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Nothing in this opinion is intended to create an attorney-client relationship with any purchaser of NuBits or NuShare tokens (collectively, the "Tokens"). Purchasers of Tokens should seek independent legal counsel regarding the implications of purchasing Tokens.

April 19, 2018

Re: **U.S. Federal Securities Laws in Regard to NuBits and NuShares**

Introduction

It is illegal to offer or sell securities in the United States unless the offer and sale are exempt under the federal securities laws or made pursuant to an effective registration statement filed with the Securities and Exchange Commission (the "***SEC***"). One type of a security under federal law is an "investment contract."[1] Consistent with the general position of the SEC, we believe that the "investment contract" analysis is the best fit for analyzing most token sales under the U.S. federal securities laws.[2] Courts since the 1930s have generated significant analysis of what is meant by the term "investment contract" and this opinion will apply this analysis to the NuBits token.

The Howey Test

The United States Supreme Court in its 1946 decision in *SEC v. W.J. Howey Co.*,[3] provided the seminal definition of the term "investment contract." An investment contract was a "contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party."[4] Many courts in the succeeding seventy-two years have further expounded on each of the constituent parts of this test, now known as the Howey test. Courts often break the Howey test into four prongs to determine (i) whether there exists an investment of money, (ii) whether there exists a common enterprise, (iii) whether there exists an expectation of profits, and (iv) whether the expectation of profits is solely from the efforts of others.[5] If all prongs are satisfied, then a contract, scheme, or arrangement passes the Howey test and constitutes a security. If any one of the prongs is not met, the arrangement fails the Howey test and there is no security.

The NuBits Token

Bitcoin and other cryptocurrencies seek to capture the functionality and benefits of both an equity instrument (shares) and a currency in a single coin. Shares have the capacity to appreciate over time to reflect the perceived value of a network while a currency, to be functional, must be able to serve as a relatively stable store of value in order to functional medium of exchange. The Nu network is built on the fundamental premise that these two competing pricing models cannot be accommodated in a single unit. The solution is a network with two types of units which are not fungible: shares and currency. Shares represent ownership of the network and their quantity should not change to accommodate the changes in the level of demand for them. If demand increases, the price should rise proportionately. They should also provide dividends from network revenues. The supply of currency, however, should dynamically adjust up and down in response to changes in the level of demand for the currency so that the price is always stable. The Nu platform is live and the NuShares and NuBits tokens are trading on exchange.

Nu permits holders of NuShares to manage the quantity of NuBits without dependence on any off blockchain

[1] The Securities Act of 1933, as amended, Section 5, 15 U.S.C. § 77e(a), (c); 77d.
[2] *See* SEC Release No. 81207, Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO (July 25, 2017), available at https://www.sec.gov/litigation/investreport/34-81207.pdf.
[3] *SEC v. Howey Co.*, 328 U.S. 293 (1946).
[4] *Id.* at 298-299.
[5] *Id.* at 301.

mechanisms. Additional NuBits can be created when shareholders vote to do so and will be placed in the custody of a recipient chosen by shareholders called a custodian. There can be as many custodians as the shareholders elect to have and they can be changed at the whim of shareholders. Custodians may adopt a pseudonym if they choose to do so. Because custodians can be pseudonymous, many in number and abandoned at the will of shareholders, third parties cannot gain control of the network by leveling threats against custodians. Being a custodian doesn't impart any control over the network, only over a finite quantity of network revenues. NuBits created and sold are network revenues that can be used by custodians for Nu operating expenses and dividends. Dividends are currently paid only in Peercoins, which is a third-party cryptocurrency that can be traded on exchanges for fiat money or other cryptocurrencies. This means custodians must purchase Peercoins in preparation to distribute them. Therefore, demand for Peercoins will increase proportionate to the amount of dividends paid by Nu. It is possible that holders of NuShares may vote to change what asset is used to pay dividends in the future to something other than Peercoins.

Conversely, the system can reduce the available supply of NuBits through a separate mechanism called parking, where holders of NuBits volunteer to take their currency out of circulation for a user configurable period of time in exchange for a monetary incentive. This is similar to extending a loan at interest. Shareholders can dynamically adjust the level of interest offered on parked NuBits (which varies by the duration) by voting for whatever yield curve they think is appropriate when they mint a block. When organic NuBit demand is in decline, shareholders will create synthetic demand for them by offering interest on parked NuBits. Some entities that would have no interest in NuBits as a currency will purchase them simply to park them at interest, thereby compensating for the decline in organic demand. Shareholders will raise the interest offered to whatever level is required so that organic and synthetic demand combined will not decline. As organic demand increases once again, the interest offered will be reduced until organic demand reaches its previous peak, at which time no interest will be offered for parking.

The NuBit price will be suppressed to one USD from custodians maintaining huge sell walls at one USD and supported at one USD by shareholders offering interest on parked NuBits to create synthetic demand when there are market signals that demand is in decline. While early in the network's life minute to minute NuBit demand could decline suddenly and cause the price to momentarily drop below one USD, shareholders will quickly push the price back into the custodial one USD sell wall by increasing the parking interest rate. This will punish anyone who sold below one USD and reward anyone who purchased below one USD. Soon it will become clear that selling NuBits below one USD is always a losing trade and buying them below one USD is always a winning trade, which will prevent its decline. A special type of custodian can be compensated to provide deep liquidity to sellers of NuBits at one USD, preventing the price from falling even in the case of a sudden drop in demand that is too quick to allow for interest rates to be raised.

Element 1: Investment of money	
Is there an investment of money? *Tokens that are not sold for value do not involve an investment of money. For example, if all tokens are distributed for free, or are only produced through mining, then there is no sale for value. Tokens which are sold in a crowdsale, at any time, regardless of whether sold for fiat or digital currency (or anything else of value) involve an investment of money. Also, an investment of money may include not only the provision of capital, assets and cash, but also goods, services or a promissory note.* Given the broad definition of a money investment and the fact that NuBits and NuShares are sold for digital currency and fiat money, this prong of the test is likely satisfied.	+

Element 2: Common Enterprise	
What is the timing of the sale? *If the sale of tokens is made before any code has been deployed on a blockchain is more likely to result in a common enterprise where the profits arise from the efforts of others. This is because the buyers are completely dependent on the actions of the developers, and the buyers cannot actually participate in the network until a later time. Or if there is a functioning network there is less likely, but still it may have some similarities to a common enterprise where the profits arose from the efforts of others. The closer the sale is to launch of the network, the less likely there is to be a common enterprise.* Both NuShares and NuBits are currently trading on exchanges and the Nu network is functional.	-
Different circuits use different tests to analyze whether a common enterprise exists. Three approaches predominate: (i) horizontal; (ii) narrow vertical and (iii) broad vertical. **What do token holders have to do in order to get economic benefits from the network?** *Under the horizontal approach, a common enterprise is deemed to exist where multiple token holders pool funds into an investment and the profits of each token holders correlate with those of the other token holders.*[6] *Whether funds are pooled appears to be the key question, and thus in cases where there is no sharing of profits or pooling of funds, a common enterprise may not be deemed to exist.* *The narrow vertical approach looks to whether the profits of a token holders are tied to a promoter.*[7] *The broad vertical approach considers whether the success of the token holders depends on the promoter's expertise.*[8] *If there is such reliance, then a common enterprise will be deemed to exist.* *If returns are paid to all token holders equally (or in proportion to their token holdings) regardless of any action on the part of the token holder, then their interests are more likely to be aligned in a common enterprise. If token holders' returns depend on their own efforts, and can vary depending on the amount of effort they each put in, then there is less likely to be a common enterprise.* While the Nu network is decentralized and the active participation of at least some of the NuShare holders is required for proper functioning of the network, assuming the more conservative horizontal approach will be applied, this prong of the Howey test is likely satisfied since Token holder funds have been pooled and the profits of any one Token holder correlates, for the most part, with those of other holders.	+
Element 3: Expectation of profits predominantly from the efforts of others	
What function does the token have? *Tokens which give, or purport to give, traditional equity, debt or other investor rights are almost certainly securities. A token which does not have any real function, or is used in a network with no real function, is very likely to be bought with an expectation of profit from the efforts of others, because no real use or participation by token holders is possible. Voting rights alone do not constitute real functionality. A token which has a specific function that is only available to token holders is more likely to be purchased in order to access that function and less likely to be purchased with an expectation of profit.* The primary goal of the Nu network is to ensure that the price stability of the NuBits token such that it can serve as a viable currency. In this respect, the primary function of the NuBits is as a medium of exchange for goods or services. While NuBits token holders may receive an economic benefit from 'parking' their tokens, this monetary incentive is not the primary function of the token, and parking is not guaranteed upon purchase of the token as there may be long periods of time when no yield is offered on parked NuBits. As a	–/+

[6] *Revak v. SEC Realty Corp.*, 18 F.3d 81, 87 (2d Cir. 1994).
[7] *Id.* at 88.
[8] *See SEC v. Koscot Interplanetary, Inc.*, 497 F.2d 473, 479 (5th Cir. 1974).

result, holders of NuBits are unlikely to be seen as expecting profits predominantly from the efforts of others. NuShares, on the other hand, do not have a practical function other than providing an on-network voting mechanism to control the number of NuBits tokens outstanding. The value of NuShares is not stabilized the way that the value of NuBits are, so their value is determined by the amount of demand for NuShares. NuShares also receive dividends in the form of Peercoins, which must be purchased and distributed by a custodian. Since NuShares do not have real functionality and purchasers of NuShares may receive a benefit in the form of increased value NuShares and Peercoin dividends, purchasers NuShares are more likely to be seen as having an expectation of profit.	
Does the holder rely on manual action to realize the benefit of the token? *A token, the value of which depends on someone taking specific manual action outside of the network, means that the token is not functional in and of itself. Instead, the token relies on a level of trust in a third party taking action off-blockchain. This sort of token is more likely to be bought for speculation.* *A token which is built with all the necessary technical permissions means that the token holder does not rely on manual actions of any third party. This means that the buyers are more likely to purchase the token for use rather than with the expectation of profit from the efforts of others.* *However, just because there is a return or profit, it does not mean that the token sale contract is a security. It is the essentially passive nature of the return, as determined by the "efforts of others" analysis, that results in a "token sale contract" and security as opposed to a simple contract instrument.* With regard to both NuShares and NuBits, all functionality is inherent in the token and occurs programmatically with the active participation of the token holders (at least with respect to NuShares). The necessary technical permissions and the Token holders do not rely on manual actions of any third party outside the network on which NuShares and NuBits reside.	-
What is the timing of the sale? *If the sale of tokens is made before any code has been deployed on a blockchain is more likely to result in a common enterprise, where the profits arise from the efforts of others. This is because the buyers are completely dependent on the actions of the developers, and the buyers cannot actually participate in the network until a later time.* *Or if there is a functioning network there is less likely, but still it may have some similarities to a common enterprise where the profits arise from the efforts of others. The closer the sale is to launch of the network, the less likely there is to be a common enterprise*. Both NuShares and NuBits are currently trading on exchanges and the Nu network is functional. Therefore, it is unlikely that there is a common enterprise for either Token.	-
Can the token holders exercise real and significant control via voting? *If the collective approval of token holders is required in order for the development team to access the funds raised in the crowdsale, then any value realized by the token holders is more closely tied to their own decisions, and less reliant on the efforts of others.* *If the collective approval of token holders is required in order to make significant changes to the protocol, then any value realized by the token holders is more closely tied to their own decisions, and less reliant on the efforts of others.* With respect to NuShares, voting by tokenholders is central to the functioning of the network. The Nu network is highly decentralized. NuShares holders control network, vote on when to mint blocks of NuShares and manage the quantity of NuBits without dependence on any off blockchain mechanism. As a consequence, holders of NuShares exercise very real and significant control over the Nu network. Holders of NuBits, however, do not have any voting rights nor exercise any control over the network.	-/+

Analysis

Whether a token is a security is based on the facts and circumstances of each token.[9] The "investment of money" prong of the Howey test is clearly satisfied with respect to both NuShares and NuBits, and applying the conservative horizontal approach to the "common enterprise" leads to the determination that both NuShares and NuBits likely satisfy the second prong of the Howey test. Which leaves us to determine the applicability of the elements of the Howey test that ask whether there is "an expectation of profit" that is "predominately based on the efforts of others".

As of the date hereof, NuShares and NuBits trade on exchanges and the Nu network is operational and functioning without substantive control or intervention by the token issuer. All functionality is inherent in the network and occurs programmatically through the active participation of NuShares token holders and to a lesser extent NuBits holders. In fact, particularly with respect to NuShares, voting by token holders is essential to the proper operation of the network. The network is highly decentralized, with NuShares voting on the central operational features of the network including minting new blocks of NuShares and managing the quantity of NuBits. While NuShares holders may have an expectation of profits, given the active and central role they play in control and functioning of the Nu network, such expectation is not predominantly based on the efforts of others.

Furthermore, since the primary purpose and functionality of NuBits tokens is to serve as a stable medium of exchange and a currency for the exchange for goods and services, purchasers of NuBits are not primarily motivated by an expectation of profit.[10] And even assuming that they were motivated by an expectation of profit, NuBits holders would not be relying on the efforts of outside third parties or the token issuer, only the active participation of other members of the Nu network.[11]

Conclusion

Based on our review of Howey and the SEC guidance, albeit limited, on the issuance of cryptographic tokens, and based on information provided and representations made to us by Nu, we are of the opinion that it is likely that both NuBits and NuShares, albeit for different reasons, do not satisfy the "predominantly based on the efforts of others" prong of the test. And if one prong of the Howey Test is not satisfied, no security exists.

Disclaimer:

The above analysis is based on information obtained from a representative of the token issuer, the company's whitepaper, and the law as it exists as of the date hereof. No US state or non-US law was considered herein; only federal securities laws. No opinion is expressed with regard to any other body of law or legal construct, including without limitation the franchise laws of any US state. No court or any administrative body has addressed the question of whether any blockchain tokens are "securities" under federal law; as such, the SEC or a court of competent jurisdiction may reach an alternative conclusion to that stated in this opinion letter. No warranties or guarantees of any kind as to the future treatment of NuBits or NuShare tokens or are being made herein.

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[9] SEC Release No. 81207 at 10.

[10] In order for a purchaser to have an expectation of profit, the purchaser's expectation of profit must predominate the expectation of using the thing purchased. However, "when a purchaser is motivated by a desire to use or consume the item purchased", then the item is not a security. *United Housing Found., Inc. v. Forman*, 421 U.S. 837, 858 (1975).

[11] This is in contrast to those Munchee targeted its marketing efforts for the purchase MUN tokens, who were not the ultimate users of the Munchee app where MUN tokens could be used. Munchee also "burned" MUN tokens in order to increase their value, whereas NuBits holders are incentivized to "park" or not park their NuBits in order to either increase or *decrease* their value. *See* SEC Release No. 10445, 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 (Dec. 11, 2017), available at https://www.sec.gov/litigation/admin/2017/33-10445.pdf.