Dissecting the Block.One SEC settlement

@katherineykwu

www.katherinewu.me

note: read both the waiver letter as well as the settlement. Both docs ahead....

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FYI:

this letter is the waiver that EOS had to sign in exchange for the settlement

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 Block.one*

Dear Ms. Murphy:

We write on behalf of Block.one ("***Block.one***" or the "***Company***") in connection with the proposed settlement of the above-captioned administrative proceeding with the U.S. Securities and Exchange Commission (the "***SEC***" or "***Commission***"). The staff of the Division of Enforcement proposed a settlement of the above referenced order to Block.one, and, once mutually agreed, will propose a 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 "***Proposed Order***"). Block.one understands that the entry of the Proposed 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 Block.one, 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 Block.one or any of its affiliates as a result of the entry of the Proposed Order.

yup, this is what happened

BACKGROUND[1]

The staff of the Division of Enforcement conducted the above-captioned investigation of possible violations by Block.one of Section 5(a) and Section 5(c) of the Securities Act in connection with the sale of 900 million digital assets ("***ERC-20 Tokens***") in exchange for Ether, a digital asset (the "***ERC-20 Token Distribution***") to the general public from June 26, 2017 through June 1, 2018, and thereafter has engaged in settlement discussions with Block.one. As a result of these discussions, Block.one and the staff of the Division of Enforcement have reached a settlement in principle with respect to the Proposed Order, subject to and including this request for waiver.

def been back & forth for a hot minute...

[1] As stated in the order, Block.one neither admits nor denies the activities described in the Proposed Order. Factual statements in this section are restatements of those included in or described in the Proposed Order only.

sigh, yup, fair in a settlement

Cooley

Elizabeth Murphy
Associate Director

The Proposed Order states that Block.one sold and distributed the ERC-20 Tokens in Dutch-style auctions on the following schedule: 200 million ERC-20 Tokens were sold and distributed during the first five days of the ERC-20 Token Distribution, and thereafter, 700 million EC-20 Tokens were split evenly into 350 consecutive 23-hour "distribution periods" of 2 million tokens each. The ERC-20 Tokens contained no restrictions on transfer following their initial sale and distribution, and the tokens began trading through online trading platforms as early as July 1, 2017.

As set forth in the Token Purchase Agreement, which was posted on the EOS.IO Website, and in other public statements, the ERC-20 Token was not the same token that eventually would be used on any anticipated EOSIO-based blockchains. Rather, the ERC-20 Token was designed to become fixed and nontransferable on the Ethereum blockchain (a different blockchain platform) at the close of the ERC-20 Token sale, meaning that while a record of past transactions could be confirmed on the Ethereum blockchain, new transfers of the ERC-20 Token could not occur on the Ethereum blockchain and the smart contract would have no further functionality at that point.

On June 1, 2018, the smart contract terminated the ERC-20 Token Distribution, and the ERC-20 Token became fixed and nontransferable. In addition to the EOSIO software, Block.one developed a "snapshot tool" that when used in conjunction with EOSIO, would allow any developer to launch a blockchain that, upon the developer's election, could contain all or part the final ERC-20 Token register of accounts, in each case at the discretion of the developer. Block.one advised that ERC-20 Token holders would need to register their token ownership via the ERC-20 Token Distribution smart contract in order to be eligible to receive any native EOSIO-based blockchain tokens utilizing the snapshot tool, if and when those blockchains launched. The ERC-20 Tokens sold in the ERC-20 Token Distribution remain fixed on the Ethereum blockchain, and the ERC-20 Tokens cannot be transferred.

The Proposed Order concludes that from June 26, 2017 through June 1, 2018, Block.one offered and sold securities that were required to be registered with the Commission pursuant to Section 5 of the Securities Act. As currently described in the Proposed Order, Block.one's activities violated Sections 5(a) and 5(c) of the Securities Act by offering and selling these securities to U.S.-based persons, among others, without a registration statement filed or in effect with the Commission and without qualifying for exemption from registration.

The Proposed Order requires Block.one to cease and desist from committing or causing any violations and any future violations of Section 5(a) and (c) of the Securities Act and requires that Block.one pay $24,000,000 in civil penalties to the Commission.

Block.one understands that, absent a waiver, the entry of the Proposed Order will disqualify Block.one and its affiliates from relying on both Regulation D and Regulation A. Block.one 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 securities, or if it is deemed to be acting in any other capacity described in Rule

ok so this is actually a pretty straight fwd registration charge.

ALSO - punitive damages are not allowed for federal securities claims

token sale facts

violations

translation EOS paid the $24 million to not be disqualified under Reg D/A

262 for purposes of Rule 262(a)(2) or Rule 506 for purposes of Rule 506(d)(1) (a "***Covered Person***"), then Block.one, 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 this disqualification upon a showing of good cause that such disqualification is not necessary under the circumstances.[2] The Division's statement on Waivers of Disqualification under Regulation A and Rules 505 and 506 of Regulation D[3] provides 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 provides 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 Proposed Order describes activities that involve the offer and sale of a security, but do not involve a criminal conviction or a violation of any antifraud statutes - scienter or non-scienter based. Thus, Block.one will not be held to a "greater" burden under the Division's waiver policy.

Based on the factors set forth by the Division for considering waiver requests and the facts and circumstances set forth below, Block.one respectfully submits that there is good cause that such disqualification is not necessary and therefore requests that the Division, on behalf of the Commission, or the Commission waive any disqualifying effects that the Order will have under Regulation A or under Regulation D.

1. Responsibility for the Conduct

Block.one undertook affirmative measures intended to block U.S.-based purchasers from buying ERC-20 Tokens such as the use of a "geoblock" designed to prevent anyone with a U.S.-based IP address from accessing the EOS.IO Website to purchase ERC-20 Tokens, it made clear in the purchase agreement governing the purchase of the ERC-20 Token and on the EOSIO Website that U.S.-based persons were prohibited from participation in the ERC-20 Token Distribution and the Purchase Agreement governing the purchase and sale of the ERC-20 Token required the purchasers to make clear representations that they were not U.S. residents. Nonetheless, some U.S.-based persons purchased ERC-20 Tokens.

Certain of the executive officers of Block.one at the time of the launch of the ERC-20 Token Distribution and the activities described in the Proposed Order continue to serve as executive officers of Block.one. As of the date of this letter, however, the majority of the senior

[2] *See* Rule 506(d)(2)(ii).
[3] *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.

executive officers that comprise the Executive Committee of Block.one (five of nine) joined Block.one after the completion of the ERC-20 Token Distribution. The new Chief Legal Officer, Chief Financial Officer and current General Counsel are primarily responsible for ensuring compliance with securities laws generally and Regulation D or Regulation A specifically, as well as implementation of procedures regarding the same. Members of the Executive Committee, including those that were executive officers at Block.one at the time of the ERC-20 Token Distribution, have been educated by experienced outside securities counsel on procedures required for compliance with securities regulations generally and Regulation D specifically.[4] They will continue to be advised on such matters by outside counsel as well as by Block.one's Chief Legal Officer, Chief Financial Officer and its General Counsel.

Block.one's executive officers that would be involved in any future Regulation D or Regulation A offering have also been educated by Block.one's Chief Legal Officer and its General Counsel, as well as Block.one's outside counsel, on the types of activities that may constitute "directed selling efforts" or "general solicitation" in connection with the offer and sale of a security, and they will be directly advised on such matters by outside counsel as well as Block.one's Chief Legal Officer and its General Counsel in advance of and during any Regulation D or Regulation A offering. From the initial point in time in which Block.one contemplates the offer and sale, in the future, of a security pursuant to Regulation D or Regulation A, the Chief Legal Officer, General Counsel, advised by experienced outside securities counsel, will be primarily responsible for securities law compliance matters, in particular, establishing and communicating clear guidelines regarding communications regarding the offering such as who may communicate on behalf of Block.one regarding the offering, what may be communicated and how or prohibiting any statements regarding the offering in any forum.

2. Duration of the Violations

The Proposed Order describes violations in connection with the offer and sale of ERC-20 Tokens during the period from June 26, 2017 through June 1, 2018.

3. Block.one Has Taken Remedial Steps and Will Continue to Take Remedial Steps

In preparation for the launch of the ERC-20 Token Distribution Block.one retained leading U.S. and international legal counsel. As of the initiation of the ERC-20 Token Distribution on June 26, 2017, regulators had not yet provided any guidance regarding application of the U.S. securities laws to the offer and sale of digital assets in connection with the launch of new blockchain networks. The first statement and guidance from the Commission regarding tokens, digital assets and securities laws applicable to the offer and sale of digital assets and cryptocurrencies was in July 2017 with publication of the *Report of Investigation Pursuant to*

[4] Note that one of the executive officers that was also an executive officer during the activities described in the Proposed Order is unlikely to have a role in any future offering of securities, but has also been educated by outside counsel on procedures required for compliance with securities laws.

this page continues w/ trying to show that there are grownups @ EOS today

Section 21(a) of the Securities Exchange Act of 1934: The DAO, Exchange Act Release No. 81207 (July 25, 2017). The Commission released the DAO Report one month after the smart contract for the ERC-20 Token Distribution had been activated on Ethereum (at which time more than 25% of the ERC-20 Tokens had been sold pursuant to the smart contract).

The Commission has made its role in regulating digital assets and cryptocurrencies clear over the period since publication of the *DAO Report*, and securities compliance is now a paramount consideration for Block.one as discussed below. Block.one is incorporating recent guidance from the Staff of the Division into its business and is focused on compliance with applicable securities laws including Regulation D.

Beginning in May 2018, Block.one significantly enhanced its internal expertise with respect to legal, regulatory and compliance matters through key strategic hires in these areas as well as growth of overall headcount focused on these areas.

- Legal and compliance personnel now number 16 staff as of September 2019, spread across Hong Kong and the United States. Block.one added a Chief Legal Officer with over 20 years of experience in international corporate compliance and governance matters, and a General Counsel with deep expertise in U.S. financial regulations including securities laws, particularly their application to cryptocurrencies and blockchain-based assets. The Chief Legal Officer and General Counsel are primarily responsible for ensuring compliance with securities laws generally as well as implementation of procedures regarding the same. They are also working with technologists at Block.one to develop technology tools that may achieve programmatic identity verification and transfer restrictions that could be used to support compliance with securities laws. In addition, the General Counsel leads a policy unit designed to ensure that Block.one achieves the best standards of international regulatory compliance. Block.one is also building out a separate and independent compliance function that reports into the Chief Legal Officer.

- Finance and risk personnel now number 16 staff as of September 2019, including a Chief Financial Officer whose previous roles include manager of the strategic investment portfolio of one of the world's largest international banks including overseeing its financial and risk management operations.

- Block.one is continuing to grow its cybersecurity and data protection function which currently includes, among others, a Chief Information Security Officer who is a former member of the Executive Committee of the Banking Industry Technology Secretariat of the U.S. Financial Services Roundtable and is responsible for the strategy and daily direction of Block.one's global cybersecurity program.

- Block.one's venture capital team is comprised of multiple individuals with extensive background and experience in regulated industries including at registered broker-dealers and international trading desks. For example, the Chief Executive Officer and Chief

why is how impressive our team is today!

Operating Officer of the EOS VC business unit most recently served as Asia Chief Executive Officer and Asia Chief Operating Officer of a leading US financial services company for eight and five years, respectively. Their roles oversaw the equities operations from front to back including compliance. These individuals lead Block.one's direct investment activities and bring their compliance focus to the operation of the venture capital business unit.

Additionally, Block.one has engaged a number of leading international and U.S.-based law, accounting and consulting firms to further develop its compliance policies and procedures, and such firms are in close counsel with Block.one's executive officers regarding compliance with applicable securities laws, including, if applicable, Regulation D and Regulation A.

Block.one has incorporated its legal and compliance team into its development of new technologies and launch of potential new projects in order to include, from the earliest stage, design features or restrictions that will support the design of a true digital currency, or, where determined to be necessary, ensure compliance with securities laws generally as well as other regulatory regimes. On June 1, 2019, Block.one announced the launch of Voice, a social media platform to be developed and launched using Block.one's EOSIO blockchain software. The new platform currently contemplates utilizing a cryptographic token that will serve as a digital currency within the blockchain-based application.[5] The General Counsel and Chief Legal Officer, as well as outside counsel, have been essential to, and deeply involved in, the development discussions and decisions around Voice and have been working to identify and analyze the applicability of securities laws in the U.S. and other jurisdictions where Voice is expected to launch.

With respect to Voice tokens or any future token developed and launched by Block.one, Block.one is aware of guidance provided by staff of the Division with respect to considerations applicable to a determination of whether a digital asset is an investment contract and subject to the U.S. securities laws, specifically the April 3, 2019 *Framework for 'Investment Contract' Analysis of Digital Assets*.[6] If the Voice tokens or any future digital asset developed by Block.one are made available to U.S.-based individuals by Block.one, or if Block.one allows for distribution or transfer of any such digital asset to U.S.-based individuals, Block.one has engaged and will continue to engage experienced U.S. securities counsel to work with its internal legal and compliance team to consider and apply such guidance in structuring the Voice platform, designing any distribution of the Voice token and managing public statements by Block.one. It is Block.one's intention to design digital assets that are true cryptocurrencies, or, as applicable, to comply fully with the requirements of the U.S. securities laws upon any determination that such digital asset may be deemed an investment contract upon application of the *Framework* or other applicable guidance. In such an event, certain features of a proposed digital asset, such as the Voice platform's identity verification features used to link real human beings to their online, social media

[5] The design, implementation, distribution, features, function and structure of Voice and the related Voice token are an ongoing project and significant development decisions remain.
[6] Available at https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets.

for those of you wondering how EOS "got away" w/ $24m settlement .... moral of the story here is "BE COOPERATIVE"

identity and the content that they produce, could be used to support compliance with Regulation D and/or the safe harbor for offshore offerings provided by Rule 903/Regulation S. For example, Block.one is considering whether there are technological mechanisms (such as geo-based IP blockers or blockchain-based multi-point identity verification) through which it or its potential partners may programmatically achieve identity verification and transfer restrictions that could be used to support compliance with securities laws in connection with the offer and sale of digital securities in the future in addition to compliance checks and controls under other regulatory regimes such as Bank Secrecy Act and "know your customer" procedures. Similarly, such mechanisms may be able to be used to ensure that future tokens are only provided to individuals in jurisdictions where it has been confirmed that implementation of such token will be fully compliant with all applicable regulations.[7] Block.one is initiating a process of consultation and discussion with staff of the Division, including the SEC's Strategic Hub for Innovation and Financial Technology (FinHub) in connection with the Voice token. Block.one will continue to engage with staff of the Division and FinHub on its future projects, as appropriate.

In connection with any offerings relying on Regulation D, Block.one intends to work closely with its securities counsel to ensure compliance with Regulation D generally and will continue to engage experienced U.S. securities counsel for such purposes. Executive officers of Block.one are well-educated in the application of U.S. securities laws to the offer and sale of any securities including certain digital assets, and dedicated compliance and legal personnel are focused on ongoing compliance efforts. 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 Block.one, Block.one or any of its affiliates intends to distribute a digital asset[8] other than on a registered basis or pursuant to an exemption from registration,[9] it will consult with the Division[10] prior to initial distribution of such digital asset.[11]

In the event that the Division, on behalf of the Commission, or the Commission, grants the requested waivers, for a period of five years from the date of the date of entry of the order, Block.one will furnish (or cause to be furnished), a reasonable time prior to sale by Block.one of any securities, to each purchaser in an offering under Regulation A or Regulation D which would

[7] Any such mechanisms are in idea or development phase only as of the date of this letter, and this statement should not be considered a representation that such mechanisms can or will be developed or implemented.
[8] This is not intended to apply to any distribution made solely 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] Block.one 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 Block.one 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.

Fuck man their lawyers are good...

if this isn't the best thing I've seen arguing for why EOS has a $1 BILLION FUND

otherwise be subject to disqualification under Rule 262(a)(2) or Rule 506(d)(1)(ii) as a result of the final order, a description in writing of the final order.

4. Impact on Issuer and Third Parties if Waiver Were Denied

In January 2018 and on certain occasions since, Block.one announced that it would deploy $1 billion from the ERC-20 Token Distribution proceeds to "offer developers and entrepreneurs the funding they need to create community driven businesses leveraging EOSIO software." Block.one remains committed to this strategy and has deployed a significant portion of the revenues of the ERC-20 Token Distribution pursuant thereto. Block.one has developed its own venture capital team and through its wholly owned group subsidiary makes direct and indirect investments. This includes committed funds to a number of investment funds which will independently invest, resulting in indirect investments by Block.one, in each case with an investment strategy and mandate to identify a diverse portfolio of growth stage emerging companies as well as established technology projects across the globe. One of the funds is focused on investment opportunities in the U.S. specifically, and certain of the other funds in which Block.one has invested have also made investments in U.S. incorporated companies. To the extent that any of the funds are captured under Rule 506(d)(1) due to their relationship with Block.one's subsidiary, upon entry of the Proposed Order without the waiver requested herein, an affected fund may also be prohibited from using Regulation D for sales of its own securities, and also will be significantly limited in its ability to invest in small businesses, startups and early stage companies in the U.S.

An inability to deploy capital for investment in securities issued by U.S.-based small businesses and growth stage companies would harm Block.one's shareholders, as capital may be forced to sit idle rather than being deployed to growth stage technology companies across the globe. Precluding Block.one and its affiliated funds (if any are deemed a Covered Person under Rule 506(d)(1)) from U.S.-based capital raising transactions that seek to rely on Regulation D we believe could also be to the detriment of innovation focused startups in the U.S. or worldwide seeking to continue to expand the use, utilization, adoption and operability of the EOSIO blockchain software by potentially limiting available investment capital as companies may limit or even refuse investment from Block.one or its affiliated funds. Even where potential investment opportunities are not based in the U.S. or currently seeking funds via U.S. capital markets pursuant to Regulation D, if a company may access U.S. markets in the future via a private offering relying on Regulation D, it may reject Block.one and the affiliated funds as partners and investors to preserve future optionality. Amounts raised in unregistered securities offerings in the U.S. totaled more than $3 trillion in 2017,[12] for example, and as a result of the disqualification, Block.one would be precluded from or significantly limited from participating in and contributing

[12] *Capital Raising in the U.S.: An Analysis of the Market for Unregistered Securities Offerings, 2009-2017,* Scott Bauguess, Rachita Gullapalli, and Vladimir Ivanov, Division of Economic and Risk Analysis (DERA), U.S. Securities and Exchange Commission (August 2018), *available at* https://www.sec.gov/files/DERA%20white%20paper_Regulation%20D_082018.pdf

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to be honest, this ... is sorta a good sign for projects like Filecoin...

capital to such investment activity. Without the waiver requested herein, companies seeking to preserve access to the highly desirable U.S. private capital markets are unlikely to partner with Block.one or its affiliated funds, and this will have a significant blocking effect of Block.one's ability to deploy capital consistent with its investment pledge and support promising innovation with funding, experience and technological support. For those companies that opt to partner with Block.one or its affiliated funds, access to U.S. private capital markets and U.S. strategic, sophisticated investors may also be precluded unless or until the company can bear the expense of a registered offering, to the potential detriment of such companies and investors.

Block.one is a growth stage company focused on developing novel, innovative technology. Block.one has spent and will spend large amounts of capital to invest in the research and development of new technology, but as in any R&D program, it is possible that many of these efforts may never be deemed viable for deployment. Blockchain technology development, social media applications and other areas in which Block.one may develop new technologies are extremely competitive, and any new technologies or applications developed by Block.one may be rendered obsolete by competitors in the industry. Alternatively, since much of the software code in the blockchain industry is open-sourced, new software may be adopted by competitors in a way that attracts more users and is more successful. Block.one is challenging dominant incumbents in a number of industries, and will require significant capital and resources to successfully compete for users, blockchain engineers, technologists and community contributors. It is most likely that such investments will be through private securities offerings in reliance on Rule 506 of Regulation D. The additional flexibility and expediency afforded by Regulation D, including the allowance of general solicitation and advertising as well as certain preemptive effects on state securities laws, will be critically important for Block.one to raise private capital and respond to market and industry shifts and respond to competitive pressures. Block.one may need to work with strategic partners and create partnerships that align incentives and promote shared long term value creation through equity investments. Notwithstanding the proceeds from the ERC-20 Token Distribution, Block.one may therefore need to find investment partners for strategic and competitive development purposes and its business and development activities. It is most likely that such investments will be through private securities offerings in reliance on Rule 506 of Regulation D rather than simple commercial agreements exchanging cash for services as partners seek to align long-term value and incentives through an equity investment in Block.one. This potential limitation on fundraising options as a result of the disqualification from reliance on Regulation D may create a meaningful competitive disadvantage to Block.one by deterring strategic growth partners, technology partners or acquisition targets that are essential to Block.one continuing to innovate, grow, support the EOSIO blockchain software and create value for its shareholders. The additional flexibility and expediency afforded by Regulation D, including certain preemptive effects on state securities laws, will be essential for Block.one to raise additional funds or efficiently capitalize on long-term strategic partnership opportunities in reliance on Rule 506 of Regulation D.

Additionally, if Block.one seeks to distribute a digital asset token in the U.S., such as the Voice token or a token associated with an application or project built on the EOSIO blockchain

software, it may seek regulatory certainty by relying on Regulation D or Regulation A (utilizing a U.S. based subsidiary) to distribute the token. Alternatively, in light of future guidance or Commission actions, Block.one 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 Block.one is prevented from utilizing these Regulations, it may be unable to include U.S.-based individuals or entities in its future applications. For example, Voice will utilize stringent identity verification mechanisms to ensure that all of its social media platform participants are natural persons rather than robots, fake accounts or Internet "trolls". Content on Voice will be created by these verified individuals, and will be "upvoted" or given high visibility within the platform based on blockchain verified "tipping" transactions from accounts linked to real persons, rather than as a result of advertising payments to the platform operator or manipulation of undisclosed algorithms. If successful, it would be unfortunate for U.S.-based individuals to be prohibited from participating in such an application and platform. Registering such a distribution on Form F-1 could be time and resource intensive, and Block.one believes that it is critical to have the lower cost, reduced disclosure option and the flexibility of Regulation A for a token that will be novel and possibly experimental. If Block.one is unable to distribute a digital asset that it has determined with counsel may constitute an investment contract under the April 3, 2019 *Framework* in reliance on Regulation D or Regulation A, it may be unable to identify a viable option in the U.S. through which to allow U.S.-based entities or individuals to participate in transformative and unique technologies that may have broad and equally transformative benefits.

Block.one anticipates that private blockchain-based enterprise solutions may also be developed using the EOSIO blockchain software, and Block.one or its affiliated funds may participate in the development or deployment of such private blockchains. In some cases, the tokens used within such a private blockchain may have security like features, though their primary features relate to utilization and implementation of the enterprise solution. Given regulatory uncertainties around utilization of digital assets, Block.one and other participants in a private blockchain-based enterprise solution may seek to rely upon Regulation D to ensure compliance rather than risk non-compliance with securities laws. In such a case, since Block.one and all of the participants would likely be accredited or institutional investors, Block.one or other participants may seek to rely on Regulation D to achieve regulatory certainty in order to facilitate an expedited launch of the new technology during a testing phase as well as later in the development life cycle or to utilize a security token. Disqualification from the use of Regulation D in this circumstance could prevent Block.one, its affiliates or the subsidiary funds from participating in and contributing to such private networks if other participants or developers seek to exclude Block.one in order to preserve the ability to rely on Regulation D or may result in new enterprise solutions or other efficiencies or innovations of blockchain-based private networks being unavailable to U.S. companies. This may also deprive U.S. enterprises of all types from accessing potentially transformative and unique technologies on the basis that Block.one cannot participate in or partner with others in developing, launching and offering these new technologies to U.S.-based entities as a result of its inability, and the inability of the other stakeholders on such private blockchains, to rely upon Regulation D.

Cooley

this is what all these pages lead up to

REQUEST FOR WAIVER

Pursuant to the Proposed Order, Block.one would be required to pay $24,000,000 in civil penalties. In light of the non-fraud, non-scienter nature of the violations in the Proposed Order, the enforcement remedies to be obtained by the entry of the Proposed Order, Block.one's commitment to ongoing compliance and engagement with respect to applicable securities laws and regulations, and the material impact of a Regulation A and/or Rule 506 disqualification on Block.one and its affiliates as well as users and potential participants of its new technologies and applications, we respectfully submit that disqualification of Block.one from relying on Regulation A and Rule 506 of Regulation D is not necessary. Under the circumstances, Block.one 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 Block.one 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,

Karen Ubell

Karen E. Ubell

I'm almost at a loss of words. Putting aside very strong & very biased feelings against

cc: Alex Erasmus, Chief Legal Officer, Block.one
Brian Klein, Baker Marquart LLP
Robert Rice, Clifford Chance US LLP

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10714 / September 30, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19568

In the Matter of **Block.one,** **Respondent.**	**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**

EOS

Lets goooooo.

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 Block.one ("Block.one" or the "Respondent").

II.

(what we just read

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement ("Offer") that 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 it and the subject matter of these proceedings, which are admitted, Respondent consents 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 a Cease-And-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Summary

Block.one is a Cayman Islands-registered technology company that was established in 2016, and developed the EOSIO software, an operating system that would underlie one or more anticipated EOSIO-based blockchains. From June 26, 2017 through June 1, 2018 (the "Relevant Period"), Block.one conducted a "token distribution," or "initial coin offering" ("ICO"), in which it publicly offered and sold 900 million digital assets ("ERC-20 Tokens") in exchange for Ether, a

don't matter for SEC jurisdiction!

this is sort of the TLDR here

digital asset, to raise capital to develop the EOSIO software and promote the launch of EOSIO-based blockchains.

Block.one raised Ether worth several billion dollars from the general public, including a portion from U.S. residents. Block.one did not register its offers and sales of the ERC-20 Tokens pursuant to the federal securities laws, nor did it qualify for an exemption to the registration requirements under the federal securities laws.

Based on the facts and circumstances set forth below, the ERC-20 Tokens were securities under the federal securities laws pursuant to *SEC v. W. J. Howey Co.*, 328 U.S. 293 (1946), and its progeny, including the cases discussed 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) ("DAO Report"). A purchaser in the offering of ERC-20 Tokens would have had a reasonable expectation of obtaining a future profit based upon Block.one's efforts, including its development of the EOSIO software and its promotion of the adoption and success of EOSIO and the launch of the anticipated EOSIO blockchains. Block.one 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.

IV.

Respondent

1. Block.one is a Cayman Islands-registered company and it currently has offices in Hong Kong and Blacksburg, Virginia. Neither Block.one nor its securities are registered with the Commission in any capacity.

Background

to be honest you can skip this if you read the warner letter

2. Block.one is a technology company that was established in 2016 to, among other things, develop the EOSIO software, an operating system designed to support public or private blockchains. The goal of the EOSIO software is to increase blockchain transaction speeds, reduce transaction costs, and improve scalability.

3. Block.one launched a website ("EOS.IO Website") and published a Technical White Paper ("White Paper") to market the EOSIO software and proposed EOSIO-based blockchains, and announced that it would be conducting an approximately year-long "initial coin offering," or "ICO" of tokens distributed on the Ethereum blockchain using the ERC-20 protocol.

4. Over the approximate one-year period from June 26, 2017 through June 1, 2018, Block.one offered and sold ERC-20 Tokens to the general public, selling and distributing 900 million ERC-20 Tokens in total. This was done through an automated and committed process, *i.e.*, a "smart contract." When purchasing tokens, investors also entered into an electronic token purchase agreement ("Token Purchase Agreement"). Block.one also reserved 100 million tokens, referred to as "founders' tokens," for its own account. Block.one sold and distributed the ERC-20 Tokens in Dutch-style auctions on the following schedule: 200 million tokens were sold and distributed during the first five days of the ICO, and thereafter, 700 million tokens were split evenly into 350 consecutive 23-hour "distribution periods" of 2 million tokens each. On average,

the ERC-20 Tokens sold for the equivalent of approximately $4.40 per token. In addition, the ERC-20 Tokens contained no restrictions on transfer following their initial sale and distribution, and the tokens began trading through online trading platforms as early as July 1, 2017.

5. Block.one ultimately raised several billion dollars' worth of Ether in the ICO, a portion of which was raised from U.S. persons notwithstanding certain measures, described below, undertaken by Block.one to prohibit U.S. persons from participating. At the close of the ICO, approximately 330,690 individual wallet addresses held the ERC-20 Tokens, with approximately 75% of all tokens held by 100 wallets.

6. The EOS.IO Website stated that the proceeds of the ICO would be "revenue" of Block.one, and it "intends to use certain of the proceeds for general administration and operating expenses, as well as to build a blockchain consulting business focusing on helping businesses re-imagine or build their businesses on the blockchain, developing more open source software that may be helpful to the community and building decentralized applications using EOS.IO Software."

7. As set forth in the Token Purchase Agreement, which was posted on the EOS.IO Website, and in other public statements, the ERC-20 Token was not the same token that eventually would be used on any anticipated EOSIO-based blockchains. Rather, the ERC-20 Token was designed to become fixed and nontransferable on the Ethereum blockchain (a different blockchain platform) at the close of the ERC-20 Token sale, meaning that while a record of past transactions could be confirmed on the Ethereum blockchain, new transfers of the ERC-20 Token could not occur on the Ethereum blockchain and the smart contract would have no further functionality at that point. Beginning in December 2017, Block.one began to release beta versions of the EOSIO software and explained that once the official version was published under an open source software license, anyone could view the software's code and use it to configure and launch blockchains (such as the EOS Blockchain, which would be a different blockchain than an Ethereum blockchain).

8. As anticipated, on June 1, 2018, Block.one's ICO closed, and the ERC-20 Token – which prior to this time had been transferrable in secondary market transactions – became fixed and nontransferable. In addition to the EOSIO software, Block.one developed a "snapshot tool" that when used in conjunction with EOSIO, would allow any developer to launch a blockchain that, upon their election, could also contain the final ERC-20 Token register of accounts. Block.one advised that ERC-20 Token holders would need to register their token ownership through a smart contract on the Ethereum blockchain in order to be eligible to receive any native EOSIO-based blockchain tokens utilizing the snapshot tool, if and when those blockchains launched.

9. On June 14, 2018, the EOS Blockchain, the first EOSIO-based blockchain, was launched. The ERC-20 Tokens sold in the ICO remain fixed on the Ethereum blockchain, and the ERC-20 Tokens cannot be transferred.

Block.one Offered and Sold Securities
Without Registration or an Applicable Exemption

10. Block.one launched the EOS.IO Website on May 11, 2017. Block.one subsequently sold and distributed the ERC-20 Tokens directly through the EOS.IO Website in exchange for Ether. The EOS.IO Website included certain measures intended to block U.S.-based purchasers from buying ERC-20 Tokens, including by blocking U.S.-based IP addresses from accessing the EOS.IO Website token sale page. In addition, Block.one required all ERC-20 Token purchasers to agree to the Token Purchase Agreement, which included provisions that U.S. persons were prohibited from purchasing ERC-20 Tokens, and that any purchase by a U.S. person was unlawful and rendered the purchase agreement null and void. Block.one did not, however, ascertain from purchasers whether they were in fact U.S.-based persons, and a number of U.S.-based persons purchased ERC-20 Tokens directly through the EOS.IO Website.

11. Block.one also undertook efforts for the purpose of, or that could reasonably be expected to have the effect of, conditioning the market in the U.S. for the ERC-20 Tokens, including by engaging in directed selling efforts. Among other things, Block.one participated in blockchain conferences in the U.S., including a prominent conference held in New York City in May 2017, to promote Block.one and which at times also promoted its ICO. In connection with the May 2017 Conference, Block.one advertised EOSIO on a large billboard in Times Square on May 22, 2017, promoted EOSIO in informal informational sessions, and hosted a post-conference reception. Block.one also promoted its proposed business and ICO to U.S.-based persons on the EOS.IO Website and through various social media and forum posts. The EOS.IO Website, White Paper, and other promotional statements were accessible to purchasers and potential purchasers, and viewable by U.S. persons.

12. In addition, ERC-20 Tokens were traded and widely available for purchase on numerous online trading platforms open to U.S.-based purchasers throughout the duration of the ICO. Block.one did not take any steps to prevent the ERC-20 Tokens from being immediately resellable to U.S.-based purchasers in secondary market trades.

13. No registration statement concerning the offers and sales of ERC-20 Tokens was in effect at any time prior to or during the offering. The offers and sales did not qualify for any exemption from registration under the federal securities laws.

ERC-20 Token Purchasers Would Reasonably Have Expected
That They Would Profit From the Efforts of Block.one

14. Block.one offered ERC-20 Tokens in order to raise capital and build a profitable enterprise, and ERC-20 Token purchasers would reasonably have understood that if Block.one was successful in doing so, their token purchase would be profitable.

15. At the time the ICO launched in June 2017, Block.one did not have any product in place, and its proposed software was largely conceptual. Purchasers would have understood that Block.one was a for-profit entity. Block.one stated that the ICO proceeds were "revenue" of the Company, and that it would use the proceeds to build a profitable enterprise by, among other things, developing the EOSIO software and promoting the widespread adoption of EOSIO and

launch of anticipated EOSIO-based blockchains. Purchasers thus would have understood that Block.one's success in building and promoting the EOSIO software and promoting the launch of one or more EOSIO-based blockchains would make their token purchase profitable.

16. In January 2018, seven months into the 12-month ERC-20 Token offering, Block.one announced that it would invest $1 billion from the offering proceeds to "offer[] developers and entrepreneurs the funding they need to create community driven businesses leveraging EOSIO software."

17. In describing Block.one's plans to invest the proceeds of the ERC-20 Token sale to fund businesses that would use, directly or indirectly, an EOSIO-based blockchain, Block.one stated that "the money we spent on those initiatives will be returned value for the network" and that the money raised in the ICO would be spent wisely to fund development of EOSIO-based blockchains.

18. Over the approximately year-long ICO, ERC-20 Token purchasers' expectations were primed by Block.one's marketing of the ERC-20 Token and anticipated EOSIO blockchains. To market the ERC-20 Token, Block.one created the EOS.IO Website and published an EOS White Paper and an "Introduction to EOS" technical paper. During the ICO, Block.one also was developing EOSIO software and released beta versions of the software to the public. Its founders also published articles and blog posts to promote the EOSIO software, and actively engaged U.S. purchasers and potential U.S. purchasers on social media, online message boards, and other outlets. In the course of marketing the EOSIO software, Block.one encouraged U.S. purchasers to rely on the founders' expertise and vision to secure the widespread adoption of the EOSIO software and anticipated launch of one or more EOSIO blockchains.

V.

Violations

19. As a result of the conduct described above regarding the offers and sales of ERC-20 Tokens in the ICO, Block.one violated Section 5(a) of the Securities Act, which states that unless a registration statement is in effect as to a security, it 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 sell such security through the use or medium of any prospectus or otherwise; or 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.

20. As a result of the conduct described above, Block.one violated Section 5(c) of the Securities Act, which states that it 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.

Penalties

VI.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondent Block.one cease and desist from committing or causing any violations and any future violations of Sections 5(a) and 5(c) of the Securities Act.

= no more future violations

B. Respondents shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $24,000,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent 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) Respondent 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

the $$ goes to the Treasury

Payments by check or money order must be accompanied by a cover letter identifying Block.one as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Lara Shalov Mehraban, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 200 Vesey Street, Suite 400, New York, New York 10281.

C. 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, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a

Penalty Offset, Respondent agrees that it 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 Respondent 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.

By the Commission.

Vanessa A. Countryman
Secretary

I'm too tired to have a sassy response to this but trust me my jaws are on the floor.