

ATTORNEY GENERAL OF THE STATE OF NEW YORK
INVESTOR PROTECTION BUREAU

In the Matter of

Assurance No. 23-027

**Investigation by LETITIA JAMES,
Attorney General of the State of New York, of**

Coin Cafe, Inc., d/b/a/ "coincafe" and "coincafe.com"

Respondent.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York ("OAG") commenced an investigation pursuant to the N.Y. General Business Law § 352 *et seq.* ("Martin Act") and N.Y. Executive Law § 63(12) into the unregistered broker-dealer activity of Coin Cafe, Inc. ("Coin Cafe" or "Respondent"). This Assurance of Discontinuance ("Assurance") contains the findings of the OAG's investigation, and the relief agreed to by the OAG and Respondent, Coin Cafe, whether acting through its respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries (collectively, the "Parties").

OAG's FINDINGS

A. Coin Cafe Failed to Register as a Commodity Broker Dealer

1. Coin Cafe is a domestic corporation, incorporated in New York State on January 3, 2014 with a business address of 66 Meserole Avenue, #220372, Brooklyn, New York 11222.
2. Johnathan Ha is the Chief Executive Officer of Coin Cafe.

3. Coin Cafe buys, sells, stores, and offers to buy and sell the cryptocurrency Bitcoin through accounts created on its website coincafe.com to members of the public within or from the State of New York. The website's homepage, www.coincafe.com, states:

[C]oincafe strives to be the fastest and easiest way to get Bitcoin, whether you're in NYC or anywhere else in the world. We pride ourselves on our excellent customer service. Got a question? Just call us. Or use live chat, email, or even text message. Our response time is usually within minutes. Even for email. We aim to please and strive to ensure our service is unique in the industry. Thanks! – coincafe team New York City.

(emphasis in the original)

4. Coin Cafe claims to provide: “[s]imple & secure access to buy, sell, and use Bitcoin since 2013”.

5. To buy Bitcoin with Coin Cafe an investor must create an account. Coin Cafe then presents the investor with a variety of ways to purchase Bitcoin, ranging from bank or wire transfers, to mail-in options, to in-person purchases available in New York City.

6. On October 6, 2022 an investigator with OAG opened an account with Coin Cafe and made two Bitcoin purchases via U.S. postal money orders. On December 9, 2022 Coin Cafe sold the investigator \$108 worth of Bitcoin in one transaction and then sold the investigator \$100 of Bitcoin on January 4, 2023.

7. In order to lawfully engage in the above activities, Coin Cafe is and was required to file a registration statement with the OAG as a commodity broker-dealer pursuant to the Martin Act.

8. Coin Cafe failed to register with the OAG from on or about January 3, 2014.

9. On July 30, 2015 Coin Cafe filed an application with the New York State Department of Financial Services (“DFS”) for a virtual currency license (“BitLicense”)

pursuant to 23 NYCRR Part 200 under the New York Financial Services Law. Because its application was within 45 days of the BitLicense regulation implementation, Coin Cafe's activity was subject to 23 NYCRR Part 200.21, also known as a grandfather provision. In other words, DFS permitted Coin Cafe to continue its virtual currency business while its application for a BitLicense was pending with DFS from July 30, 2015 to January 26, 2023. DFS granted Coin Cafe a BitLicense on January 26, 2023.

10. Neither a valid BitLicense, nor a pending BitLicense status excused or otherwise exempted Coin Cafe from its obligation to follow all New York State laws, including the Martin Act necessitating it file a registration statement with the OAG.

11. Coin Cafe violated the Martin Act by its failure to file a registration statement with the OAG.

B. Coin Cafe Misled Investors About the Excessive Storage Fees it Charged

12. The OAG further found that Coin Cafe violated the Martin Act and the Executive Law's prohibition against deceptive practices. Coin Cafe claimed to provide its investors with a free account and free wallet storage but, in reality, Coin Cafe charged excessive fees for its wallet service.

13. Coin Cafe began charging a fee associated with a customer storing or maintaining Bitcoin in their Coin Cafe account or otherwise associated with Coin Café's wallet service ("Storage Fees") on or about September 1, 2020. The Storage Fees were activated by an account's period of inactivity. As the fee increased, Coin Cafe decreased the period of inactivity that triggered the increased and undisclosed fee. Its schedule was as follows:

Terms of Service Effective Date	Fee Amount	Time Frame
2013 - August 30, 2020	None	None
August 30, 2020	Greater of 1.49% of the value of the account or \$19/ month USD	12 months without logging into the account
November 1, 2021	Greater of 3.49% of the value of the account or \$49/ month USD	12 months without logging into the account
March 1, 2022	Greater of 7.99% of the value of the account or \$99/ month USD	6 months without logging into the account
October 1, 2022	Greater of 7.99% of the value of the account or \$99/ month USD	30 days without a transaction

14. The most recent Storage Fee structure charged investors the greater of 7.99% of the value of the account or \$99 per month. Coin Cafe charged one New Yorker \$5,452.34 worth of Bitcoin in just the first four months since the latest fees were assessed. The company charged another investor \$51,307.03 over the course of 13 months. In another instance, Coin Cafe took more than \$10,000 from one New York account in a single month. On March 1, 2023, Coin Cafe debited \$99 from OAG's account, which amounted to about half of the \$208 worth of Bitcoin the investigator originally purchased.

15. In sum, Coin Cafe has assessed its Storage Fees against 345 New York investors. Of those accounts, Coin Cafe completely wiped out 217 accounts leaving more than half of its New York investors with a zero balance. The Storage Fees went directly from investors' accounts to Coin Cafe.

16. The Storage Fees were not disclosed on Coin Cafe's website, including on the "Fee" page that disclosed the various transaction fees. Rather, Coin Cafe marketed itself on its website by stating that investors should choose Coin Cafe because they "[g]et a free wallet."

Though Coin Cafe included a reference to the “maintenance fees” in its Terms of Service, the reference was hidden and not easily accessible to users.

17. Coin Cafe sent email notifications to affected investors. However, these purported notices of the new fee schedules were inadequate. For instance, Coin Cafe sent investors affected by the September 1, 2020 storage fee two email notifications with the nondescript subject line: “Please login to keep your account free.” It then sent affected investors one email ahead of the November 1, 2021 and March 1, 2022 storage fee increases, with the similarly inconspicuous subject line: “Coin Cafe Terms of Service Update.” Soon Coin Cafe required its investors not only to log in to keep their account free, but to also transact – buy, sell, or transfer Bitcoin – every month to avoid the greater of \$99 or 7.99% monthly fee. Again, Coin Cafe sent emails to investors ahead of the fee change but failed to disclose the specific amount it was going to charge investors.

18. Coin Cafe took approximately half a million dollars’ worth of Bitcoin from New York investors’ Coin Cafe wallets, and over \$4.25 million in total from United States investors from September 2020 to March 2023.

C. Coin Cafe’s Remediation and OAG’s Conclusions

19. On January 23, 2023, the OAG issued a subpoena to Coin Cafe requiring CEO Johnathan Ha’s testimony. Mr. Ha appeared for testimony and answered each question put to him. Additionally, Coin Cafe tendered for submission its application for registration at Mr. Ha’s examination.

20. The day after the exam, Coin Cafe unilaterally changed its website to remove references to “free wallets” and affirmatively disclosed the Storage Fees.

21. OAG finds that Coin Cafe's conduct beginning on or about January 3, 2014 constituted commodity broker-dealer activity within the meaning of General Business Law ("GBL") Section 359-e and that such activity required that Coin Cafe file a complete registration statement with the OAG before engaging in such activity.

22. OAG finds that Respondent violated the registration requirements of GBL § 359-e and that failure constituted a fraudulent practice under Executive Law § 63(12).

23. OAG finds that Coin Cafe's non-disclosure and inadequate notice of the storage fees constituted deceptive practices in violation of the GBL § 352.

24. Respondent admits OAG's Findings.

25. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of GBL § 359-e, GBL § 352 and Executive Law § 63(12) based on the conduct described above during the relevant time period.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

RELIEF

26. General Injunction: Respondent shall not engage, or attempt to engage, in conduct in violation of the Martin Act, and expressly agrees and acknowledges that any such conduct would be a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 25, supra, or any other appropriate investigation, action, or proceeding.

27. Programmatic Relief: Coin Cafe has already taken a number of actions to improve its practices with regard to the conduct described above since the commencement of the OAG's investigation. As part of that continuing remediation:

- (a) Respondent will continue to cooperate with the OAG.
- (b) Respondent will charge a monthly Storage Fee of no more than two one-thousandths (.002) of a Bitcoin for at least five (5) years following the execution of this Assurance by all Parties.
- (c) Respondent will continue to ensure unambiguous disclosure of all fees charged to customers, including Storage Fees. Respondent will provide a real-time calculation of the Storage Fee in USD on its website.
- (d) Respondent will notify all customers via email five (5) business days prior to the Storage Fee being assessed. The subject of the email shall clearly state that the customer is being charged a Storage Fee, and the body of the email will clearly state the amount of the Storage Fee including the USD amount as of the date of the email. The email will warn the customer that the Storage Fee will be based on the value of Bitcoin on the date the fee is assessed, which may differ from the amount stated in the email due to the possible fluctuation of Bitcoin. The email will also clearly inform the customer of the steps they need to take to avoid the assessment of the Storage Fee.
- (e) For a period of twelve (12) months from the execution of this Assurance, Respondent will be required to provide, at any customer's request, a full refund of the Storage Fees Respondent charged between September 2020 to March 2023 (the "Relevant Period") to each U.S. based customer, excluding New York

customers (“U.S. Based Customers”). Coin Cafe shall inform each U.S. Based Customer within five (5) business days of the execution of this Assurance that the customer may request a refund in writing by email, postal mail, the Coin Cafe website, and may also request a refund in-person. Respondent will process refunds by returning the Storage Fee to the Coin Cafe account within five (5) days of a request being made. If required, Respondent will re-open the customer’s account for the purpose of processing the refund and process the refund within in ten (10) days of the request. Respondent will continue to email U.S. Based Customers who have not already received a refund, informing them of their right to request a refund on a monthly basis during the twelve (12) month period following the execution of this Assurance by all Parties. Each email from Coin Cafe regarding the refund should include the subject: “You May be Entitled to a Refund – Further Action Required”.

(f) Respondent will report the status of all refund requests to the OAG monthly for the twelve (12) month period following the execution of this Assurance;

(h) Respondent will continue to follow the laws of each state regarding escheatment.

(i) Acceptance of this Assurance by the OAG is not an approval or endorsement by OAG of any of Respondent’s policies, practices or procedures, and the Respondent shall make no representation to the contrary.

28. Monetary Relief Amount: Respondent will provide full restitution to all New York customers for the Storage Fees it assessed during the Relevant Period. Respondent shall pay to the State of New York \$508,910.56 in restitution (the “Monetary Relief Amount”).

Payment shall be made in full within thirty (30) days of the execution of this Assurance by the Parties. The Payment shall be made by wire transfer payable to the "State of New York" pursuant to wire instructions provided by OAG and shall reference Assurance No. 23-027.

MISCELLANEOUS

Subsequent Proceedings:

29. Respondent expressly agrees and acknowledges that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 37, and agree and acknowledge that in such event:

- (a) any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;
- (b) the OAG may use statements, documents or other materials produced or provided by the Respondent prior to or after the effective date of this Assurance;
- (c) any civil action or proceeding must be adjudicated by the courts of the State of New York, and Respondent irrevocably and unconditionally waives any objection based upon personal jurisdiction inconvenient forum, or venue; and
- (d) evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

30. If a court of competent jurisdiction determines that the Respondent has violated the Assurance, the Respondent shall pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

Effects of Assurance:

31. This Assurance is not intended for use by any third party in any other proceeding.

32. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Respondent. Respondent shall include any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

33. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

34. Nothing in this Assurance is intended to form the basis for any disqualification from registration as a broker-dealer, investment adviser, or issuer under the laws, rules or regulations of the State of New York; the laws of any other state, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands; the rules or regulations of any securities regulator or self-regulatory organization; or under the federal securities laws.

35. Any failure by the OAG to insist upon the strict performance by Respondent of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by the Respondent.

Communications:

36. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 23-027, and shall be in writing and shall, unless

expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to the Respondent, to:

Johnathan Ha
Chief Executive Officer
Coin Cafe, Inc.

, or in his absence, to the person holding the title of
General Counsel and/or Chief Compliance Officer

If to the OAG, to:

Lauren A. McDonough
Assistant Attorney General
Investor Protection Bureau
28 Liberty St., 21st Floor
New York, NY 10005

, or in her absence, to the person holding the title of
Chief, Investor Protection Bureau.

Representations and Warranties:

37. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by the Respondent and their counsel and the OAG's own factual investigation as set forth in OAG's Findings paragraphs (1)-(25) above. The Respondent represents and warrants that neither it nor its counsel have made any material representations to the OAG that are inaccurate or misleading. If any material representations by Respondent or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

38. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the Respondent in agreeing to this Assurance.

39. The Respondent represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved. Respondent further represents and warrants that Coin Cafe, Inc. by Johnathan Ha, as the signatory to this Assurance, is a duly authorized officer.

General Principles:

40. Unless a term limit for compliance is otherwise specified within this Assurance, the Respondent's obligations under this Assurance are enduring. Nothing in this Assurance shall relieve Respondent of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

41. Respondent agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in the Assurance or creating the impression that the Assurance is without legal or factual basis.

42. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that the Respondent violates the Assurance after its effective date.

43. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

44. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

45. Respondent acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

46. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

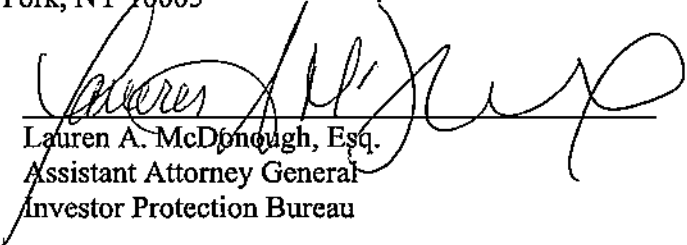
47. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

48. This Assurance may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

49. The effective date of this Assurance shall be May 18, 2023.

LETITIA JAMES
Attorney General of the State of New York
28 Liberty Street
New York, NY 10005

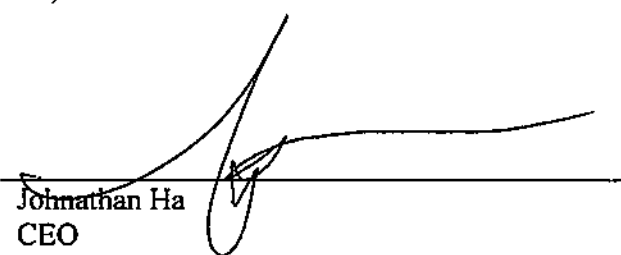
By:



Lauren A. McDonough, Esq.
Assistant Attorney General
Investor Protection Bureau

Coin Cafe, Inc.

By:


Johnathan Ha
CEO

STATE OF New York)
) ss.:
COUNTY OF Kings)

On the 15 day of May in the year 2023 before me personally came JOHNATHAN HA to me known, who, being by me duly sworn, did depose and say that he resides in New York, New York; that he is CEO of the Corporation described in and which executed the above instrument; that he know the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the board of managers of said corporation, and that he signed his name thereto by like authority.

Sworn to before me this
15 day of May, 2023


NOTARY PUBLIC



KLAUDIA ROMANTUK
NOTARY PUBLIC
STATE OF NEW YORK
Registration No. 01RO6442423
Qualified in Kings County
My Commission Expires
October 11, 2026