

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10671 / August 12, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19332

In the Matter of

SimplyVital Health, Inc.,

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, 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”) against SimplyVital Health, Inc. (“SimplyVital” 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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant To Section 8A of the Securities Act, 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 that:

Summary

SimplyVital is a New England-based business that describes itself as the designer and creator of Health Nexus, a health care-related blockchain ecosystem. During 2017 and 2018, SimplyVital offered and sold securities in transactions that were not registered with the Commission. SimplyVital violated Sections 5(a) and 5(c) of the Securities Act by offering and selling these securities without a registration statement filed or in effect with the Commission and without qualifying for an exemption from registration.

Respondent

SimplyVital is a Delaware corporation currently operating in Brighton, Massachusetts. It was founded in 2017 as a privately-owned corporation based in Bloomfield, Connecticut. The company disclosed to investors and the general public during at least 2017 and 2018 that it was developing Health Nexus, a blockchain protocol through which healthcare providers could share patient data. SimplyVital announced to investors and in public statements that it was designing Health Nexus to satisfy regulatory requirements unique to sharing data within the health care industry, including, for example, compliance with the Health Insurance Portability and Accountability Act.

Facts

1. On September 21, 2017, SimplyVital publicly announced its plan to conduct a token sale to raise money to further its development of Health Nexus. SimplyVital offered its own new token called Health Cash, or HLTH, which it explained would be used ultimately as currency in the Health Nexus ecosystem that the company was developing based upon its blockchain protocol. A blockchain is a cryptographically-secured digital ledger, and a blockchain's protocol is the software that governs rules, operations, and communications between computers interacting with the blockchain.
2. SimplyVital originally announced that its token sale or "crowdsale" would occur between November 22, 2017 and December 20, 2017. SimplyVital planned to create a total of 200 million HLTH tokens to offer and sell.
3. Also on September 21, 2017, SimplyVital announced on its website that it would conduct what it characterized as a "pre-sale" available to the public that would begin on September 26, 2017. In its "pre-sale," SimplyVital offered to enter into purchase agreements with investors, called Simple Agreements for Future Tokens ("SAFTs"), under which it sold HLTH tokens that would be delivered to investors if and when SimplyVital created them. Initially, SimplyVital

offered to sell 40 million of the 200 million HLTH tokens in its pre-sale and projected its pre-sale would end on October 24, 2017.

4. SimplyVital set an investment minimum in its pre-sale of 35 “Ether” (hereafter referred to as “ETH”), a digital asset native to the Ethereum blockchain. During late September 2017, the pre-sale minimum of 35 ETH was equivalent to approximately \$10,000 U.S. dollars (“USD”). To encourage investment, SimplyVital offered pre-sale investors a bonus, meaning investors could purchase HLTH tokens from the pre-sale at a significant discount compared to the price at which SimplyVital would offer HLTH tokens during its crowdsale or “main sale” then scheduled for November and December 2017.

5. To participate in SimplyVital’s pre-sale, investors provided personal background information via SimplyVital’s website, communicated directly with a representative of SimplyVital, and eventually executed a SAFT in exchange for ETH or USD. During the pre-sale purchasing process, investors expressed to SimplyVital that they were entering into the SAFTs to acquire HLTH tokens. The SAFTs, which had been prepared by legal counsel retained by SimplyVital in August 2017, stated, among other things, that proceeds being raised in the pre-sale would be used by SimplyVital to fund the development of the Health Nexus platform and blockchain protocol.

6. Before it offered and sold HLTH through the SAFTs, SimplyVital did not file a Securities Act registration statement with the Commission covering its offer and sale. Instead, in an offering memorandum which SimplyVital’s legal counsel prepared, SimplyVital stated to investors that SimplyVital was seeking to rely on either “the exemption provided by Section 4(A)(2) of the Securities Act and Regulation D promulgated thereunder” or the Regulation S safe harbor for offers and sales that occur outside the United States.

7. In late October 2017, SimplyVital extended its “pre-sale” due to low sales to investors.

8. In December 2017, SimplyVital continued to solicit investors and sell HLTH through the SAFTs in its pre-sale. It also became aware that investors were forming pools or syndicates, commonly called “ICO pools,” to participate in its pre-sale. ICO pools (referring, in general, to pools formed in connection with so-called “initial coin offerings” or “ICOs”) were groups of investors that pooled their money to collectively satisfy a token or coin issuer’s investment minimum and to take advantage of discounts offered to pre-sale investors.

9. In early 2018, SimplyVital began offering tiered discounts to pre-sale investors. Specifically, investors who invested more USD or ETH received larger discounts from the main sale token price than investors who invested at lower tiers or at the minimum investment amount. In February 2018, SimplyVital’s pre-sales increased dramatically, including sales to ICO pools and non-U.S. investors. Although it was aware of the interest from and participation of ICO pools in its pre-sale, SimplyVital did not attempt to identify the individual members of most of the pools.

10. SimplyVital failed to take reasonable steps to verify that purchasers of securities sold in its pre-sale offering were accredited investors. For example, SimplyVital was aware that a number of purchasers were pooling funds from various unknown individuals for the purpose of participating in the pre-sale, and it made no efforts to determine the accredited investor status of those participants in the pools. SimplyVital also permitted certain non-U.S. investors, who represented the majority of the ETH SimplyVital raised in its pre-sale, to purchase securities without SimplyVital or its agent undertaking any accredited investor verification.

11. In total, from September 25, 2017 to April 3, 2018, SimplyVital raised more than 15,200 ETH (equivalent to approximately \$6.3 million USD as of April 3, 2018) from 52 individuals or ICO pools who invested through the company's pre-sale. Of the more than 15,200 ETH raised, at least 13,800 ETH (more than \$5.2 million USD) came from purchasers with whom the company had not taken reasonable steps to verify accredited investor status.

12. SimplyVital is a domestic corporation which advertised its offer of securities via a general solicitation to potential purchasers in the United States, including through internet postings and direct communication with U.S. persons. It also offered and sold these securities to persons in the U.S.

13. No registration statements were filed or in effect for SimplyVital's offers and sales of securities, and the offers and sales did not qualify for any exemption from registration under the Securities Act.

14. As a result of the conduct described above, SimplyVital violated Section 5(a) of the Securities Act, which states that unless a registration statement is in effect as to a security, it 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 sell such security through the use or medium of any prospectus or otherwise; or 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.

15. Also as a result of the conduct described above, SimplyVital violated Section 5(c) of the Securities Act, which states that it 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.

SimplyVital's Remedial Efforts

16. After the close of its pre-sale, SimplyVital scheduled its crowdsale of HLTH tokens for May 2018. After being contacted by the staff of the Commission concerning this offering, SimplyVital decided against conducting it. At the time, SimplyVital had not generated or created any HLTH tokens, and therefore had not delivered any HLTH tokens to pre-sale investors.

17. On January 25, 2019, SimplyVital publicly announced it would not generate HLTH tokens and would return funds to those who had participated in the pre-sale, either directly or through an ICO pool.

18. On April 11, 2019, SimplyVital began to return ETH and USD to pre-sale investors. By April 15, 2019, SimplyVital had returned substantially all of the ETH and USD claimed by investors. This amounts to substantially all of SimplyVital's assets.

19. In determining to accept the Offer, and to not impose a civil penalty, the Commission considered the remedial acts undertaken by Respondent, including the financial impact of those acts.

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:

Pursuant to Section 8A of the Securities Act, Respondent SimplyVital cease and desist from committing or causing any violations and any future violations of Section 5(a) and (c) of the Securities Act.

By the Commission.

Vanessa A. Countryman
Secretary