "broker" as "any person engaged in the business of effecting transactions in securities for the account of others." Based on the conduct described above, Respondent was acting as an unregistered broker. As a result, Respondent violated Section 15(a) of the Exchange Act, which, in relevant part, prohibits any broker from making use of the mails or any instrumentality of interstate commerce, to effect any transaction in, or induce or attempt to induce the purchase or sales of, any security unless the broker is registered in

accordance with Section 15(b) of the Exchange Act absent an applicable exemption or exception from registration.

Respondent's Cooperation and Remedial Efforts

23. In determining to accept the Offer, the Commission considered the cooperation afforded the Commission staff by Respondent and Respondent's remedial efforts to stop trading activity and wind down the Fuse platform following the May 2022 platform exploit, including Respondent's voluntary return to harmed users of the performance-based fees that it had collected.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Sections 5(a) and 5(c) of the Securities Act as well as Section 15(a) of the Exchange Act.

B. Respondent acknowledges that the Commission is not imposing a civil penalty based upon its cooperation in a Commission investigation. 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 a civil money penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether it 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.

By the Commission.

Vanessa A. Countryman
Secretary