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December 17, 2019

Elizabeth Murphy  
Associate Director  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

Re: In the Matter of Blockchain of Things, Inc.

Dear Ms. Murphy:

We write on behalf of Blockchain of Things, Inc. (“BCoT” or the “Company”). BCoT hereby requests, pursuant to Rule 506(d)(2)(ii) of Regulation D under the Securities Act of 1933 (the “Securities Act”), waiver of any disqualification from relying on exemptions under Rule 506 of Regulation D that will be applicable as a result of the anticipated entry of the BCoT Order (described below). We respectfully submit that relief from disqualification is appropriate in this case for the following reasons.

### **BACKGROUND**

The staff of the Division of Enforcement has engaged in settlement discussions with BCoT in connection with the sale of BCOT tokens. As a result of these discussions, and in anticipation of the institution of proceedings, BCoT submitted an offer of settlement. The settlement would result in an Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”) against BCoT imposing a mandate that BCoT cease and desist from committing or causing any violation or future violation of Section 5(a) and (c) of the Securities Act. BCoT has not been found by the SEC to have engaged in any fraud and is not subject to any current claims by the SEC with respect to this matter.

### **DISCUSSION**

We understand that the Order will disqualify BCoT from relying on certain exemptions under Rule 506 of Regulation D pursuant to 17 C.F.R. § 230.506(d). The Commission has the authority to waive the Regulation D exemption disqualifications upon a showing of good cause

that it is not necessary under the circumstances that the exemptions be denied. See 17 C.F.R. §§ 230.506(d)(2)(ii).

For the reasons discussed below, BCoT respectfully requests that the Commission waive any disqualifying effects that the Order will have under Rule 506 of Regulation D with respect to BCoT for the following reasons:

- *The Violation Is Not Scierter Based And Will Not Result in Criminal Convictions*

The violation described in the Order will not constitute a criminal conviction. Section 5 of the Securities Act is a strict liability section of the statute, and BCoT will be found to have violated only Section 5(a) and Section 5(c) of the Securities Act. The Order will not find that BCoT violated any scierter-based sections of the federal securities laws.

Therefore, although the alleged misconduct involved the offer and sale of securities, BCoT's violations will not be scierter-based and thus is not subject to the higher show good cause burden set forth in the statement of policy by the Commission's Division of Corporation Finance regarding granting such waivers.<sup>1</sup> According to the statement of policy, the Division considers the following factors when determining whether good cause is shown: who was responsible for the misconduct; what was the duration of the misconduct; what remedial steps have been taken; and impact if the waiver is denied.

- *Nature of the Violations*

The Order will find that BCOT violated Sections 5(a) and 5(c) of the Securities Act by offering and selling digital securities without having a registration statement filed or in effect with the Commission or qualifying for exemption from registration. BCOT tokens are designed to be used on blockchain technology. Blockchain, coin offerings, and cryptocurrency and the digital assets and technology behind them are relatively new, especially to the financial world. This is also an emerging area of the law. The SEC has recently launched a number of initiatives and guidance in this area, but much of that was not available to BCoT when it first began to raise capital and to sell its tokens. Indeed, Chairman Jay Clayton authored a public statement in December 11, 2017<sup>2</sup> stating that the determination of whether coin offerings amount to securities offerings "often requires an in-depth analysis, and the answers will differ depending on many factors." It was around this time that BCoT sought legal counsel on the manner of token sales and developed a white paper and related documentation, which BCoT reasonably believed at the time did not amount to an offer or sale of securities.

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<sup>1</sup> See "Waivers of Disqualification under Regulation A and Rules 505 and 506 of Regulation D," <https://www.sec.gov/divisions/corpfin/guidance/disqualification-waivers.shtml>.

<sup>2</sup> See [https://www.sec.gov/news/public-statement/statement-clayton-2017-12-11#\\_ftn6](https://www.sec.gov/news/public-statement/statement-clayton-2017-12-11#_ftn6).

The Order will find, based on the facts and circumstances, that BCOT tokens were securities, 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) (the “DAO Report”). A purchaser in the Offering of BCOT tokens would have had a reasonable expectation of obtaining a future profit based upon BCOT’s efforts to spur development of an “ecosystem” using the technology of the Catenis platform, including BCOT’s use of its Offering proceeds and steps to control and increase the value of BCOT tokens.

The Order will also point out that, in coming to its conclusion to not impose greater civil penalties, the staff of the Commission considered remedial acts undertaken by BCoT and the cooperation it afforded the Commission staff.

- *Who Was Responsible for the Misconduct?*

Although BCoT is responsible for the transactions it entered, BCoT hired multiple law firms to help create, structure, and advise it on the transaction documents that are the subject of the Order. BCoT sought the advice of multiple well-known national law firms on compliance with securities laws including whether its tokens would be considered securities, were advised that the area of law was emerging but that the tokens likely would not be considered securities assuming compliance with specified substantive and procedural guidance, and proceeded in reliance on the advice they received.

Based on the advice of counsel, BCoT personnel believed that they were complying with all securities laws. BCoT halted all token sales as soon as the Division of Enforcement Staff indicated it had concerns and did not proceed with any further token sales or capital raises without consulting the Staff.

The Order will not charge BCoT with any criminal or scienter-based violation, and will not name any individual participants in connection with the conduct underlying the Order. Accordingly, neither BCoT’s CEO nor any other officers, directors, or other control persons (or any other BCoT-affiliated persons) have been charged and we understand that no such charges are likely to be forthcoming.

BCoT has hired new experienced securities law counsel with expertise in determining whether offerings satisfy exemptions (such as Reg. A, Reg. D and Reg. S) from registration to assist it in fully complying with all securities laws when offering all tokens (and other securities) for sale. That counsel will be consulted on all future offerings. These mitigating circumstances should be taken as favorable to the waiver request.

- *What Was the Duration of the Misconduct?*

The Order will describe that the alleged misconduct occurred during a period of limited duration from December 2017 to July 2018, was halted immediately once the SEC indicated it had concerns, and has not continued. Moreover, BCoT shall comply with the undertakings set

forth in the Order and will continue to take steps to ensure that violations of Section 5 of the Securities Act do not occur in the future.

- *What Remedial Steps Have Been Taken?*

BCoT took immediate remedial steps to address the SEC's concern by halting all BCOT token sales as soon as it was contacted by the SEC. BCoT has not sold any BCOT tokens since July 2018.

BCoT also cooperated closely with the Commission staff during the staff's investigation, including, among other things, producing hundreds of documents, detailed presentations and in-person meetings between the Commission staff and BCoT counsel and personnel, and amicable and meaningful settlement discussions.

As part of the Order, BCOT will undertake to implement a claims process to notify persons who purchased BCOT tokens from BCOT, before and including July 31, 2018, of their potential claims under Section 12(a)(1) of the Securities Act, including the right to recover the consideration paid upon tender of the BCOT tokens.

Specifically, in connection with the Order, BCoT has agreed to the following undertakings:

- to file, and maintain, a Form 10 to register under Section 12(g) of the Securities Exchange Act of 1934 ("the 1934 Act Registration") the BCOT Tokens as a class of securities, and make all timely filings required by Section 13(a) of the Securities Exchange Act of 1934;
- to distribute, and post on its website, a notice and a claim form (the "Claim Form"), both of which shall be in a form not objected to by Commission staff, informing all persons and entities that purchased BCOT Tokens from BCoT before and including July 31, 2018, of their potential claims under Section 12(a) of the Securities Act, including the right to sue "to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if [the purchaser] no longer owns the security" and informing purchasers that they may submit a written claim on the Claim Form directly to BCoT;
- to pay the amount due under Section 12(a) of the Securities Act, if any, to each qualified person or entity that purchased BCOT Tokens from BCoT before and including July 31, 2018, and that submitted a written claim to BCoT;
- to submit monthly reports, and one final report, of the claims received to the Commission staff;

- to certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and BCoT agrees to provide such evidence, as applicable;
- to notify the Commission staff if BCoT plans to file a Form 15 to terminate its registration pursuant to Rule 12g-4 under the Securities Exchange Act of 1934 on the grounds that the BCOT Token no longer constitutes a “class of securities” under Rule 12g-4 because the BCOT Token is no longer a “security” under Section 3(a)(10) of the 1934 Act. Upon such notification, the Commission staff may make reasonable requests for further information, and Respondent agrees to provide such information, as applicable;
- to retain all records and communications relating to the BCOT Token Offering for a period of at least one year after the date it submits the certification of compliance as described in Paragraph 6 above, or until such time as otherwise required by law;
- to apply, for good cause shown, to the Commission staff for an extension of the deadlines described above before their expiration.

BCoT will also take the following remedial steps to ensure that its future tokens are sold in compliance with all securities laws:

In order to avoid future violations of Section 5 of the Securities Act, BCoT will rely on exemptions from registration in the future issuances of its securities, which would include both new BCOT Tokens (to be issued in the future) and shares of capital stock. Regulation D allows a company to issue securities without registering them with the Commission, as long as the business complies with every requirement of the regulation. BCoT intends to work closely with experienced securities counsel with expertise in determining whether offerings satisfy exemptions (such as Reg. A, Reg. D and Reg. S) from registration to ensure that its future securities offerings of BCOT Tokens and capital stock comply with the requirements Regulation D.

Moreover, BCoT will prepare private placement memorandums whether or not all investors are accredited in the offerings. The private placement memorandum will state whether the Company plans to use Rule 506(b) or Rule 506(c) and will adhere to the rules pertaining to general solicitation and verification of accredited investor procedures set forth in the applicable rule.

Finally, BCoT plans to implement a central issuance technology which allows tokens to be distributed to personally/institutionally held wallets with a time locked restriction.

Blockchain of Things, Inc. has the programmatic ability to issue BCOT tokens with its movement restricted by disabling the ability of purchaser to move or transfer the BCOT tokens until a determined amount of time. This restricted time locking allows Blockchain of Things to ensure beyond contractual means the inability of the purchaser to move or negotiate any of its BCOT tokens until the elapsed time is reached.

BCoT has also implemented procedures in which it consults counsel in advance of all offerings to ensure that it has taken all steps to prevent any further Section 5 violations. As noted above, BCoT has hired experienced securities law counsel with expertise in determining whether offerings satisfy exemptions (such as Reg. A, Reg. D and Reg. S) from registration in The Doney Law Firm. The Company has also established a policy of consultation and pre-clearance with counsel with regard to all variations of token sales. Prior to the Company engaging in any action that would constitute either the offer or sale of BCOT Tokens (to be issued in the future) or its shares of capital stock, BCoT will consult with experienced securities counsel to ensure that the securities are properly registered with the Commission or there is a valid exemption from registration. If, in the opinion of experienced securities counsel, the contemplated offer or sale of these securities does not coincide with a valid exemption from registration, the Company will refrain from offering or selling the securities altogether, or register the shares with the Commission, as the Company deems appropriate.

Moreover, 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 BCoT, BCoT or any of its affiliates intends to distribute a digital asset<sup>3</sup> other than on a registered basis or pursuant to an exemption from registration,<sup>4</sup> it will consult with the Division<sup>5</sup> prior to distribution of such digital asset.<sup>6</sup>

- *Impact if the Waiver is Denied.*

The impact on BCoT and its clients and customers, if BCoT is disqualified under Rule 506, would likely be a death knell for the Company. Since BCOT Tokens were designed to power the company's product, BCoT has plans to offer its tokens for sale to accredited investors/customers who plan to utilize the tokens on the BCoT platform. As such, any disqualification will impair the ability for BCoT to conduct regular business and sales of its

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<sup>3</sup> This is not intended to apply to any distribution made for testing or engineering purposes.

<sup>4</sup> "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.

<sup>5</sup> BCoT 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.

<sup>6</sup> This provision is intended to provide that BCoT 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.

products as the product is powered by the very security tokens that would be required to be sold to accredited investors for consumptive use on its platform.

Moreover, any disqualification in this case would result in an unjust, disproportionately severe, burden on the daily business operations of a small startup company. BCoT must be able to sell its tokens to customers via an exemption under Regulation D. The BCoT tokens were designed to be sold and used on a daily basis and to customers that are not previously known to BCoT. Being constricted to selling its tokens only via the registration process or without the benefits of general solicitation under Section 4(a)(2) of the Securities Act could impose a potentially insurmountable financial burden on BCoT.

Requiring BCoT to register any future security would be a much more complicated, expensive process, especially considering that the sale of its tokens is the core business model of the Company. Moreover, BCoT must be able to sell the tokens to new customers and it is likely that these new customers do not have a preexisting or substantive relationship with the officers and directors of the Company. Since Section 4(a)(2) does not permit general solicitation in the offer or sale of these securities, the exemption would not provide a sufficient avenue for BCoT to extend its reach to accredited investors in the offer or sale of its tokens to its customers or capital stock to its investors. Moreover, given the Company's stage of operations, it is unlikely that any broker-dealers would be interested in acting as placement agent for the Company to locate investors in the Company's private offerings. The Company's reach would thus be constrained to those few known by officers and directors of the Company.

Additionally, BCoT's ability to attract new investors and potential acquirers could be thwarted by the uncertainty of BCoT's future eligibility to avail itself of exemptions under Regulation D. BCoT's inability to represent that it could freely sell its tokens to an unlimited number of accredited investors without having to register the tokens could chill potential investors and/or acquirers' interest in BCoT. Denying the waiver requests and hindering BCoT's efforts to sell its tokens and pursue investor and/or acquirer transactions imposes disproportionate harm on BCoT as a startup company because it would effectively destroy the Company's ability to survive.

In addition, the disqualification may place BCoT at a competitive disadvantage with respect to its competitors. BCoT and other blockchain technology and cryptocurrency businesses that were among the first wave of businesses to receive subpoenas and SEC scrutiny for selling tokens will be at a disadvantage as compared to newer, startup companies who would have the advantage of being able to avail themselves of all exemptions simply because they came along later in the game.

In light of the foregoing, BCoT believes that disqualification is not necessary and that it has shown good cause that relief in the form of a waiver from disqualification should be granted for the disqualification period. Accordingly, BCoT respectfully requests that, pursuant to Rule

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506(d)(2)(ii), the Commission waive the disqualification provisions of Rule 506 that will otherwise disqualify BCoT, when the Order is issued. If this waiver application is approved, BCoT will carefully and thoughtfully comply with Regulation D and other securities laws and regulations in the future.

We appreciate your consideration of this request. Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in cursive script that reads "Glen DeValerio".

Glen DeValerio