

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11102 / September 19, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-21103

In the Matter of

**Sparkster, Ltd. and Sajjad
Daya,**

Respondents.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 8A OF THE SECURITIES ACT
OF 1933, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS
AND 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 Sparkster, Ltd. (“Sparkster”) and Sajjad Daya (“Daya”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have each submitted an Offer of Settlement (collectively, the “Offers”) 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 the Respondents and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds¹ that:

Summary

1. From April 2018 into July 2018, Sparkster, a developer of software to enable “no code” software development, and its founder, Daya, conducted an unregistered securities offering (the “Offering”) of crypto asset securities called “SPRK tokens,” raising approximately \$30,000,000 from nearly 4,000 investors located in the United States and abroad. The tokens were sold in a so-called “presale” phase in May 2018 and a “crowdsale” phase in July 2018. Sparkster and Daya represented to investors that SPRK tokens would increase in value, that Sparkster management would continue to improve Sparkster, and that one of the goals was to make the tokens available for trading on a crypto asset trading platform. Sparkster and Daya also utilized promoters to help spread their message to potential investors. Sparkster did not register the offer and sale of the tokens pursuant to federal securities laws, and no exemption from registration was available. Sparkster and Daya made use of interstate commerce by promoting the Offering on Sparkster’s publicly available website and on social media, and through the use of electronic messaging, and made use of interstate commerce in effectuating the sale of SPRK tokens.

2. Based on the facts and circumstances below, the SPRK tokens were offered and sold as investment contracts, and therefore securities, pursuant to the test laid out by the U.S. Supreme Court in *SEC v. W.J. Howey Co.*, 328 U.S. 293, 298-99 (1946) and its progeny, including the cases referenced by the Commission in its *Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO* (Exchange Act Rel. No. 81207) (July 25, 2017). A purchaser in the Offering of SPRK tokens would have had a reasonable expectation of obtaining future profits based upon Sparkster’s managerial and entrepreneurial efforts. Sparkster and Daya violated Sections 5(a) and 5(c) of the Securities Act by offering and selling these securities without having a registration statement filed or in effect with the Commission or qualifying for an exemption from registration.

Respondents

3. Sparkster, Ltd. is a privately-owned entity incorporated in the Cayman Islands with activities in multiple countries, including the United States. Neither Sparkster nor its securities are registered with the Commission in any capacity.

4. Sajjad Daya, age 37, is a resident of the United Kingdom. Daya is the founder and Chief Executive Officer of Sparkster. Daya has never been associated with an entity registered with the Commission.

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

Facts

5. In April 2018, Sparkster began circulating a whitepaper containing details about an offering of SPRK tokens. The whitepaper was disseminated on Sparkster's website and promoted on its Telegram channel. The whitepaper stated that the purpose of the Offering was to raise funds for further research and development and for marketing of a "no-code" software platform that would allow users to develop software applications using a "drag and drop" graphical interface instead of writing code.

6. According to the whitepaper, this no-code platform would run on "the world's fastest Decentralized Cloud for Smart Software" using a network of cell phones, notebooks, laptops, and other personal devices held by "miners" who would be rewarded with SPRK tokens for contributing their spare computing capacity to the network. The whitepaper proposed a marketplace for users to buy and sell software created using the no-code platform, with SPRK tokens as the exclusive form of payment. The whitepaper also stated that SPRK tokens "may be placed on third-party exchanges" and that any users seeking to buy SPRK tokens after the Offering would have to buy them on these exchanges. The whitepaper provided details regarding the token sale and distribution, including Sparkster's retention of 2% of tokens to "facilitate liquidity for an exchange listing."

7. The whitepaper stated that the no-code platform would launch in April 2018, the marketplace would launch in May 2018, and the decentralized cloud would launch a public alpha release in the fourth quarter of 2018. As of May 10, 2018, Sparkster's no-code platform was launched and available for users to begin testing.

8. Sparkster began the "presale" phase of its offering in May 2018. The phase was announced on Sparkster's public Telegram channel and open to any investor making a minimum investment of \$25,000. This "presale" phase and the subsequent "crowdsale" phase were conducted on the Ethereum blockchain, selling SPRK tokens directly to participants in exchange for Ether, using ERC-20 smart contracts. Sparkster stated that it would proceed until it reached an aggregate cap of approximately \$30 million raised.

9. Each participant in the "presale" phase entered into a purchase agreement entitled "Simple Agreement for Future Tokens" (the "SAFT") with Sparkster, which the SAFT described as a company incorporated in the Cayman Islands.

10. Pursuant to the SAFT, the investors purchased SPRK tokens at a price of \$.15 per token, although three "strategic partners" were also offered and sold bonus tokens, thereby receiving their tokens at a discounted average price.

11. On May 23, 2018, Sparkster announced that the "presale" phase was over. During that phase, Sparkster raised \$24.3 million, from approximately 900 investors world-wide, including investors residing in multiple U.S. states. Approximately 350 other individuals, again including U.S.-based investors, purchased tokens through third-party investing pools. The investing pools used their own smart contracts, which provided that pool participants would receive their SPRK

tokens by sharing in the allotment of SPRK tokens purchased directly from Sparkster by the individual directing the distribution to that pool.

12. On May 29, 2018, Sparkster opened the process that it referred to as “registration” for the “crowdsale” phase of its offering, and on June 29, 2018, Sparkster announced “crowdsale” phase details on its Telegram channel, including that the token price would be \$.15. However, later that same day, Sparkster announced that it was postponing the phase, due to “deteriorating market conditions.”

13. On July 7, 2018, Sparkster began selling SPRK tokens in a “first round” of the “crowdsale” phase and offered and sold SPRK tokens in a “second round” the following day, continuing until the aggregate cap of \$30 million had been raised. During the “crowdsale” phase itself, Sparkster raised approximately \$5.7 million, from approximately 3,000 individuals, including investors residing in multiple U.S. states.

14. During the “presale” and “crowdsale” phases, Sparkster and Daya promoted the Offering through live chat sessions with Daya on YouTube, multiple posts on Twitter and Telegram, information hosted on Sparkster’s website and blog, including the various iterations of the whitepaper, and the use of a rewards program for members of the Sparkster community. These solicitations were publicly accessible to potential investors in the United States.

15. Sparkster’s and Daya’s promotional efforts for the Offering were broadly aimed at crypto token investors and enthusiasts, and were not limited to potential users of the Sparkster platform. To assist their promotional efforts, Sparkster and Daya utilized initial coin offering promoters who, according to Daya, would “make a lot of noise about the project.” At least one of these promoters had an audience that primarily consisted of token investors and enthusiasts.

16. Immediately ahead of, and then during, the “crowdsale” phase, Daya stated on social media that SPRK tokens would increase in value and that his goal was to preserve the value of the tokens and eventually list them on crypto asset trading platforms. In a Telegram comment that he posted two days before the “crowdsale” phase commenced, Daya stated, “Stick with us, and we’ll deliver 300x. Our platform is truly life changing.”

17. During the Offering, Daya also made statements on the Sparkster website, YouTube, and other social media highlighting the company’s partnerships with and employees’ connections to well-known technology companies and research institutions.

18. In July 2018, Sparkster and Daya distributed locked SPRK tokens, prohibiting their use and transfer, and did not list them on crypto asset trading platforms for almost a year. Sparkster told token holders that it was taking those actions because it did not want SPRK tokens to decrease in value as a result of a general decline in values in the initial coin offering market.

19. Sparkster launched its promised decentralized cloud on January 1, 2019, almost six months after the Offering, and launched the marketplace on June 9, 2019, almost a year after the

Offering. As a result, during the time of the Offering, and for a considerable time afterwards, the tokens had no use.

20. In June 2019, SPRK tokens were finally unlocked and briefly listed on a crypto asset trading platform, but the listing was removed shortly thereafter, when concerns were raised by Sparkster token holders about certain aspects of Sparkster's smart contract. Beginning on September 6, 2019, after a new smart contract was established and existing tokens had been swapped for new tokens, SPRK tokens were listed on another crypto asset trading platform. As soon as trading began on that platform, the value of SPRK tokens dropped precipitously.

Violations

21. As described above, Sparkster and Daya offered and sold securities worth at least \$30 million by means of interstate commerce to investors in more than one U.S. state. No registration statement was filed or in effect for the SPRK token offers and sales, and no exemption from registration was available.

22. As a result of the conduct described above, Respondents each violated Section 5(a) of the Securities Act, which states that “[u]nless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly, (1) 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 (2) 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.”

23. As a result of the conduct described above, Respondents each violated Section 5(c) of the Securities Act, which states in relevant part that “[i]t 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.”

Disgorgement and Civil Penalties

24. The disgorgement and prejudgment interest ordered in Section IV, paragraph G is consistent with equitable principles, does not exceed Respondent Sparkster's net profits from its violations, and will be distributed to harmed investors to the extent feasible. The Commission will hold funds paid pursuant to Section IV, paragraph G in an account at the United States Treasury pending distribution. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934.

Undertakings

25. Respondent Sparkster has undertaken to:

A. Destroy all SPRK tokens in its possession or control within 10 days of the date of this Order.

B. Publish notice of the Order on Sparkster's website and social media channels, in a form not unacceptable to the Commission staff, within 10 days of the date of this Order.

C. Issue requests to remove SPRK tokens from any further trading on all crypto asset trading platforms where SPRK tokens are or may be trading, including any that Respondents previously contacted to request trading of SPRK tokens, and publish notice of such requests on Sparkster's website and social media channels, in a form not unacceptable to Commission staff, within 10 days of the date of this Order.

26. Respondent Daya has undertaken to refrain for a period of five years from participating, directly or indirectly, in any offering of a crypto asset security; provided, however, that such undertaking shall not prevent Respondent Daya from purchasing or selling crypto asset securities for his personal account.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that pursuant to Section 8A of the Securities Act:

A. Respondents each cease and desist from committing or causing any violations and any future violations of Sections 5(a) and 5(c) of the Securities Act.

B. Respondent Sparkster shall comply with the undertakings enumerated in paragraph 25 above.

C. Respondent Daya shall comply with the undertaking enumerated in paragraph 26 above.

D. Respondent Sparkster shall certify in writing compliance with the undertakings set forth in paragraph 25. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent Sparkster agrees to provide such evidence. The certification and supporting material shall be submitted to Carolyn M. Welshhans, Associate Director, Division of

Enforcement, with a copy to the Office of the Chief Counsel of the Enforcement Division, no later than thirty (30) days from the date of the completion of the undertakings.

E. Respondent Sparkster may apply to the Commission staff for an extension of the deadlines set forth above before their expiration and, upon a showing of good cause by Respondent Sparkster, the Commission staff may, in its sole discretion, grant such extensions for whatever time period it deems appropriate.

F. Respondent Daya shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$250,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

G. Respondent Sparkster shall pay disgorgement of \$30,000,000, prejudgment interest of \$4,624,754.23, and a civil money penalty of \$500,000 to the Securities and Exchange Commission. Payment shall be made in the following installments: (1) \$5,000,000 within 14 days of the entry of this order; (2) \$1,000,000 within 44 days of the entry of this order; and (3) \$1,000,000 every 30 days thereafter until the amount due has been fully satisfied. Payments shall be applied first to post-order interest, which accrues on disgorgement and prejudgment interest pursuant to SEC Rule of Practice 600 and accrues on civil money penalties pursuant to 31 U.S.C. § 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately, at the discretion of the staff of the Commission, without further application to the Commission. Respondent Sparkster consents, in such an event, to jurisdiction in the U.S. District Court for the Southern District of Florida for an action by the Commission, pursuant to Section 20(c) of the Securities Act, to convert this Order into a court judgment.

H. Payments must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying the party as a Respondent in these proceedings, and noting the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Carolyn M. Welshhans, Division of Enforcement, Securities and Exchange Commission, 100 F St. NE, Washington, D.C. 20549.

I. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the disgorgement, prejudgment interest, and penalties referenced in paragraphs F and G above. This Fair Fund may be combined with any other fund arising out of a related proceeding in which the underlying facts are the same as the basis for Respondents' violations. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent Daya, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Daya under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent Daya of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary