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October 30, 2018

VIA ELECTRONIC SUBMISSION

Office of Chief Counsel
Division of Company Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Memo in support of No-Action Relief Request for the Shakti Coin

Dear Sir/Madam,

This memo is to support the request for No-Action Letter from Shakti Coin dated August 25, 2018. We have under taken an analysis of the question below and have provided this memo in support.

Background Facts and Social Benefits of the Coins

The Swiss Shakti Foundation (the “Shakti Foundation” or “Foundation”) is a proposed public benefit foundation that has been submitted for approval to the regulators in the Canton of Zug, Switzerland. The Shakti Foundation is planning to issue a Utility Token called Shakti

(“Shakti”). The Foundation’s stated purpose is to increase primary school attendance globally using an innovative blockchain protocol, Proof of Efforts (“PoE”).

The mission of the Shakti Foundation is poverty alleviation by addressing school participation deficits globally. In India, for example, secondary school attendance stands at only 69 percent. The Foundation’s solution for this problem is to incentivize parents to bring their children to school, integrating established sharing economy with a blockchain-based solution.

Conditional-cash transfers (“CCTs”), transfers of value conditioned upon beneficiaries’ investment in child education and health, are a tested and proven method for improving child outcomes. Empirical research has shown that CCTs have been successful with Indian school children specifically.

The Shakti Foundation builds on the success of CCTs through a technological advancement for the transfer of value – the blockchain. The blockchain facilitates the nearly costless and instantaneous transmission of value across borders, with full transparency in validating that a child actually attends school. The key to this PoE protocol are the validators who physically validate the daily attendance of children at school at multiple points in the process. If all validators certify that a child attends school, their parent will receive a Shakti Coin.

Once the coin is mined in the first instance, participating parents will be able to use Shakti Coins as a means and medium of payment with participating vendors, or potentially transfer them within their community. The vision is that once sufficient Shakti Coins are in circulation, the Shakti Coins will become accepted as a form of payment, similar to other school rewards programs, by merchants. It will retain a store of value for the holders because of the work parents had to do (unit of work) to get their children into school. Once the Shakti Network is live, it is the Foundation’s expectation that the Shakti Coins will naturally evolve into an accepted form of payment through the network of participants increasing the utility of the coin as an incentive for the participating families to send their children to school. Thereby, further incentivizing the parents to send their children to school.

Technical Token Issuance

There will be no pre-mined Shakti Coins and therefore no Initial Coin Offering. The parents receive Shakti Coins based on their Proof of Effort as no payment is made for the coins. The parents' condition precedent is met to be able to mine the coin in the first instance only after the students' attendance at school, is validated by trusted parties such as teachers, school authorities, bus drivers, and other educational professionals who also are vetted and participate in the Shakti Network.

The Foundation has pronounced and memorialized a value of the Shakti Coin to be fixed at US \$5.00 because this is an amount sufficient to provide two square meals a day per child, for 95% of the world's children, with a little extra to purchase materials such as textbooks and school supplies.

Shakti Network will maintain that fixed value, because:

1. It is protocol layer token (coin).
2. It is *native* to Shakti Network.
 - a. The Shakti ledger will not reach consensus when C2B transaction takes place and the declared value departs from the US\$5.00 fixed value, for example, the coin can only be transferred on a decentralized ledger from user 1 to user 2 at the pronounced and memorialized value.
3. The transaction is stored on a public ledger.
4. The Shakti PoE ecosystem is a shared communal economy, with an in-built incentive for community governance, which unifies the populace while penalizing the price manipulators at the root level.

Furthermore, the Foundation intends to work with teams of volunteers to build a global community of NGOs who will assist them to reinforce the belief system that a fixed value coin is desirable to pull the marginal communities into the fold of global economic participation. Shakti Coins are fungible with each other, but there is no limit on the number of coins that can be

created¹. However, the coins are created according to a mathematical algorithm based on real parents with real children, collectively making an effort to attend a school which attendance must be evidenced by various participants in the school system.

The Foundation envisions that the public at large will purchase Shakti Coins from parents, as a way of supporting children's education both in their own country and in foreign countries. It is further envisaged that merchants and traders in their respective communities will readily accept Shakti Coins as a means of payment as a means of supporting the underlying social goal of children attending school. It is through constant supply and widespread adoption of Shakti that the Foundation anticipates the coin will store value for its recipients and become a means of exchange thus incentivizing parents to have their children attend school. The Foundation working with grass roots communities and NGOs, will consistently communicate that the Shakti Coin has a fixed value of US\$5.00 in order to encourage both parents and the merchant community to accept payment of the Shakti at this value.

Therefore, a protocol layer coin with codified blockchain technology together with this consistent messaging, will keep the value constant and avoid speculation and nefarious exchange practices such as "spoofing" and "trade washing". In short, there should be no incentive or opportunity to manipulate the value up or down.

The Shakti blockchain will be supported and maintained by node operators – who in turn will receive access to the Shakti Network and the ability to mine for transaction fees. The Foundation envisages two levels of node operators: "Power and Regular" as node operators.

The Power node operators are a selected group of experienced node operators, who will be incentivized to join the Shakti Network and popularize it. Power node operators will pay an annual software license fee and be required to locate their server in a data centers distributed according to a four-tier system ranging in price from \$199 to \$999. Locating the server in a data

¹ Although the Foundation does not intend to function as a central authority, it does intend to support the market for the coin at a fixed value of US\$5.00 and encourage school participation in the program with this accepted value in mind. The coin must have value sufficient to purchase meals and school supplies as intended but should not increase beyond this need in order to prevent the coin from being used to purchase vices such as tobacco and alcohol products. The coin is intended to be used to assist families in educating their children and for no other purpose. The stability of value is essential to achieve this goal.

centers will give the power node operators enhanced geographic stability on the network for which power miners gain early access to the network. The power node licenses are limited in number and are distributed based on suitability. It is anticipated that they will act as “influencers” and encourage general participation in the Shakti Network. The network will continually expand to accommodate regular node operators as they sign on to the technology. Regular node operators will pay an annual software license fee of \$49.95 to operate and maintain the Shakti blockchain ledger.

The software license fees paid by node operators to SXE Network Operations LLC (the “Company”) give the regular node operators access to the Shakti Network. The fees will be applied to the administrative cost incurred by the Shakti Network for compliance due process, to commission an opinion with respect to various regulatory issues arising for the wallet holders, such as cross border transactional tax issues and to provide 24 X 7 software maintenance & support services to node operators.

The fees are charged solely for the purpose of covering current and anticipated expenses in maintaining the Shakti Network. The Company does not intend on increasing the license fees and if the fees are increased it will be for the sole purpose of covering increased cost incurred in maintaining the network.

All node operators will earn a small fraction of Shakti² as verification fees for each Shakti Coin mined by a parent and verified by them which fee will be automatically transferred to the node

² The precise amount is determined as follows:

The minimum mining fee is set at 500 Toshi (USD = 0.025; SXE = 0.005).

The transaction processing cost, Y, is calculated using the following equation:

- $Y = \text{SXE} \cdot 0.005$, when $\text{SXE} \leq 2$; (USD = 2.5 Cents for any purchase that cost less than or equal to US \$10.00)
For a transaction amount of more than SXE 2, the transaction processing cost, Y, is calculated using the following equation.
- $Y = k \cdot \text{Log}_2(\text{SXE})$, when $\text{SXE} > 2$
 - All values are measured in SXE.
 - The function is continuous. The coefficient, k, regulates the growth rate uniformly.
 - Y is the value of processing payment cost. The node operator who initiates a transaction to be included within the block earns five percent (5%) of the transaction processing fees, when there is a consensus.
 - Eighty Five percent (85%) of the allocated transaction processing fee is paid to node operators, as the first authority, to validate the transaction on the SXE Network.
 - The remaining 10% of the transaction processing fee is paid to the SXE Network Operations LLC to enforce global compliance and deliver other operational services.

operator's wallet³. Each node operator can only buy one license which cannot be sold or otherwise transferred to a third party⁴. There is no limit to the number of regular node operators who can join the network. The difference between a regular node operator and power node operators is primarily the location of their servers. Power node operators must locate their servers in a data center while regular node operators can locate their servers anywhere but a data center.

In addition to the verification fee, all node operators are eligible to earn a "Genesis Bonus Bounty" in the early stages of the network. The Genesis Bounty is akin to a commission that is paid for onboarding participants (parents, validators, merchants) onto the network. At the outset, in order to encourage community building, all node operators will be required to on board at least 84 participants – with at least 10% of the participants coming from the merchant community before they can access the transaction fees earned in their wallets or unlock the bonus bounty. As the community grows this requirement will become redundant and will be phased out.

Since the Coin will not be earned with any expectation, by these service providers of a profit.

Key Facts

When analyzing the Shakti Coin and whether or not the Shakti Coin is a security there are several key facts that impact on the analysis.

- The first is that ***there will be no initial coin sale***. The Coins will only be given as a reward to parents for Proof of Effort on the blockchain.
- Second there will be a fixed conversion price as to assure a stable price. The Foundation has put in a number of safeguards to insure this.

³The payment system to all participants – whether a Shakti coin mined or a micro payment to the validators or node operators – is completely automated and is an autonomous process derived from the PoE protocol which is a self-propagating system that lives on the Shakti Network.

⁴The purpose of limiting one licence per natural person (either incorporated or not) is to prevent mining dominance and ensure the platform remains widely accessible and evenly distributed.

- Third there will not be an attempt to raise the value by the Shakti Coin.
- Fourth the only impact that a third party can have on the value of a Shakti is whether or not to accept the Shakti as a form of payment.
- Fifth the Genesis Bounty participants will attempt to educate merchants to gain acceptance for the token.
- Sixth the public ledger will enforce a \$5 value for verification.
- Seventh the Foundation will have as its primary mission to hold the value of the Coins at \$5 a unit.

Analysis under recent SEC announcements, Definition of a Security, DAO Report, SEC v. W.J Howey Co. and other related cases.

Based on the facts above we have the following analysis regarding if the Shakti Coin offering is a security.

The term 'security' , as defined in the 1933 Securities act means 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, 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.' . . ."

The Supreme Court has insisted that the Securities Acts must be interpreted liberally and broadly. It has rejected narrow and strict construction in order to carry out the remedial purposes of the legislation. Securities and Exchange Commission v. W. J. Howey Co., [328 U.S. 293](#), 66 S.

Ct. 1100, 90 L. Ed. 1244 (1946). In the same opinion the court approved a certain interpretation of the Securities Act of 1933 because it embodied

“ . . . a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits. 328 U.S. at 299, 66 S. Ct. at 1103.”

The very purpose of the statutes would be violated if they were construed to apply only to familiar and conventional transactions and were not capable of adaptation to novel and irregular schemes fairly covered by the intent and text of the statutes. Thus, the Supreme Court has said that in interpreting these acts, "form should be disregarded for substance and the emphasis should be on economic reality." *Tcherepnin v. Knight*, [389 U.S. 332](#), 336, 88 S. Ct. 548, 553, 19 L. Ed. 2d 564 (1967).

The SEC position on Initial Coin Offerings, as a security, are rapidly evolving with more aggressive regulatory authorities being claimed in the last 6 months. Initial Coin Offerings had been generally been viewed as unregulated transactions by investors until this activity.

The SEC issued, in the summer of 2017, a Report of Investigation (“DAO Report”) related to the issuance of over 1 billion Coins in exchange for 12 million Ether virtual currency by a virtual organization known as “The DAO”. The issuers made many public pronouncements that the offering was similar to buying shares in a company and that the smart contracts would bring on a new era of corporate governance. DAO also promised that the Coins would be tradeable on the secondary market and that the Coins were not subject to any transfer restrictions.

The SEC decided after conducting its investigation not to pursue any enforcement action but instead decided to issue the DAO Report, setting out its views as to application of the federal securities laws to DAO Coins. The SEC analyzed the DAO Coins using the “facts and circumstances” test established by the Supreme Court in *SEC v. W.J. Howey and Co.* The “Howey” test as it is known has four factors to consider and the SEC reviewed and analyzed those in deciding whether the Initial Coin Offering (“ICO”) in question was in fact a security offering.

The four factors considered were whether:

- The purchasers of the ICO invested money or valuable goods and services
- The purchasers of the ICO were investing in a common enterprise
- The purchasers of the ICO had a reasonable expectation of earning profits
- Any Profits earned from the ICO were to be derived from the efforts of others

The SEC determined that the elements of the “Howey” test were met based on the following:

- The Purchasers payments in Ether were an investment of money. Since DAO SEC officials have stated that Ether is a “digital currency”
- The Ether was invested in a common enterprise
- Investors had a reasonable expectation of profits
- Investors relied on the efforts of others because of the key role played by the “founders” and “curators”

The SEC was clear in its findings that not all Initial Coin Offerings are offerings that each is driven by its own facts and circumstances. However, it is clear by the DAO Report and the release this summer of a statement of the SEC that they will be looking to pursue aggressive enforcement and that “*form must reflect “substance”*”. The statement though of “form must reflect substance” is a long tradition in Securities Law (See *Tcherepnin v. Knight*, 389 US 332 [1967]).

Analysis of Shakti Foundation Utility Coin Offering under “Howey Test”

The Shakti Foundation Utility Token Offering is not in our opinion a security under the “Howey” test . Reviewing the “Howey test” factors together with the definition of a “security” and the facts above our belief is that:

Test one: Is there an investment of money or valuable goods and services?

The first part of the first test is fairly straight forward is there an investment of money. Clearly, the answer is no as there will not be a purchase payment for the token and no private sale of the token. The second part of the first test whether valuable good or services were contributed the answer again is clearly no. The whole reason the Shakti is fulfilling a societal need is that currently there is no economic value derived from a parent taking a child to school.

Test two: Is there an investment into a common enterprise?

It is clear that there is no investment as discussed under test one above. The Coins are not to be purchased and the coins are not issued in exchange for valuable goods or services. The second prong of test two is there a “common enterprise” is clearly not met as each holder of Shakti earns their Shakti through Proof of Effort *as an individual only* not through the actions of others. It matters only what the parent does regarding their own child’s education. The Shakti price rising or falling is not based on the efforts or results of the parents.

The Foundation itself will only assist in education activities to keep the Shakti value at \$5 a coin.

Test three: Is there a reasonable expectation of a profit?

The Parents that are issued the Coins do not have a reasonable expectation of profit from the Coins. The Shakti is being stabilized at a value of \$5 a Coin by the Foundation and the public ledger. The Coins are not set up to rise in value hence there cannot be an expectation of a profit.

Test four: Will the token holders be relying on the efforts of others ?

The fourth test has long been seen by the court as a key to determine if an instrument is a security “The real sticking point in the definition of an investment contract is the requirement that investors expect profit *solely* from the efforts of others”. (See *SEC v. Glenn W. Turner Enters., Inc.*, 474 F.2d 476, 482-43 (9th Cir. 1973).

The Coin holders will not be relying on the efforts of others to receive their Coins instead through their own individual efforts of bringing their children to school and the Proof of Effort blockchain each individual earns their own Shakti. The Foundation is not the “Manager of the Coins” instead it is acting as a manager-umpire of the rule book on behalf of the coin holders.

The Foundation’s only involvement with the Shakti Coin is to pronounce the value of the Shakti coin to be US\$5.00. The Foundation will not direct any effort towards increasing or decreasing the value of the Shakti. The propagation of the Shakti Coin into common use will be carried out by node operators, parents and community participants and, even at this level, the effort is to encourage and increase the adoption and utility of the Shakti Coin (as a means of incentivizing school attendance) and not to increase the coin’s monetary value.

The value of Shakti Coin will not be determined by the efforts of the Foundation. Instead, the value of the Coin and its proliferation and acceptance among the recipients and their respective communities will determine its acceptance and value – not from the efforts of the Foundation. The Recipients have neither invested money nor are they dependent on the efforts of the Foundation. In fact, the recipient parent must provide the effort to ensure their children attend school in order to receive the Shakti; therefore, receiving Shakti is primarily as a result of the parents’ efforts assisted by their community and not the efforts of the Shakti Coin issuer.

Our Conclusion on whether a Shakti Coin is a security

We believe that even under a liberal **interpretation**, as required, for what is a security that the Shakti Coin is not a security.

When we look at the totality of the “facts and circumstances” we do not believe that this is a security offering.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Ryan". The signature is fluid and cursive, with the first name "Daniel" being more prominent than the last name "Ryan".

Daniel Ryan
President
Law Offices of Daniel Ryan PC