



COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
ADMINISTRATIVE ACTION NO. 2022-AH-0002

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

v.

EMERGENCY ORDER TO CEASE AND DESIST

VOYAGER DIGITAL LTD.,
VOYAGER DIGITAL HOLDINGS, INC.,
and VOYAGER DIGITAL LLC

RESPONDENTS

The Department of Financial Institutions (hereinafter referenced as the “Department”), pursuant to Kentucky Revised Statute (KRS) 292.470, KRS 292.500, and 808 Kentucky Administrative Regulation (KAR) 10:225, hereby enters this **Emergency Order to Cease and Desist** against Voyager Digital LTD., Voyager Digital Holdings, Inc., and Voyager Digital LLC (hereinafter referenced as “Voyager”, the “Company”, or “Respondents”). In support thereof, the Department states as follows:

PARTIES

1. The Commissioner is responsible for administering the provisions of KRS Chapter 292, the Securities Act of Kentucky (“the Act”), as well as any applicable rules, regulations and orders entered pursuant to the Act.
2. Voyager Digital Ltd. is incorporated in British Columbia, Canada and is the parent company for Voyager’s subsidiaries, including Voyager Digital Holdings, Inc. Respondents have a principal office located at 33 Irving Plaza, Suite 3060, New York, NY 10003.
3. Voyager Digital Holdings, Inc. is a corporation incorporated in Delaware and is the holding company for Voyager Digital Ltd.’s subsidiaries in the United States, including Voyager Digital LLC. Respondents have a principal office located at 221 River Street 9th Floor, Hoboken,

New Jersey, 07030. Voyager Digital Holdings, Inc. has a registered process agent at Corporation Service Company, located at 251 Little Falls Drive, Wilmington, DE 19808.

4. Voyager Digital LLC is a foreign limited liability company incorporated in Delaware, has a principal office located at 185 Hudson St Ste 2500 Jersey City, NJ 07311, and has a registered process agent at Corporation Service Company, 421 W Main St., Frankfort, KY 40601.

STATEMENT OF FACTS

5. On July 16, 2021, the Department began its investigation into Voyager's securities-related activities. Subsequently, the Department investigated Voyager, learning of the facts and circumstances described herein.

6. Voyager Digital LLC is a subsidiary of Voyager Digital Ltd. and provides Respondents' user-facing products and services for customers in the United States.

7. Voyager offers what it refers to as an "Earn Program" (hereinafter "Voyager Interest Accounts"), which are interest-bearing cryptocurrency accounts that are available on Voyager's website and proprietary smartphone application.

8. Voyager Interest Accounts can be either individual or corporate accounts and are offered to anyone of legal age under the laws of the state where the Customer resides, except for residents of certain foreign jurisdictions. Registering for a Voyager Interest Account requires an investor to mark a box to indicate the investor has read and accepted Voyager's "Terms of Use." This document is available on the website via hyperlink, although the investor can mark the box regardless of whether the hyperlink is opened or the document content is reviewed.

9. Investors open accounts by transferring U.S. dollars or eligible cryptocurrency or other digital assets to Voyager to invest in the Voyager Interest Accounts. Investors relinquish control over their deposits and Voyager takes custody and control of the investors' deposits.

Voyager is free to use investors' deposits consistent with the terms of the Voyager Interest Accounts. Voyager's uses for investor deposits include commingling investor deposits into an omnibus account; transferring deposited dollars, cryptocurrencies, and digital assets to foreign jurisdictions; lending, pledging, selling, rehypothecating, and otherwise transferring deposited dollars, cryptocurrencies, and digital assets to unidentified third parties; and engaging in any other activities at Voyager's discretion.

10. U.S. dollar, cryptocurrency, and digital asset deposits into Voyager Interest Accounts are comingled in omnibus accounts belonging to Voyager and are used by Voyager to fund its revenue-generating activities. Investors who deposit into Voyager Interest Accounts can opt out of earning interest on their deposits but cannot opt out of Voyager taking control of their deposits and using investor deposits as it sees fit.

11. Voyager generates revenue through cryptocurrency and digital asset trading, lending, borrowing, proprietary trading, and other activities conducted at Voyager's discretion. These activities are funded, in part, by offering its Voyager Interest Accounts to consumers for the deposit of the consumers' cryptocurrencies.

12. In exchange for consideration received in the present, Voyager promises to pay lucrative interest rates in the future. Voyager currently promotes the interest rates through its website, which recently advertised an annual return of up to 12 percent on certain cryptocurrencies or digital assets for retail investors, which significantly exceeds the rates currently being offered for short-term, investment grade, fixed-income securities or for bank savings accounts.

13. Voyager sets the interest rates it pays on various cryptocurrencies and digital assets in advance and on a periodic basis. Voyager sets its interest rates based on various considerations and prioritizing Voyager's need for particular cryptocurrencies or digital assets.

14. Voyager incentivizes investors who invest in the Voyager Interest Accounts to also hold Voyager's native digital token that comes in two iterations, VGX and VGX 2.0, by paying higher rates of interest—which Voyager references as a “boost”—to investors who hold certain amounts of VGX. As an example, Voyager has paid an extra 0.5% interest to Voyager Interest Account holders that hold 500 units of VGX and has paid an extra 1.5% interest to Voyager Interest Account holders that hold 20,000 units of VGX.

15. The accrual of interest on Voyager Interest Accounts is calculated by using a daily periodic rate applied to the principal in a Voyager Interest Account. Interest is paid the month after it accrues, on or before the fifth business day of each month for the interest accrued for the prior month. Interest payments are denominated in the same type of cryptocurrency or digital asset originally invested.

16. Voyager's Customer Agreement states that customers grant Voyager the right to loan cryptocurrency held in the Voyager Interest Account to third parties, which may not be secured or otherwise require posted collateral. Furthermore, Voyager states that “[f]he Rewards Program and underlying Loans are not insured.” The Customer Agreement's description of risk states that “losses may exceed the principal invested.”

17. Retail investors may withdraw their deposits in the Voyager Interest Accounts at any time, subject to certain processing times and minimum balance requirements, including Voyager's sole discretion to delay or prohibit withdrawals within 60 days of an investor deposit.

18. On or about July 16, 2021, the Department searched Voyager's website, <https://www.investvoyager.com/>. The website states, among other things, “Our mission is to provide every investor with a trusted and secured access point to crypto asset trading... Let us be your guide on this journey to the new frontier of investing.” In Voyager's “Terms of Use”, Voyager

includes a "Disclaimer of Warranties; Limitation of Liability" section, which states in capitalized letters:

THE SERVICES AND THE CONTENT ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTIES OF ANY KIND, INCLUDING THAT THE SERVICES OR CONTENT WILL OPERATE ERROR-FREE OR THAT THE SERVICES, ITS SERVERS, OR THE CONTENT ARE FREE OF COMPUTER VIRUSES OR SIMILAR CONTAMINATION OR DESTRUCTIVE FEATURES

WE DISCLAIM ALL WARRANTIES INCLUDING, BUT NOT LIMITED TO, ...FITNESS FOR PARTICULAR PURPOSE AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE.

Voyager then references that some jurisdictions do not allow exclusion of certain warranties and that none of the disclaimers preclude recovery of damages and loss caused by Voyager's negligence, gross negligence, recklessness, fraud, or other willful, unconscionable or intentional misconduct.

19. In Voyager's Customer Agreement, Section 5(C) states that in the event Voyager or a custodian become subject to an insolvency proceeding, "it is unclear how Customer Cryptocurrency would be treated and what rights Customer would have to such Cryptocurrency." In Section 7(J), Voyager describes that market volatility and disruption may suspend access to the customer's account, prevent customers from closing any open positions in the account, and Voyager may cease to follow any customer instructions, with the customer presumed to acknowledge that market rates after such an event may differ significantly to what was available before.

20. In describing the tiers of the Voyager Earn Program, Voyager designates tier one (starting at 500 VGX) as an "Adventurer" with the description "You are a bold investor ready to secure your financial future," tier two (starting at 5,000 VGX) as an "Explorer" with the description "You are a seasoned investor reaping the rewards of your hard-earned investments",

and tier three (starting at 20,000 VGX) as a “Navigator” with the description “You are a master investor taking the reins on your finances and maximizing your rewards.” These tiers are premised on what Voyager describes as “VGX staking rewards” for holding Voyager’s token in the above-referenced quantities. According to Voyager’s white paper regarding the VGX 2.0 token, the only qualification for these tiers is the amount of the token held in the account by the customer, without any reference to reviewing the customer’s investment acumen despite each tier’s references to a substantially different kinds of investment experience. The white paper describes staking rewards in terms that would be analogous to a 7% monthly dividend and that Voyager will “utilize blockchain staking whenever possible to generate staking yields.”

21. Voyager’s “Voyager Cryptocurrency Disclosures” state:

Cryptocurrencies are highly speculative in nature, involve a high degree of risk and can rapidly and significantly decrease in value. It is reasonably possible for the value of Cryptocurrencies to decrease to zero or near zero.

Cryptocurrency held on the Voyager Platform is not protected by FDIC insurance or any other government-backed or third party insurance.

The future development of Cryptocurrencies and their underlying software protocols is uncertain. The slowing or stopping of the development or acceptance of Cryptocurrencies may negatively affect their value.

Cryptocurrencies are not regulated or are lightly regulated in most countries, including the United States...

The value of Cryptocurrencies may result from the continued willingness of market participants to exchange U.S. Dollars (or other government-backed currencies) for Cryptocurrency. Therefore, should the market for a Cryptocurrency disappear, the Cryptocurrency may suffer a total and permanent loss of value.

...
The software protocols that underlie Cryptocurrencies are typically open source projects...such software protocols are subject to sudden and dramatic changes (including Forks) that might have a significant impact on the availability, usability or value of a given Cryptocurrency.

Voyager's blog, NODE, features a similar excerpt for its "Voyager Cryptocurrency Risk Disclosure", which states that "Cryptocurrencies are highly speculative in nature, involving a high degree of risk and can rapidly and significantly decrease in value. It is reasonably possible for the value of Cryptocurrencies to decrease to zero or near zero. While diversification may help spread risk, it does not assure a profit or protect against loss."

22. Respondents are not licensed with the United States Securities and Exchange Commission nor are Respondents' Voyager Interest Accounts registered.

23. Respondents are not registered in Kentucky to offer or sell securities in Kentucky, nor are Respondents' Voyager Interest Accounts registered or permitted for sale in Kentucky.

24. Respondents are not licensed as a money transmitter in Kentucky to conduct currency exchange or money transmission activities in Kentucky.

25. Respondents are not registered with the Commodity Futures Trading Commission or its delegee, the National Futures Association.

26. Respondents' Voyager Interest Accounts are not protected by Securities Investor Protection Corporation, otherwise known as the SIPC, a federally mandated, non-profit, member-funded United States corporation created under the Securities Investor Protection Act of 1970 that mandates membership of most U.S.-registered broker-dealers.

27. The cryptocurrency contained and/or associated with Voyager Interest Accounts are not insured by the Federal Deposit Insurance Corporation ("FDIC"), an agency that provides deposit insurance to depositors in the United States, or the National Credit Union Administration ("NCUA"), an agency that regulates and insures credit unions.

28. As of March 2022, Voyager claims it has approximately \$5,000,000,000 in assets under management from approximately 1,500,000 Voyager Interest Accounts.

29. As of March 2022, excluding digital asset and cryptocurrency deposits, Voyager has more than \$25,986,412 in total assets under management from more than 15,325 Kentucky residents and businesses, with more than \$25,942,012 in assets under management as reward accounts.

STATUTORY AUTHORITY

30. KRS 292.310(19) defines a "security", in relevant part, as:

...any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, life settlement investment, voting-trust certificate, certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; or, in general, any interest or instrument commonly known as a "security[.]"

31. KRS 292.340 states,

It is unlawful for any person to offer or sell any security in this state, unless the security is registered under this chapter, or the security or transaction is exempt under this chapter, or the security is a covered security.

32. KRS 292.470 states, in pertinent part,

Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order under this chapter, the commissioner may in his or her discretion bring any or all of the following remedies:

- (1) Issue a cease and desist order, with or without a prior hearing, appealable to Franklin Circuit Court, against the person or persons engaged in the prohibited activities directing that person or persons to cease and desist from illegal activity. In order to issue an order without prior hearing, the commissioner must find that the delay in issuing a final cease and desist order will cause harm to the public.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

33. The Department has become aware that Voyager is offering securities in the form of investment contracts in exchange for the deposit of assets with Voyager. These investment

contracts allow passive investors to earn profit in the form of interest on the assets deposited with Voyager and qualify as securities under the Act.

34. Through Voyager's publicly available website and smartphone application, Respondents have solicited securities in Kentucky.

35. Voyager has never been registered with the Department and has never sought registration for either itself or its Voyager Interest Accounts.

36. Pursuant to KRS 292.340, it is unlawful for any person to solicit or sell securities in Kentucky without first being registered with the Department to do so.

37. Voyager and the Voyager Interest Accounts do not qualify for an exemption from registration.

38. Based on the facts set forth above, Voyager offered unregistered securities in Kentucky through a publicly available website, in contravention of the Act. These securities were not registered with the Department as required by the Act, do not qualify for an exemption from registration and, unless enjoined, Voyager will continue its conduct without appropriate regulation.

39. Respondent's management of assets is completely unregulated and is not subject to any government oversight or approval.

40. Voyager, by failing to register itself and its Voyager Interest Accounts pursuant to the Act, are not abiding by any disclosure requirements regarding the risks of investing with the Company, or the potential losses that an investor can suffer after opening a Voyager Interest Account.

41. Accounts opened with Voyager are not insured by the Federal Deposit Insurance Corporation, or any other government entity.

42. This lack of oversight coupled with the extremely volatile nature of the cryptocurrencies used to fund Respondents' Voyager Interest Accounts has resulted in an unregulated market that represents a substantial risk to consumers.

43. Delay in issuing a final cease and desist order in this case would cause direct harm to the public due to Respondent's current and foreseeable conduct. Failure of the Department to enter an emergency order to cease and desist in this case could result in extensive financial losses to the citizens of the Commonwealth, and consumers harmed in this way may have little to no recourse whatsoever. The emergency nature of this order is essential to protect the interests of the citizens of the Commonwealth due to the high volume of assets and volatile nature of cryptocurrency.

ORDER

Based on the foregoing, IT IS HEREBY ORDERED that:

1. Voyager, shall **CEASE AND DESIST** from soliciting or selling any security in Kentucky unless that security is registered with the Department pursuant to KRS 292.340; and
2. Voyager, shall **CEASE AND DESIST** from any and all activity which would otherwise violate the Act.

SO ORDERED on this the 29th day of March, 2022.

Charles
A. Vice

Digitally signed by: Charles A. Vice
DN: CN = Charles A. Vice email = charles.vice@ky.gov, C = US, O = Dept. of Financial Institutions, OU = PPC/DFI/Commissioner
Date: 2022.03.29 09:56:59 -05'00'

_____/s/ *Charles A. Vice*_____
CHARLES A. VICE
COMMISSIONER

NOTICE TO RESPONDENT

You are hereby notified that you are entitled to request an emergency hearing. If requested, an administrative hearing shall be held within ten (10) days pursuant to the provisions of KRS Chapter 13B.125. Please submit any request for hearing, in writing, to Brandon Adcock, Staff Attorney, Kentucky Department of Financial Institutions, 500 Mero Street 2 SW 19, Frankfort, Kentucky 40601. Alternatively, you may also have the right to the judicial review of this Order in Franklin Circuit Court pursuant to KRS 292.470(1).

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Emergency Order to Cease and Desist was sent on this the 29th day of March, 2022 by the method indicated below to the following:

Via certified mail, return receipt requested:

Voyager Digital Ltd.
33 Irving Plaza
Suite 3060
New York, NY 10003
Respondent

Voyager Digital Holdings, Inc.
221 River Street 9th Floor
Hoboken, New Jersey, 07030
Respondent

Corporation Service Company
VOYAGER DIGITAL HOLDINGS, INC.
251 Little Falls Drive
Wilmington, DE 19808
Registered Agent for Service of Process

Voyager Digital LLC
185 Hudson St
Ste 2500
Jersey City, NJ 07311

Corporation Service Company
VOYAGER DIGITAL LLC
421 W Main St
Frankfort, KY 40601
Registered Agent for Service of Process

Via electronic delivery:

Brandon Adcock, Staff Attorney III
DEPARTMENT OF FINANCIAL INSTITUTIONS
500 Mero Street, 2 SW 19
Frankfort, KY 40601
Counsel for Department of Financial Institutions

Kentucky Department of Financial Institutions

Name: Allison Reed, by Mary Johnson

Title: Executive Staff Advisor