

MEMORANDUM

To: Crypto Task Force Meeting Log
From: Crypto Task Force Staff
Re: Meeting with Representatives of Cahill Gordon & Reindel LLP

On February 24, 2025, Crypto Task Force Staff met with the representatives from Cahill Gordon & Reindel LLP.

The topic discussed was approaches to addressing issues related to regulation of crypto assets. Cahill Gordon & Reindel LLP representatives provided the attached documents, which were discussed during the meeting.

CAHILL GORDON & REINDEL LLP
32 OLD SLIP
NEW YORK, NY 10005

DANIEL AMATO
DANIEL R. ANDERSON
PETER J. ARMENIO
HELENE R. BANKS
ANIRUDH BANSAL
LANDIS C. BEST
CHRISTOPHER BEVAN
BROCKTON B. BOSSON
DONNA M. BRYAN
SARAH W. CHEN
EMEKA C. CHINWUBA
JAMES J. CLARK
CHRISTOPHER W. CLEMENT
ANDREW COCHRAN
LEWIS RINAUDO COHEN
AYANO K. CREED
SEAN M. DAVIS
STUART G. DOWNING
MICHAEL A. DVORAK
ADAM M. DWORKIN
ANASTASIA EFIMOVA

SAMSON A. ENZER
JAMES Z. FANG
GERALD J. FLATTMANN JR.
KIERSTEN A. FLETCHER
HELENA S. FRANCESCHI
JONATHAN J. FRANKEL
SESI GARIMELLA
ARIEL GOLDMAN
PATRICK GORDON
JASON M. HALL
STEPHEN HARPER
CRAIG M. HOROWITZ
TIMOTHY B. HOWELL
COLLEEN TRACY JAMES
DAVID G. JANUSZEWSKI
BRIAN S. KELLEHER
ANDREW R. KELLY
RICHARD KELLY
JOEL KURTZBERG
TED B. LACEY
ANDREW E. LEE

TELEPHONE: (212) 701-3000
WWW.CAHILL.COM

1990 K STREET, N.W.
WASHINGTON, DC 20006-1181
(202) 862-8900

221 W. 10th STREET, 3rd FLOOR
WILMINGTON, DE 19801
(302) 884-0000

CAHILL GORDON & REINDEL (UK) LLP
20 FENCHURCH STREET
LONDON EC3M 3BY
+44 (0) 20 7920 9800

WRITER'S DIRECT NUMBER

ALIZA R. LEVINE
JOEL H. LEVITIN
MARK LOFTUS
JOHN MacGREGOR
MICHAEL MAKHOTIN
TRISTAN E. MANLEY
BRIAN T. MARKLEY
MEGHAN N. McDERMOTT
EDWARD N. MOSS
JOEL MOSS
NOAH B. NEWITZ
EDWARD C. O'CALLAGHAN
JULIANA OBREGON
JAVIER ORTIZ
DAVID R. OWEN
JOHN PAPACHRISTOS
LUIS R. PENALVER
SHEILA C. RAMESH
MICHAEL W. REDDY
OLEG REZZY
THOMAS ROCHER *

NIKOLAS X. RODRIGUEZ
PETER J. ROONEY
MATTHEW E. ROSENTHAL
THORN ROSENTHAL
TAMMY L. ROY
ANDREW SCHWARTZ
DARREN SILVER
JOSIAH M. SLOTNICK
RICHARD A. STIEGLITZ JR.
GREGORY STRONG
SEAN R. TIERNEY
AMIT TREHAN
HERBERT S. WASHER
FRANK WEIGAND
MILES C. WILEY
PETER G. WILLIAMS
DAVID WISHENGRAD
C. ANTHONY WOLFE
ELIZABETH M. YAHL

* ADMITTED AS A SOLICITOR IN
ENGLAND AND WALES ONLY

February 21, 2025

Re: Meeting with SEC Crypto Task Force

Dear Members of the Task Force:

We refer to the statements of Commissioner Hester Peirce entitled “The Journey Begins”, discussing the anticipated work of the Commission’s Crypto Task Force (released on February 4, 2025), and “There Must Be Some Way Out of Here” (released on February 21, 2025), posing questions concerning statutes and rules that may present challenges to firms seeking to innovate with crypto assets and blockchain technology. We appreciate the Task Force taking the time to meet with us. We propose to discuss the topics set out below during our upcoming meeting on February 24, 2025.

One of the items included on the list of areas of focus in both “The Journey Begins” and “There Must Be Some Way Out of Here” is public token offerings. We would like to discuss practical ways that would allow a company to offer for sale (including through a pre-sale), or otherwise distribute to the public, crypto assets commonly referred to as “coins” or “tokens” that would not themselves properly be considered securities. This would only occur in circumstances in which the coins or tokens constitute (or, upon availability, would constitute) a functional part of an independent blockchain-based network or application developed by, or at the direction of, the company.

As you may be aware, we have done a significant amount of legal research and advocacy on this topic, and strongly support finding a path that would allow companies to offer and sell to the general public in the United States a non-security digital asset in a fundraising or other transaction that meets the four prongs of the *Howey* test. We believe that many of the challenges currently observed in the crypto asset sector can be addressed by providing a practical means of offering new crypto assets in a transparent manner and in a way that provides significant guardrails against fraud and abuse, while preserving the ability of entrepreneurs to develop

permissionless blockchain technology in the United States. To achieve this objective, we appreciate that there are practical challenges that will need to be addressed.

With this in mind, we would like to discuss the following approach and issues during the upcoming meeting:

- Consistent with the *Howey* jurisprudence, certain fundraising transactions involving the initial offer and sale of non-security tokens by an issuing entity would properly be considered “investment contracts” and therefore securities transactions. These offer and sale transactions to the public in the United States would be made pursuant to an offering statement on Form 1-A, the contents of which would be tailored to the circumstances applicable to developers of the relevant blockchain technology.
 - The tokens would be offered pursuant to an offering circular contained in the offering statement and sold pursuant to a legal agreement (such as a “token sale agreement” or a “token warrant”) that constitutes a security. The means of execution of the relevant legal agreement could be tailored to market conventions, including through on-chain activity that is effective to bind the parties.
- So long as the value proposition of the tokens relates to a blockchain network or application and is separate and independent from the issuing entity of the offered security (and the issuing entity’s affiliates) and the tokens do not create a legal relationship with the issuing entity or any other identifiable legal entity (whether by contract or otherwise), the tokens in and of themselves would not be securities and would be permitted to be used for their intended purpose and traded freely.
- The pathway used by the Commission in the late 1980s and mid-1990s for asset-backed securities could be looked to as an example of ensuring that all information material to an investment decision in the relevant securities is provided in the offering statement, even if not strictly required by the general requirements found in Regulations S-K and S-X, while categories of information technically required by Regulations S-K and S-X that may not be material to investors may be excluded from the offering statement.
- Issuers may also agree to provide additional information to the public that is subject to the Securities Act’s anti-fraud provisions on an ongoing basis so long as the issuer continues to provide entrepreneurial or managerial efforts that may have a significant impact on the value of the relevant token.

- Commission guidance could be provided that (i) would allow purchasers of securities from the issuer that involve an allocation of the non-security tokens to determine whether or not they are acting as statutory underwriters of the initially offered security when they are disposing of the purchased tokens and (ii) would clarify whether and when trading firms facilitating the availability of tokens (that are not themselves securities) to buyers and sellers in compliance with other applicable law are engaging in securities activity.

We have received significant interest in this approach from multiple clients representing a wide range of interests in the blockchain sector and believe that there could be meaningful adoption to the extent that such an approach becomes feasible.

Finally, please note that although our firm represents many clients who participate in the crypto or digital asset markets in a variety of capacities, our participation in this meeting will not take place on behalf of any specific client.

Sincerely,



Lewis Rinaudo Cohen, Esq.
Co-Head, CahillNXT

cc: Samson A. Enzer, Esq., Co-Head, CahillNXT
Gregory Strong, Esq., Partner, CahillNXT
Sarah Chen, Esq., Partner, CahillNXT