



Karen E. Ubell
+1 650 843 5246
kubell@cooley.com

Via Email & FedEx

September 30, 2019

Elizabeth Murphy
Associate Director
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549
Attn: Erin Wilson

Re: *In the Matter of Nebulous, Inc.*

Dear Ms. Murphy:

We write on behalf of Nebulous, Inc. (“**Nebulous**”) in connection with the proposed settlement of the above-captioned administrative proceeding (the “**Proceeding**”) with the U.S. Securities and Exchange Commission (the “**SEC**” or “**Commission**”). The staff of the Division of Enforcement is in the process of proposing this settlement to the Commission. It is anticipated that the settlement will result in an 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 (the “**Order**”). Nebulous understands that the entry of the Order would disqualify it from relying on certain exemptions under Regulation A and Rule 506 of Regulation D promulgated under the Securities Act of 1933, as amended (the “**Securities Act**”). On behalf of Nebulous, we hereby respectfully request, pursuant to Rule 262(b)(2) of Regulation A and Rule 506(d)(2)(ii) of Regulation D, a waiver of any disqualification that will arise under Regulation A and Regulation D with respect to Nebulous as a result of the entry of the proposed Order.

BACKGROUND¹

Nebulous was founded in March 2014 to develop a decentralized file storage platform (the “**Sia Storage Platform**”) based on blockchain technology. The Sia Storage Platform is a blockchain-based, peer-to-peer file storage network on which “renters” store files on the excess hard drive capacity of “hosts.” Renters pay hosts for the use of the storage space and hosts post collateral to attract renters – all via smart contracts that are programmed into the network. The Sia Storage Platform utilizes two complementary digital assets. The first, Siacoins, are used by and between renters and hosts as the currency to enable file contracts. The renter and the host pay fees to the Sia Storage Platform in connection with the storage payment and posting

¹ As stated in the Order, Nebulous neither admits nor denies the activities described in the proposed Order. As indicated, factual statements in this section are restatements of or make reference to those included in or described in the proposed Order.



Elizabeth Murphy
Associate Director
September 30, 2019
Page Two

collateral, respectively. The second cryptocurrency, Siafunds, are entitled to receive those fees, which amount to 3.9% of all storage contract spending on the platform.²

On May 11, 2014, Nebulous publicly announced an offering of what it called "Siastock" which was later renamed "Siafunds."³ On May 13, 2014, Nebulous began publicly offering and selling what it called "SiaNotes," which it described as instruments that were convertible into Siastock once Nebulous launched the Sia network and user application. On or about May 15, 2014, Nebulous closed its offering of SiaNotes, having sold approximately 1,250 SiaNotes at an average price per note of \$96, for total proceeds to Nebulous of approximately \$120,000.

On April 20, 2015, Nebulous publicly announced it intended to launch its network and data storage platform on June 1, 2015. In anticipation of the launch, Nebulous publicly offered to exchange one Siafund for each SiaNote. By June 3, 2015, Nebulous converted approximately 1,189 SiaNotes into Siafunds.⁴

The staff of the Division of Enforcement conducted the above-captioned investigation into whether by its actions, Nebulous violated federal securities laws and thereafter engaged in settlement discussions with Nebulous. As a result of these discussions, Nebulous and the staff of the Division of Enforcement have reached a settlement in principle with respect to the proposed Order.

The proposed Order states that during 2014 and 2015, Nebulous offered and sold securities that were required to be registered with the Commission pursuant to Section 5 of the Securities Act. Nebulous violated Sections 5(a) and 5(c) of the Securities Act by offering and selling these securities without a registration statement filed or in effect with the Commission and without qualifying for exemption from registration.

The proposed Order requires Nebulous to cease and desist from committing or causing any violations and any future violations of Sections 5(a) and (c) of the Securities Act and require that Nebulous pay \$224,601.85 in civil penalties, disgorgement and pre-judgment interest to the Commission.

DISCUSSION

Nebulous understands that, absent a waiver, the entry of the proposed Order will disqualify Nebulous and its affiliates from relying on both Regulation D and Regulation A. Nebulous is concerned that if it or any of its affiliates are deemed to be an issuer, predecessor of an issuer, affiliated issuer, general partner or managing member of an issuer or promoter, underwriter of

² For example, a renter may pay 10,000 Siacoins as payment for storage space and a host may post 15,000 Siacoins as collateral. The total fees charged in this transaction would be 975 Siacoins (which is 25,000 Siacoins * 3.9%). The aggregate fees for storage contracts vary depending on the amount of collateral posted by the host but typically amount to approximately 10% of the renter payment.

³ In November 2014, Nebulous changed the name of its Siastock to "Siafunds."

⁴ Nebulous did not convert 61 SiaNotes because it did not know who owned them.



Elizabeth Murphy
Associate Director
September 30, 2019
Page Three

securities, or if it is deemed to be acting in any other capacity described in Rule 262 for purposes of Rule 262(a)(2) or Rule 506 for purposes of Rule 506(d)(1), then Nebulous, its affiliates and third parties with which it is associated in one of those listed capacities that may seek to rely on Regulation A or Regulation D in connection with their securities offerings, would be prohibited from doing so.

The Commission, or the Division of Corporation Finance ("**Division**"), acting pursuant to its delegated authority, has the authority to waive these disqualifications upon a showing of good cause that such disqualifications are not necessary under the circumstances.⁵ Nebulous has not previously sought a waiver of these disqualifications from the Division in connection with the proposed Order or any other matter. Based on the factors set forth by the Division for considering waiver requests⁶ and the facts and circumstances set forth below, Nebulous requests that the Commission waive any disqualifying effects that the Order will have under Regulation A or under Regulation D.

1. Nature of the Violations in the proposed Order and Whether they Involve the Offer and Sale of Securities

Although the violations described in the proposed Order concern the sale or offering of securities, these were not criminal or scienter-based violations. The proposed Order relates to the offer and sale of securities without a registration statement filed or in effect with the Commission and without qualifying for exemption from registration.

The Division's statement on "bad actor" waivers states that the Division will "consider whether the conduct involved a criminal conviction or scienter based violation, as opposed to a civil or administrative non-scienter based violation." That statement also indicates that "where there is a ... scienter based violation involving the offer and sale of securities, the burden on the party seeking the waiver to show good cause that a waiver is justified would be significantly greater."

The activities described in the proposed Order do not involve a criminal conviction and do not relate to a violation of any antifraud statutes - scienter or non-scienter-based. Thus, Nebulous is not subject to a "greater" burden under the Division's waiver policy.

2. Responsibility for the Conduct

At the time of the conduct set forth in the proposed Order, Nebulous was building out a blockchain based technology at a time when blockchain technology, distributed networks, peer-

⁵ See Rule 506(d)(2)(ii).

⁶ See Division of Corporation Finance, *Waivers of Disqualification under Regulation A and Rules 505 and 506 of Regulation D*, available at: <https://www.sec.gov/divisions/corpfin/guidance/disqualification-waivers.shtml>.



Elizabeth Murphy
Associate Director
September 30, 2019
Page Four

to-peer cryptographic networks and virtual currency were novel, unique and experimental.⁷ In 2014 and 2015, the founders of Nebulous viewed the product and network that they were building simply as software code implementing a new technology, and found precedent for that among their peers such as Ethereum.

As the technology and the regulatory landscape evolved, and as detailed below, Nebulous engaged sophisticated securities counsel to assist with the growth of its network and implementation of its technology, and, upon the advice of counsel, complied with the requirements of Regulation D in subsequent offers and sales of Siafunds in 2018 and a convertible securities offering in 2019. While the founders continue to have a significant role in building the technology to support the Sia Network, they have engaged experienced outside securities counsel to advise them on compliance with securities regulations generally and Regulation D specifically, and to implement policies and procedures to ensure ongoing compliance with securities laws. Nebulous hired additional executive officers to its executive management team well after the dates of the activities described in the proposed Order, including a Chief Operating Officer, and an additional director. Additionally, Nebulous may seek to hire internal legal and compliance counsel to support its compliance with securities laws. The executive officers and Board of Directors seek advice and will continue to seek advice from experienced outside securities counsel with respect to matters relating to compliance with securities laws. For example, outside securities counsel was consulted on all elements of securities laws compliance in connection subsequent securities offerings and offerings of Siafunds after the conduct described in the proposed Order, as further described below, and will continue to do so for offerings in the future.

3. Duration of the Violations Described in the Order

The proposed Order describes conduct occurring in May 2014 in connection with the offer and sale of SiaNotes and June 2015 in connection with the conversion of SiaNotes into Siafunds.

4. Nebulous Has Taken Remedial Steps and Will Continue to Take Remedial Steps

Nebulous has taken certain remedial steps to ensure compliance with applicable securities laws and Regulation D, and has proactively engaged with Division staff to explore compliant options and ensure strict adherence to regulatory requirements in connection with a contemplated Regulation A offering and a completed Regulation D offering of Siafunds, as further detailed below.

In late 2017 Nebulous decided to offer and sell Siafunds for the first time since May 2014. Despite this timing coinciding with the large volume of “ICOs” then being conducted, the founders of Nebulous were now aware that the sale of Siafunds may be subject to securities laws, and they engaged Cooley LLP to assist them with structuring an offer and sale of Siafunds in compliance with all applicable securities laws.

⁷ As points of comparison, the Satoshi White Paper, setting forth the concept of the Bitcoin blockchain, was first published in October 2009, and the \$18 million Ethereum crowdsourced pre-sale financing was announced in January 2014 and took place in July 2014, with the first live release launched in 2015.



Elizabeth Murphy
Associate Director
September 30, 2019
Page Five

As Nebulous considered the options available for a compliant offer and sale of Siafunds, it even went so far as to reach out to the Division staff to discuss the possible availability of Regulation A for the offer and sale of Siafunds. As it would be one of the first to utilize Regulation A in connection with the sale of a digital asset, Nebulous founders and its counsel presented the facts of the Sia network, including its May 2014 sale of SiaNotes, as well as its plans for a future offer and sale of Siafunds to Division staff. It engaged in discussions with Division staff in September 2017 regarding open questions on how Nebulous could comply with certain disclosure requirements and other considerations to ensure a compliant Regulation A offering. This demonstrates the commitment from Nebulous and its founders to ongoing operations and offers and sales of securities in full compliance with applicable securities laws and a willingness to engage fully with Division staff and counsel to ensure such compliance.

Upon further review and analysis by Nebulous and its counsel, Nebulous determined to conduct an offer and sale of Siafunds as “tokenized securities” pursuant to Rule 506(c) of Regulation D. Nebulous provided each purchaser with an offering memorandum describing its business, Siafunds and Siacoins and providing fulsome disclosure of risks associated with the purchase of Siafunds. In order to ensure compliance, Nebulous engaged service providers to affirmatively accredit each purchaser in the offering as required by Rule 506(c) and to verify identities of all purchasers of Siafunds in the offering. In addition, Nebulous did not distribute the Siafunds for a period of one year from sale and issuance in order to enforce transfer restrictions for all purchasers in accordance with Regulation D.

Additionally, in the offering memorandum provided to purchasers in the 2018 offering, Nebulous disclosed the risks associated with its 2014 offer and sale of Siafunds and SiaNotes. Nebulous included the following risk factor disclosure:

If our prior sale of Siafunds were held to be in violation of the Securities Act, we could be required to repurchase Siafunds previously sold.

We did not register the prior sale and issuance of approximately 1,250 Siafunds upon their initial distribution in 2014. Because Siafunds likely constitute a “security” under current SEC guidance, registration of the distribution may have been required under the Securities Act, unless an exemption from registration was available. At the time of the distribution, cryptocurrencies and Siafunds were new technologies and we did not take steps to determine whether or not purchasers of Siafunds were accredited investors under the Securities Act or whether the issuance of these Siafunds was otherwise exempt from the registration requirements of the Securities Act as a private placement. If our sale of Siafunds were held by a court to be in violation of the Securities Act, we could be required to repurchase the Siafunds sold to purchasers at the original purchase price, plus statutory interest from the date of purchase, and/or have other exposure to liability for the violation. Any such liability may affect the Company’s ability to maintain and improve the Sia Storage Platform.



Elizabeth Murphy
Associate Director
September 30, 2019
Page Six

Nebulous intends to treat any additional offers and sales of Siafunds as a securities offering, as it has done since the initial offer and sale which is the subject of the proposed Order. Nebulous continues to work closely with its counsel to ensure compliance with Regulation D, and if it should revisit the possibility of utilizing Regulation A, will do the same with compliance with Regulation A. Nebulous will consult experienced outside securities counsel with respect to matters relating to compliance with securities laws. Additionally, Nebulous may seek to hire internal legal and compliance counsel to support its compliance with securities laws. Experienced outside securities counsel was consulted with respect to securities laws compliance in connection all subsequent securities offerings, such as the 2019 convertible securities offering, and offerings of Siafunds after the conduct described in the proposed Order. The founders of Nebulous, including the two executive officers that were executive officers of Nebulous at the time of the activities described in the proposed Order, are well-educated in the application of securities laws to the offer and sale of Siafunds and the potential application of securities laws to any future offer and sale of a digital asset such that a recurrence of the conduct associated with the violation is highly unlikely to occur.

If, during the five-year period following the date of entry of the proposed Order or such shorter period as may be agreed by the Division and Nebulous, Nebulous or any of its affiliates intends to distribute a digital asset⁸ other than on a registered basis or pursuant to an exemption from registration,⁹ it will consult with the Division¹⁰ prior to distribution of such digital asset.¹¹

In the event that the Division, on behalf of the Commission, or the Commission, grants the requested waiver, for a period of five years from the date of the Order, Nebulous will furnish (or cause to be furnished), a reasonable time prior to sale, to each purchaser in an offering by Nebulous under Regulation A or Regulation D which would otherwise be subject to disqualification under Rule 262(a)(2) or Rule 506(d)(1)(ii) as a result of the Order, a description in writing of the Order.

5. Impact on Issuer and Third Parties if Waivers Were Denied

As a growth stage company, Nebulous expects that it will need to raise capital to fund operations, research, development and other strategic purposes related to its business and development activities in the next twelve to eighteen months, though this will depend capital spending, expenses, increased headcount and payroll and market forces, any of which, as well as other factors, may require Nebulous to raise additional capital sooner than estimated herein. Nebulous is an early-stage technology company and it is expected that it will raise funding in

⁸ This is not intended to apply to any distribution made for testing or engineering purposes.

⁹ "Pursuant to an exemption" will be deemed to include, with respect to a non-security digital asset, if distributed in a manner that would comply with an available exemption or safe harbor if it were a security.

¹⁰ Nebulous will email or call the FinHub Chief Legal Advisor and provide a brief description of the digital asset, its proposed key features and the proposed distribution

¹¹ This provision is intended to provide that Nebulous will not be required to consult with the Division with respect to subsequent distributions of a digital asset in circumstances where the digital asset and the method of distribution of such digital asset have not changed.



Elizabeth Murphy
Associate Director
September 30, 2019
Page Seven

multiple future financing rounds in order to finance its continued operations and growth initiatives. It is most likely that such financings will be through private securities offerings in reliance on Rule 506 of Regulation D. Due to the rapidly changing nature of the industries in which Nebulous operates, Nebulous's capital requirements and operational plans may change quickly. The additional flexibility and expediency afforded by Regulation D, including the allowance of general solicitation and advertising if Nebulous elects to rely upon Rule 506(c) and certain preemptive effects on state securities laws, will be critically important for Nebulous to raise private capital and respond to market and industry shifts. Investors will require representations from the issuer in equity financing rounds that the issuance was in full compliance with securities laws, and the ability to rely on the clear rules of the Regulation D safe harbor, as opposed to the common law judicial interpretations of Section 4(a)(2), will expedite and facilitate Nebulous's ability to affirmatively provide such a representation to the satisfaction of its investors. Additionally, Nebulous may seek strategic partnerships based upon long-term value creation and alignment through the offer and sale of equity securities or Siafunds to such partners. Investment and partnership opportunities are highly competitive and require quick response, negotiation and closing. Nebulous will need to rely on Regulation D to offer competitive timing to other similar situated blockchain based companies to attract and close strategic partner investment opportunities. Strategic partners will require representations from the issuer that the issuance was in full compliance with securities laws, and the ability to rely on the clear rules of the Regulation D safe harbor, as opposed to the common law judicial interpretations of Section 4(a)(2), will expedite and facilitate Nebulous's ability to affirmatively provide such a representation to the immediate satisfaction of its potential strategic partners. Additionally, the ability to quickly close such deals, without time consuming consultation with counsel and possible legal opinions associated with reliance on Section 4(a)(2), will be essential for Nebulous. In each of these cases, the expense associated with a registered offering, particularly relative to the proceeds of the offering, would be cost prohibitive for an early-stage startup like Nebulous. If Nebulous is unable to raise additional funds or create long-term strategic partnerships in reliance on Rule 506 of Regulation D, its competitive position will be immediately harmed, its growth prospects will be limited, its ability to hire technical and operational specialists may be limited given the uber-competitive market for talent in the blockchain industry and its overall operations and prospects will be severely negatively affected.

While Nebulous is an active and contributing member of the development community, Nebulous cannot unilaterally update the Sia software since it is open-sourced and updates are subject to a consensus process among developers.¹² As has been discussed with the Staff and as noted in the background, the Sia software is (and has been for more than 4 years) fully functioning code. It is currently being used by 323 hosts in 43 different countries to store file contracts representing more than 300 terabytes of data. The software is freely downloadable by hosts and renters in both executable and open-source formats. A new release is published on average approximately every 71 days. The current release is version 1.4.0, which was released in April 2019 and consisted of 1,274 code commits to the open source repository. More than 50

¹² Changes to the Sia software must be approved unanimously by all network participants using a consensus mechanism. Any non-consenting participants could continue to run the non-conforming prior version of the Sia software on a "fork" of the blockchain, essentially launching a new, independent blockchain and network.



Elizabeth Murphy
Associate Director
September 30, 2019
Page Eight

community members, users and developers are actively and substantially contributing to development, improvements, “bug fixes” and construction of applications running on the Sia Storage Platform or utilizing Sia software. Nebulous and its team are contributors to the proposed updates, “bug” fixes and other upgrades that are important for the ongoing functionality and security of the Sia Storage Platform. Sometimes Nebulous submits proposals to the community, and at other times it simply comments upon proposals submitted by other community members or may only vote on proposed protocol changes. Nebulous has a continuing role in the ongoing development and adoption of the Sia software, and its continued funding will help grow and accelerate the usage and adoption of the Sia software.

Sia is not unique in the decentralized nature of its platform and software; all decentralized networks benefit from many active participants contributing to the continuous improvement and evolution of the underlying protocol. We acknowledge that as a result of its decentralized structure, even if Nebulous is unable to raise funds via Regulation D or Regulation A to fund its ongoing participation in the Sia community, the Sia Storage Platform would continue to run; hosts and renters would continue to exchange Siacoins for storage capacity; and current and future community members would propose and adopt network upgrades and security improvements. However, if Nebulous cannot raise additional funds through Regulation D or Regulation A, its ability to productively contribute to the Sia software and the Sia Storage Platform would likely be severely limited. This may result from an inability by Nebulous to support ongoing operations due to an inability to raise capital, or may result by preventing Nebulous from successfully attracting and hiring potential employees that may either misunderstand the disqualifications resulting from the proposed Order and Nebulous being deemed a “bad actor” or may eschew a company that has limited capital raising options. Preventing Nebulous from meaningfully contributing to this ongoing process will limit unnecessarily the growth and usage of the Sia Storage Platform, potentially to the detriment of all users, participants and contributors as well as the holders of Siafunds.

Additionally, if Nebulous seeks to distribute a digital asset token in the U.S., it may seek regulatory certainty by relying on Regulation D or Regulation A to distribute the digital asset. Alternatively, in light of future guidance or Commission actions, Nebulous may determine, with the advice of outside counsel, that a future digital asset is likely to be viewed as an investment contract by the Commission. In either case, if Nebulous is prevented from utilizing these Regulations, it may be unable to distribute a digital asset to U.S.-based participants or purchasers, and it may be unable to identify a viable alternative in the U.S. through which to allow U.S.-based entities or individuals to participate in such application, network or platform. It is essential that if Nebulous seeks to distribute a digital asset that it has determined with counsel may constitute an investment contract under the April 3, 2019 Framework or future guidance from the Division, it may be unable to identify a viable option in the U.S. to allow U.S.-based entities or individuals to participate in such new project or network. Regulation A provides a simpler, lower cost option for Nebulous to continue to provide U.S.-based persons with access to the innovative technologies it may launch in the future. As noted above, Nebulous has seriously considered utilizing Regulation A in connection with an offer and sale of Siafunds, and respectfully requests that the Division approve the waiver requested herein so that Nebulous may preserve all available options to proceed with offerings of Siafunds or digital assets on an exempt basis.



Elizabeth Murphy
Associate Director
September 30, 2019
Page Nine

REQUEST FOR WAIVERS

Pursuant to the proposed Order, Nebulous would be required to pay \$224,601.85 in civil penalties, disgorgement and pre-judgment interest. In light of the nature of the violations in the proposed Order, the enforcement remedies to be obtained by the entry of the proposed Order, the remedial measures Nebulous has taken and will take, and the material impact of a Regulation A and/or Rule 506 disqualification on Nebulous and its affiliates and potentially the members of the Sia community and users of the Sia Storage Platform, we respectfully submit that disqualification of Nebulous from relying on Regulation A and Rule 506 of Regulation D is not necessary. Under the circumstances, Nebulous respectfully submits that it has shown good cause that relief should be granted.

Accordingly, we respectfully urge the Division, on behalf of the Commission, or the Commission, pursuant to Rule 262(b)(2) of Regulation A and 506(d)(2)(ii) of Regulation D, to waive the disqualification provisions in Regulation A and Rule 506 of Regulation D under the Securities Act to the extent they may be applicable to Nebulous as a result of the entry of the Order, effective as of the date of the Order.

We appreciate your consideration of this request. Please contact me at (650) 843-5246 with any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Karen Ubell".

Karen E. Ubell

cc: Zach Herbert, Chief Operating Officer, Nebulous, Inc.
Luke Cadigan, Cooley LLP