January 23, 2018

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Rulemaking Regarding ICO Remediation

Dear Secretary Fields,

Liquid M Capital, Inc. f/k/a/ Ouisa Capital, LLC ("Liquid M") is a FinTech company and broker-dealer registered with the SEC and the Financial Industry Regulatory Authority ("FINRA"). Liquid M is the operator of an alternative trading system ("ATS") that plans to use blockchain technology as part of the operation of the ATS. Templum, LLC ("Templum") is a financial technology ("FinTech") company and partner of Liquid M.[1] Liquid M has engaged in extensive advocacy regarding digital assets and FinTech, including filing a prior petition for rulemaking on March 13, 2016, encouraging the SEC to undertake formal rulemaking with respect to the regulation of digital assets and blockchain technology.[2] This petition is intended to supplement our previous advocacy efforts.

Liquid M encourages the SEC to provide an opportunity for issuers of tokens through initial coin offerings ("ICOs") that took place prior to the promulgation of related guidance by the SEC the opportunity to remediate their illegal offerings. While we believe that there are still uncertainties regarding the regulation of digital assets and blockchain, the regulatory climate has become clearer in recent months through the issuance of the SEC's investigative report on The DAO (the "DAO Report"),[3] along with various recent actions by the SEC against ICO issuers.[4] We have long believed, and the SEC continues to affirm, that tokens issued through ICOs are by and large securities, which therefore must be either registered or subject to an applicable exemption as set forth in Section 5 of the Securities Act of 1933 (the "Securities Act").

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[1] Templum is in the process of acquiring Liquid M.

[2] *See* Petition for Rulemaking (Mar. 13, 2017), available at: https://www.sec.gov/rules/petitions/2017/petn4-710.pdf.

[3] *Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO* (July 25, 2017), available at: https://www.sec.gov/litigation/investreport/34-81207.pdf.

[4] *See* Munchee Inc., Securities Act Release No. 10445 (Dec. 11, 2017) *available at* https://www.sec.gov/litigation/admin/2017/33-10445.pdf, SEC v. REcoin Group Foundation, LLC, DRC World Inc. a/k/a Diamond Reserve Club, and Maksim Zaslavskiy, 17 Civ. [ ] (Sept. 29, 2017) (Complaint).

I. Background

a. *Growth of ICOs*

The growth of ICOs has been exponential over the past year, with an estimated excess of $3.2 billion of investor funds being raised through such offerings in 2017 thus far.[5] This amount is four times what was raised through such offerings in 2016.[6] We believe that ICOs and digital assets more broadly, represent a fundamental change to the financial services industry and the way businesses will raise capital in the future. Though the regulatory climate surrounding ICOs and digital assets remains unclear in some respects, the SEC has provided some clarity through the actions noted above.[7] ICOs present a unique concern for the industry. The vast majority of ICOs have attributes of securities, with many issued prior to the DAO Report and other SEC guidance, and were not properly exempted or registered pursuant to Section 5 of the Securities Act prior to their offering.

Chairman Clayton recently stated that he has "yet to see an ICO that doesn't have a sufficient number of hallmarks of a security."[8] This has left many token issuers in a situation where they have already issued tokens, which more than likely violate the federal securities laws, but given the lack of regulatory guidance, were unaware that they needed to either register their offering or ensure it complied with an exemption. Critically, this also creates notable consumer protection concerns, as billions of dollars have been invested in assets that do not have sufficient regulatory supervision. We believe that issuers should be given a chance to remediate their illegal offerings now that clearer guidance has been provided regarding ICOs by the SEC.

Additionally, unregistered ICOs create significant liability for platforms like Liquid M that facilitate the secondary trading of tokens. Liquid M intends to only trade tokens that are securities and have been issued pursuant to the federal securities laws. Today, the number of such tokens is very small, but we anticipate that following recent SEC guidance it will increase substantially. This leaves, however, hundreds of tokens that were issued improperly prior to the SEC's guidance. If Liquid M, or another platform, intends to trade such tokens, they are open to liability for aiding and abetting under Section 5 of the Securities Act, as well as Section 20 of the Securities Exchange Act of 1934.

b. *Precedent for Remediation*

In the 1990s, the growth of the internet, analogous to today's boom in blockchain technology, brought with it the development of direct to public offerings ("DPOs") as a more direct and accessible form of fundraising. Like ICOs today, several DPOs were conducted prior to guidance from the SEC regarding how such offerings were viewed under federal securities laws. The most notable of such DPOs being that conducted by Spring Street Brewery ("Spring

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[5] Kevin Dugan, *NY investigators probing bitcoin-like currencies worth $3.2 billion*, New York Post, Nov. 4, 2017, *available at* https://nypost-com.cdn.ampproject.org/c/s/nypost.com/2017/11/04/investors-have-poured-3-2b-into-bitcoin-like-currency/amp/.

[6] *Id.*

[7] *See supra* notes 2-3.

[8] Dave Michaels and Paul Vigna, *SEC Chief Fires Warning Shot Against Coin Offerings*, Wall Street Journal, Nov. 9, 2017, *available at* https://www.wsj.com/articles/sec-chief-fires-warning-shot-against-coin-offerings-1510247148?mg=prod/accounts-wsj.

Street").[9] Through Wit-Trade, a platform designed to conduct such offerings, Spring Street conducted a DPO in the absence of regulatory guidance in the space. Following the offering, Spring Street began a dialogue with the SEC regarding how to ensure their offering remained compliant with federal securities laws. As a result of this dialogue, the SEC issued a letter to Spring Street that addressed the nascent nature of DPOs, their utility, and how to ensure compliance with federal securities laws.[10] Critically, the SEC also allowed Spring Street to revise their offering materials to ensure compliance with Regulation A, which the SEC determined was an appropriate offering method for Spring Street's DPO.[11]

II. Recommendation

a. *The SEC should allow issuers of ICOs that were conducted prior to guidance from the SEC to remediate their illegal offerings.*

We believe that issuers of ICOs that took place prior to guidance from the SEC are in a position that is analogous to Spring Street in 1996. The offerings that they have conducted, which they largely believed to be permissible outside of the federal securities laws, now appear to have been conducted illegally due to subsequent regulatory developments. By providing these issuers with the opportunity to remediate their offerings, the SEC will be able to both encourage compliance with federal securities laws and ensure greater consumer protection. Such remediation should only be made available to issuers who acted in good faith in conducting their ICO, and should not be available to any bad actors or in the case of fraud.

We believe that it is appropriate, given the current state of the industry, to allow issuers of tokens through ICOs that took place prior to the release of the DAO Report to remediate their illegal offerings by retroactively engaging in the appropriate filings under Rule 506, Regulation A, or Regulation CF. This type of retroactive registration should be accompanied by a right of recession to all purchasers of the original tokens allowing them to receive a refund should they not want their investment to carry over into the new remediated token. This should be facilitated by the SEC providing issuers with a 180 day window to remediate their illegal initial offerings by engaging in either an appropriate registration or exemption under the federal securities laws. We believe that by affording FinTech firms the opportunity to remedy their conduct, the SEC will be able to advance its interests in regulating FinTech while fostering innovation and regulatory compliance. The SEC will also satisfy its duties to: (i) protect investors; (ii) maintain fair, orderly, and efficient markets; and (iii) facilitate capital formation.[12] Such an approach is not without precedent given what took place regarding the regulation of DPOs in the mid-1990s.

We hope that you, the Commissioners, and the SEC staff find these comments informative. Liquid M welcomes the opportunity to discuss with you how the SEC may develop a

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[9] *See* SEC Letter to Spring Street Brewing Company (Apr. 17, 1996).
[10] *Id.*
[11] *Id.*
[12] Michael S. Piwowar, Acting Chairman, SEC, Remarks at the "SEC Speaks" Conference 2017: *Remembering the Forgotten Investor* (Feb. 24, 2017), *available at:* https://www.sec.gov/news/speech/piwowar-remembering-the-forgotten-investor.html.

regulatory framework to facilitate remediation and increased regulatory compliance of token issuances.

If Liquid M or we can be of any further assistance to you in this matter, please do not hesitate to contact us at the above address or 646-595-1713 or our counsel Richard B. Levin at 202-772-8474.

Very truly yours,

Vincent R. Molinari
Chief Executive Officer
Liquid M Capital, LLC

Christopher Pallotta
Chief Executive Officer
Templum, LLC

cc: Jay Clayton, Chairman, Securities and Exchange Commission
Michael S. Piwowar, Commissioner, Securities and Exchange Commission
Kara M. Stein, Commissioner, Securities and Exchange Commission
Hester M. Peirce, Commissioner, Securities and Exchange Commission
Robert J. Jackson Jr., Commissioner, Securities and Exchange Commission