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**TO:** **ARNAV KISHORE (PRINCIPAL, BOLTT SPORTS TECHNOLOGIES PVT. LTD.)**
**FROM:** **AARON P. KROWNE, ESQ**
**RE:** **EXPRESS U.S. SECURITIES LAW OPINION FOR "BOLTTCOIN"**
**DATE:** **APRIL 13, 2018**

*This is an express memorandum of opinion. As such, it does not contain exhaustive legal citations. However, it has been produced by counsel upon personal and professional knowledge and belief that substantial legal support exists which justifies the conclusions herein.*

## I. Introduction

Boltt Sports Technologies Pvt. Ltd. (along with BolttCoin OÜ, Estonia; collectively, "Boltt," or the "Company") is an India-based tech startup venture providing fit-tech wearables and related software and services. It has already been to market with product for 1-2 years, and has tens of thousands of retail end-users (or more). In order to enhance participation and improve outcomes for its customers, it has planned to create blockchain-based version of its system and services. This will be done by creating a blockchain coin/token-based "ecosystem" for users to earn and spend coins primarily for fitness-related goods and services. It also plans to take advantage of fundraising by selling the tokens/coins (hereunder, "BolttCoin" or simply "tokens") to be issued for use in its blockchain ecosystem prior to the development of said blockchain system (i.e., undertake an initial coin offering or "ICO," along with one or more private/pre-sales).

It is undersigned counsel's belief that Boltt's plans, provided the compliance advice of counsel is followed, put it within excellent ability to attain non-security, or "utility token" treatment for its tokens for the purposes of U.S. securities laws **upon substantial delivery of its blockchain-based platform**. That is, once the development plans are substantially achieved, Boltt should have the ability to sell tokens to the U.S. general public without falling under the jurisdiction of the U.S. Securities Act of 1933 – hereunder, the "Securities Act" or "the Act").

It is our position that, *prior to the substantial development of its blockchain platform*, Boltt must treat all token sales or contracts for future tokens as sales within the U.S. as sales of securities, subject to U.S. securities law. Such sales (i.e., "private" or "pre-sales") may still proceed within the U.S., provided a valid exemption from registration of the instruments represented by the tokens (or sale contracts therefor) is followed (e.g., Regulation D, Regulation CrowdFunding, Regulation S, etc.).

The above opinions notwithstanding, the treatment of blockchain tokens and blockchain-based services and systems for the purposes of U.S. securities law is highly uncertain and in a state of rapid interpretational flux, and in virtually all situations, most regulatory risk manifests post-hoc; namely, the Securities Exchange Commission ("SEC") and other relevant U.S. regulatory authorities do not make direct, preliminary determinations or qualifications of regulatory coverage with respect to particular

blockchain tokens and related commercial plans. Indeed, multiple sectors of regulation could conceivably apply to a single project (i.e., securities, commodities, coin/token custodial licensing, money-transmittal services, gaming/gambling restrictions), with the applicable boundaries between them yet-unclear. Thus, a considerable degree of legal risk remains in taking actions in this commercial field touching or concerning the United States, even if the advice of counsel is faithfully-followed.

## II. Technical Facts and Assumptions Underlying Analysis

According to the latest information provided by Boltt and reviewed by undersigned counsel, the BolttCoin system is planned to have the following main characteristics:

Users will be able to earn tokens by:

- Simply using their fitness (step-counting) devices, paying no ongoing service subscription fee, based upon users's physical steps taken (as counted by the devices and verified/finalized by certain Boltt computation nodes within the system);
- Paying an ongoing (monthly) subscription fee (in progressive tiers, reckoned in BolttCoin), and as a result, receiving proportionally-larger BolttCoin rewards for physical steps taken;
- Engaging in betting with respect to step goals amongst groups of other BolttCoin users, with a token award "pot" divided amongst the winner(s) (*pari-mutuel* style);
- Other ad hoc rewards and "challenges" offered from time to time by the Company, its commercial partners, corporate clients, and other Boltt participants.

Other relevant technical attributes of the planned network and ecosystem are:

- The tokens themselves will be based on Ethereum and Waves (dual-token architecture);
- All marketplace, health ID and wallet transactions (including reward earnings based on steps, challenges, tournaments, and algorithms determining the rewards and generation of BolttCoins, etc.) will make use of smart contracts and be recorded on the decentralized ledger;
- Business algorithms & logic, the platform application, and AI-based analytics (i.e. step verification) will be provided "off-chain;" i.e., on servers managed and controlled by Boltt directly;
- Retailers, app developers, interest groups, and other stakeholders will be able to link into to the Boltt blockchain ecosystem through various "development stacks" and kits allowing such interfacing (i.e., the "retailer integration stack," the "reward generation stack," the "software development kit," the "crypto network stack," and the "data collection stack")
- "Decentralized" trading of BolttCoin for other cryptocurrencies, national currencies, or possibly other assets will be available as provided by the Waves platform;
- It will include "hosted wallets" for users to hold their BolttCoin, so that they do not need to install their own software (or engage with third-party wallet services) to do so, and to make such holdings transparently-simple.

*Disclaimed Elements*

The following sources of potential value to the overall BolttCoin system have been expressed as desirable by the principals of the venture, and appear in some of the original drafts of public-materials made available to undersigned counsel, but counsel has already advised Boltt that any such promises,

projections or representations should be removed from token offering materials (along with any public materials whatsoever which could condition potential token-purchasers' beliefs or assumptions motivating their future token purchases):

1. Prospective listing of BolttCoin on third party blockchain token trading exchanges;
2. Prospective gains in the token's value (whether based on the increase in users of the system, or due to other developmental benefits added by the company);
3. The ability to use BolttCoin to pay general obligations (e.g., utility bills);
4. The ability to use BolttCoin as a substitute for a general money-transmission medium.

The motivation for advising against the first and second items above is to avoid U.S. securities treatment being imputed to the tokens by reason of creating purchaser expectations of increased token value/price (with respect to external reference points; e.g., national currencies, bitcoin or Ethereum), either through the *ongoing* developmental efforts of the Company itself, or by (or through) listing the token on third-party exchanges.

The motivation for advising against (3) and (4) above is to avoid coverage of BolttCoin under U.S. money-transmittal laws, which have already been deemed generally-applicable to cryptocurrencies (but not universally so).

## III. Analysis

The application of securities law to a particular transaction in[1] the U.S. hinges upon the status of an instrument being sold as a security, which is either an expressly-enumerated (traditional) financial instrument within the law, or as most relevant here, an "investment contract" in general. The legal analysis of whether an instrument is an investment contract is situated under the case *SEC vs. W. J. Howey & Co.*, hence the moniker "the *Howey* test;" the applicable test in this case.

The *Howey* test requires an instrument (as offered) constitute *all* of (1) an investment of monetary value (2) in a common enterprise, (3) with the expectation of profits (4) derived from the efforts of others.

For present purposes, we will not delve into these elements in depth, and will assume that elements (1) and (2) apply to Boltt, *arguendo*. This is because the most serious doubts as to the applicability of the *Howey* test to Boltt arises within elements (3) and (4). If either of these elements are not satisfied, however, BolttCoin should *not* be a security for U.S. purposes. We discuss them below, in reverse order.

*From the Efforts of Others*

This element is unlikely to be met by the project as presented. Certainly, "profits" may be earned by holders of BolttCoin—whether gains upon sale/exchange of BolttCoin for some other instrument, or in the form of "earnings" of BolttCoin on existing holdings *per se,* or for performing some task.

However, as outlined earlier, such profits within the Boltt system would be primarily derived from the token-holder's own efforts—i.e., from earnings of coins *for taking physical steps*, or possibly even from "trading gains" due to timing of when coins are earned/bought and sold/exchanged. In the

[1] Notably, if a transaction does not take place *within* the U.S., as determined by the purchaser of the instrument being physically resident in the U.S., or a U.S. domiciliary, wherever located, U.S. securities law generally does not assert jurisdiction. This is the case even for an issuer of the instruments which is a company *based in the U.S.* The specific contours of this exception from coverage of the Securities Act is given in Regulation S.

former case, the predominating effort is clearly that of the end-user/token-holder. In the latter case, any gains would be due to the user's own trading skill, or simply sheer luck. *There are to be no gains or returns merely for holding the tokens* (e.g., interest, or some other form of "passive" return).

Further, as noted, trading of BolttCoins, to the extent promised to definitively be provided (along with any profits that might be derived therefrom) is already in place, and is provided by the third-party Waves platform.

In any case, the marginal additional value to be derived is not due to the Company's efforts, but rather that of the end user's (or sheer luck, general market forces or other market participants, etc.), and therefore, does not support a conclusion that the value is derived from the applicable "common enterprise" in this case—the Company, as issuer of the tokens and progenitor of the associated blockchain network.

(Boltt has also made representations that the tokens will be spendable with numerous participating third-party vendors providing relevant goods and services. However, the Company already has a considerable network of participating vendors within its pre-blockchain ecosystem of services, and expects to have significant continued participation by them, along with possible additional partners, within the blockchain-based ecosystem, by the time the tokens are to be sold under asserted non-security status.

Other future services and capabilities will be provided by Boltt itself in connection with the BolttCoin network in the future and on an ongoing basis, including running numerous nodes of the blockchain network, providing step-verification computational capacity, providing general maintenance and development of the blockchain software, providing general stewardship for the community and network, and providing user support. However, these capabilities are planned to be substantially in place at the time of initial release of the BolttCoin network, and their provision subsequently would not be subject to any special risk of lapse.

Thus, these factors, as with any other substantially-delivered element of value of the promised/projected system, "drop out" of the *Howey* analysis, reckoned at (or after) the time of full initial release. It must be underscored that if any such component of value offered to token purchasers at the time of purchase as "utility tokens" is not, in fact, substantially in place at that time, the tokens sold could be imputed to be securities, and therefore, if not registered or exempt, would be sold unlawfully).

*(Other) Expectations of Profits*

Per the above, certain expectations of profits (or other gains in value) through using BolttCoin and the associated blockchain system *are* explicitly promised and expected in the offer of tokens for sale—but these forms are all qualified by *not* being derived from the managerial or entrepreneurial efforts of the Company (subject to a substantial risk of not being delivered) from "ICO time," and so do not constitute aspects that independently meet the *Howey* test.

We also consider whether other forms of profit or value might be promised or implied by the Company, which would give rise to the obligation of Company to bring them about before selling tokens as non-securities. Prospective purchasers might purchase Boltt tokens because

1. They anticipate listing of the token on third party blockchain token trading exchanges;
2. They anticipate pure gains in the token's value/price (i.e., based on the continued increase in users of the system, or due to other developmental benefits added by the Company, continuing from ICO time).

Any of these potential sources of profits, if they were promised or suggested, would tend to incur Company's ongoing legal obligation to deliver them, and therefore, render the tokens securities when sold under such representations. However, as mentioned above, Company has already been advised to avoid mentioning, and even to disclaim profits or any other gains in value from these sources.

Finally, none of the other traditional features of securities in the business venture context are planned to be provided:

- Ownership interests in a legal entity, including a general partnership;
- Equity interest;
- Share of profits and/or losses, or assets and/or liabilities;
- Status as a creditor or lender;
- Claim in bankruptcy as equity interest holder or creditor;
- Holder of a repayment obligation from the system or the legal entity issuer of the blockchain token; or
- A feature allowing the holder to convert a non-security token into a token or other instrument with one or more investment interests, or granting the holder an option to purchase one or more investment interests.

Therefore, no further cognizable areas of promised profits which might accrue to holders of BolttCoin remain which could independently give rise to U.S. securities status under the *Howey* test.

## IV. Note on Other Potential Regulatory Coverage

As mentioned earlier, besides securities law, one other area of regulatory concern within the U.S. is potential coverage under money transmittal laws. In the U.S., money transmittal services are licensed by the states, and nearly all states have such laws which are putatively applicable to any blockchain cryptocurrency systems capable of communicating monetary value. (There is also some U.S. federal regulation in this sector, but it exists largely as a compliment to state laws.) Generally, however, these laws are considered to not apply to (a) earning cryptocurrencies directly (i.e., for "mining" or similar work), (b) buying and selling cryptocurrencies for one's own account, or (c) transacting in cryptocurrencies directly for goods and services. There is also recent guidance that U.S. money transmittal laws might be precluded in the case of treatment of tokens as securities. However, in the present case, non-security token treatment is sought, leaving the money transmittal regulatory "flank" exposed. For this reason, we believe that as long as *general purpose* transmission of monetary value in using BolttCoin is disclaimed (or even prohibited—if only within the U.S.), this area of regulation should be avoidable.

An additional area of concern is U.S. restrictions against gambling/betting, with respect to the "step goals" (and similar) challenges. Gambling, betting and gaming (for a wager) is an area of mixed U.S. state and federal regulatory coverage. However, an initial evaluation has indicated that there are likely a number of available exemptions or exceptions that would tend to exclude internet-based *pari-mutuel* betting of the sort that Boltt plans to facilitate (and further, in case the non-application of these laws cannot be conclusively determined, it might be possible to prohibit, and even technically-exclude U.S.-based users from participating; i.e., by IP-address filtering).

A final area of concern is virtual wallet custodial licensing. At the moment, there is no U.S. federal requirement for such, but one U.S. state—New York—has a regulation (the "BitLicense") that, on its face, covers *any* services providing custodial holdings of cryptocurrencies (the license is expensive to

obtain and comply with on an ongoing basis). However, to the extent it is deemed to apply, coverage by the NY BitLicense should be avoidable by not providing such service from a New York-based entity or using New York facilities, and prohibiting New York-based customers.

## V. Conclusion

Sales of BolttCoin tokens in combination with the provision of the planned affiliated blockchain network and services, per the foregoing assumptions and U.S. securities law analysis, should not constitute sales of securities within the U.S. at the time of "ICO" (or any other general/unrestricted public sale of tokens in which U.S. persons might participate), provided the network and associated services are substantially developed and available in their full initial form at such time (as earlier-promised or implied by Boltt).

Beyond securities law, other U.S. regulatory coverage seems questionable at best, and otherwise is likely avoidable through planning and technical provisions.

As a final overarching point, it seems abundantly clear that BolttCoin and the associated commercial ecosystem would have the character of a "customer loyalty rewards" system, a well-established commercial structure in the U.S. which is generally free from restriction under any or all of the sectoral regulations covered above (despite the ability to "cash out," transact in and make unrelated third-party purchases with points). It is impossible at this early stage to say with complete confidence whether U.S. regulators will, in Boltt's or every other similar such case of the deployment of blockchain technology, agree with that conclusion—but this author certainly believes that they should.

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