

FIRST BITCOIN CAPITAL CORP. DISTRIBUTION OF THE TESLACOIL COIN AS A DIVIDEND

First Bitcoin Capital Corp. (the “Company”), a Canadian corporation, is a non-reporting “foreign private issuer” under Rule 405 of Regulation C under the Securities Act of 1933, as amended, 15 U.S.C. § 77a et seq. (“Securities Act”) and Rule 3b-4 under the Securities Exchange Act of 1934, as amended, 15 U.S.C. § 78a et seq. (“Exchange Act”).¹

On August 2, 2017, the Company publicly announced a declaration of a dividend to all shareholders of record (“Shareholders”), with September 12, 2017 established as the record date (the “Dividend Announcement”).² The Dividend Announcement was reiterated on September 13, 2017 which reported that the dividend paid to Shareholders would consist of approximately 0.048 TeslaCoil Coin (symbol: TESLA) (referred to herein as the “Tesla Token”), a virtual currency held by the Company, for each share of stock held by Shareholders on the record date (referred to herein as the “Tesla Token Dividend”). This appears to be the first instance in which a publicly traded company in the U.S. will distribute a virtual currency to shareholders as payment of a declared dividend.

This Memorandum addresses whether the Tesla Token Dividend may be validly and legally distributed as a dividend to Shareholders under applicable law. This determination requires a resolution of the following two questions:

1. Does the Company have the power and authority under the *Business Corporations Act* (British Columbia) of the Province of British Columbia (Canada), the jurisdiction in which the Company is incorporated, to declare a dividend and distribute Tesla Tokens as a dividend to Shareholders?
2. Are the Tesla Tokens to be distributed as dividends “securities” within the meaning of the Securities Act and the Exchange Act of 1934, and regulations promulgated thereunder by the Securities Exchange Commission (“SEC”), and therefore subject to the prospectus and registration requirements in Section 5 of the Exchange Act?

A. The Company’s Cryptocurrency Business

The Company is primarily engaged in the business of developing technologies for or in connection with digitally distributed ledgers, or blockchains, and in developing new platforms and digital objects that are made available to other companies, firms and individuals using cryptocurrency networks and technologies. The Company’s business includes the development of blockchain technologies and cryptographic products, including virtual currencies and tokens.

¹ The Company is a publicly traded company with shares of its common stock traded in the pink sheets of the Other OTC Markets (OTC PINK: BITCF). The Company has authorized share capital of 500,000,000 shares of common stock, par value of \$0.001 (U.S.), in a single class. Based on the Company’s Quarterly Report for the period ending June 30, 2017, the Company had a total of 304,998,228 common shares issued and outstanding.

² The dividend announcement was originally issued by the Company in a press release on August 2, 2017. This announcement was confirmed in a press release on September 13, 2017. Both press releases were posted on the website of OTCMarkets.com and may be viewed on the Company’s website at: <http://bitcoincapitalcorp.com/category/company-news/>.

1. Blockchains & Cryptographic Products.

In general, a blockchain is a list of entries in a digital or electronic distributed ledger that is maintained in a decentralized “consensus” database on a “peer-to-peer” basis by participants in a network of computers. Blockchains are developed and secured by a strong cryptology and mathematics and not by individuals (or by trust) and use cryptography to confirm or verify transactions on the blockchain. This provides a verification of ownership and a transparent record of all transactions confirmed on the blockchain.

A virtual currency or cryptocurrency is a virtual coin or token (referred to herein as “blockchain tokens” or “tokens”) consisting of entries of data on a blockchain (or using blockchain technology) and is a representation of value that can function as a medium of exchange, a unit of account, or a store of value. Virtual currencies generally have a controlled supply and, unlike fiat currencies (which are essentially debt-based), do not represent debt, are not controlled by any sovereign government, and represent a secure bundle of property rights in digital objects.

Once issued, blockchain tokens cannot be controlled or accessed except when the entries are matched to an owner that, through access represented by a private key, is vested with a bundle of rights and/or interests in the tokens. This bundle of rights, at the very least, consist of rights that inhere in the basic ownership of any personal property, including the right to hold or store, transfer, gift, exchange or spend the tokens or to resell the tokens to others in a secondary market on a blockchain or other platform or on a virtual currency exchange.³

Blockchain tokens may be designed so that they have other rights as well, rights that are “external” to the rights inherent in the basic ownership of property. For example, blockchain tokens may be pegged to a fixed unit of monetary value or grant to the owner the right to purchase goods or services (with or without discounts). In some instances, blockchain tokens may be designed to include external rights that are in the nature of “investment interests”, which may include or represent equity or economic interests in a corporation, partnership or other enterprise, or certain economic rights (such as profit/loss sharing, dividends or distributions) in some external enterprise or venture.

2. Development of the Tesla Token.

In 2015-2016, the Company began entering into commercial arrangements with other companies in which the Company provided blockchain software and virtual currency development services. In addition, in a cooperation arrangement with members of the Omni Foundation, the Company mastered the Omni Protocol – consisting primarily of a software layer built on top of the Bitcoin Blockchain – which permits users to participate in Bitcoin transactions as well as more advanced transactions involving customized digital assets and currencies.

³ The most successful virtual currency to date, Bitcoin, was developed from an invention by Satoshi Nakamoto. In 2008, Nakamoto announced in 2008 that he had developed a decentralized “peer-to-peer” electronic cash system that could not be controlled by a centralized entity (like government or bank servers). Nakamoto circumvented centralization and discovered a method of transaction verification by requiring that every “peer” in the network have a complete record of all transactions to achieve “consensus” in a fully decentralized system. Virtual currencies arose out of Nakamoto’s invention of a consensus-based network.

Upon mastering the most basic of Omni Protocols in 2015, the Company designed and created the Tesla Token as a “commemorative cryptocurrency” on the Bitcoin Blockchain using the Omni Protocol.⁴ The Tesla Token was launched to commemorate the life and achievements of the great inventor, Nikola Tesla, and was issued in a fixed quantity of 100 million tokens, with the Company receiving 20 million tokens as a fee for the development of the virtual currency on the blockchain. The Tesla Token was designed so that each owner would receive only basic property ownership rights in each token. Aside from these basic property ownership rights, no other rights or interests (e.g. external rights) are attached to or embedded in the Tesla Token.⁵

B. Corporate Authority to Distribute Tesla Tokens as Dividends

Under Section 70 of the *Business Corporations Act* (British Columbia), R.S.B.C. 2002, c. 57, s. 70 (the “BCBCA”), the Company is authorized, unless otherwise restricted by its charter, to declare and pay a dividend to shareholders (a) by the issuance of shares or warrants, and (b) in property or money held by the Company. BCBCA, s. 70(1). If dividends are paid in property or money, the Company must first determine, supported by “reasonable grounds”, that the Company is not insolvent and that payment of the dividend will not render the Company insolvent. BCBCA, s. 70(2).⁶

The question of whether the Company’s determination to pay a Tesla Token Dividend complies with the dividend requirements in Section 70 of the BCBCA hinges on whether (1) the TeslaCoil Coins earmarked for distribution to Shareholders constitute “property” of the Company, and (2) the Company’s board of directors authorized payment of the dividend based on a declared finding or belief, supported by “reasonable grounds”, that the Company is not insolvent and payment of the dividend will not place the Company in a state of insolvency.

1. The Earned Tesla Tokens Constitute “Property” of the Company.

Upon generating the Tesla Tokens on the Bitcoin Blockchain, the Company earned a fee consisting of 20 million tokens (the “Earned Tesla Tokens”) for its services in using an Omni Protocol

⁴ Viewed properly, the Tesla Token is a virtual analog to the “physical” commemorative coins, medals and tokens privately manufactured and offered to the public through much of American history. Once issued and purchased by the public, physical commemorative coins are often resold, exchanged or traded in secondary markets physical marketplaces (bazaars, coin conferences and retail stores) and in digital platforms at websites and digital exchanges. The long-standing practice of offerings of commemorative coins, medals and tokens to the public has been largely unregulated under U.S. law. Federal regulation consists mainly of the Hobby Protection Act of 1973 (“HPA”), 15 U.S.C. § 2101 et seq. (amended by the Collectible Coin Protection Act of 2013) and regulations adopted by the Federal Trade Commission (16 C.F.R. Part 304). The HPA covers political items and commemorative, fantasy and imitation “numismatic” materials and requires disclosures on certain items to identify them as imitations and to prevent counterfeiting. Offerings of physical commemorative coins, medals or tokens in the U.S. by private firms have never been considered a sale or offering of “securities” under the U.S. securities laws.

⁵ In this respect, the Tesla Token is a true virtual currency and must be distinguished from blockchain tokens that include or attach “external” rights or interests that extend beyond rights vested in property ownership on the blockchain.

⁶ Section 1(1) of the BCBCA defines “insolvent”, with respect to a company, as an inability of the company to pay its indebtedness as it becomes due in the ordinary course of its business. This definition reflects what is referred to as the “equity insolvency” test. In contrast, both the equity insolvent test and a second test, the “balance sheet insolvency” test, are used in Section 2 of the Bankruptcy and Insolvency Act of Canada, R.S., 1985, c. B-3, s. 1, 1992, c. 27, s. 2 [retrieved from the [Justice Laws Website](#)].

node to generate the virtual currency for a Colorado company whose founder holds a proprietary design for a Tesla coil. The Earned Tesla Tokens were both generated in and transferred to an Omni digital wallet owned by the Company and are controlled by the Company through its private key. Based on the design of the Tesla Token, the Company thereby acquired, like any other purchaser of Tesla Tokens, basic property ownership rights in the Earned Tesla Tokens.

Under basic blockchain principles, any exercise of ownership rights in a digital object on a blockchain requires that certain conditions be met, namely that (1) the initiation of any transaction may only be conducted by the owner holding the private key, and (2) ownership of the digital object and the transaction must be “confirmed” by a consensus of participants in the blockchain. The “peer-to-peer” consensus process required by the blockchain effectively provides “proof of ownership” for blockchain tokens in any transaction conducted on the blockchain.

In the Dividend Announcement, the Company reported that it would be publishing one or more transactional events on the Bitcoin Blockchain (using the Omni Protocol) that would provide proof of ownership of the Earned Tesla Tokens and other virtual currencies held by the Company in its Omni digital wallets. As part of this demonstration, the Company transferred 18.18 Tesla Tokens from the Earned Tesla Tokens held in the Company’s first Omni wallet to a second Omni wallet owned by the Company. Confirmation of this transaction on the blockchain verified the Company’s ownership of the Earned Tesla Tokens as property of the Company.⁷

2. The “No Insolvency” Determination.

The Company’s board of directors authorized the Tesla Token Dividend in a resolution adopted on August 1, 2017 (the “Dividend Resolution”). In the Dividend Resolution, the board of directors determined, based on a finding that the Company is debt-free, that the Company is not insolvent and payment of the Tesla Token Dividend will not render the Company insolvent.

Examination of the Company’s financial statements and accounting records confirms that the determination of “no insolvency” by the Company’s board of directors in the Dividend Resolution is supported by “reasonable grounds”. Applying the “equity insolvency” test deployed by the BCBCA,⁸ the Company’s financial statements show that the Earned Tesla Tokens are “surplus” to any cash or property required to meet the Company’s debt obligations.⁹ Even under a “balance sheet” insolvency test,¹⁰ the number of Tesla Tokens that will be distributed to Shareholders – calculated as the product of (1) the shares of Company stock issued and outstanding on September 12, 2017, and (2) the token dividend rate (per share) announced by the Company – are relatively small when compared to the numeric quantity of

⁷ The Earned Tesla Tokens held by the Company in its first Omni wallet, consisting of 19,038,590.82 tokens as of September 16, 2017, are located under the symbol “Tesla” at: <http://omnichest.info/lookupadd.aspx?address=1FwADyEvdvaLNxjN1v3q6tNJCgHEBuABrS>. The 18.18 Earned Tesla Tokens recently transferred by the Company to its second Omni wallet are located under the symbol “Tesla” at: <http://omnichest.info/lookupadd.aspx?address=1VuF26AgLyQ4tBoGzYTWqrqDG9zCB7QXe>.

⁸ See Note 6, *supra*.

⁹ This conclusion is underscored by the fact that the Company currently has no indebtedness other than relatively small expenses incurred in the ordinary course of its business and payable to its management.

¹⁰ See Note 6, *supra*.

the remaining Earned Tesla Tokens and the market value of other virtual currencies held by the Company on the blockchain.

C. Analysis of the Tesla Token Dividend Under the U.S. Securities Laws

1. Standards for Determining Whether a “Security” Exists.

Section 5 of the Securities Act prohibits the offer or sale of a “security” in interstate commerce unless a registration statement has been filed and is in effect for the security or the security is otherwise exempt from the registration under the Act. The question is whether the Earned Tesla Tokens received by the Company are “securities” that must be registered with the SEC before they may be distributed to Shareholders as a dividend.

Under Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Securities Exchange Act, the definition of a “security” includes an “investment contract”. 15 U.S.C. § 77b-77c. Since an offering of Tesla Tokens does not involve a note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness or other interest or instrument specifically listed in Section 2(a)(1), the sole question is whether an offer and sale of Tesla Tokens on the Bitcoin Blockchain qualifies as an “investment contract” and is therefore a security under the U.S. securities laws.¹¹

Under the primary test adopted by the U.S. Supreme Court (the “Howey Test”), an investment contract is “a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party . . .” SEC v. W. J. Howey Co., 328 U.S. 293, 298-99 (1946). *See* SEC v. Edwards, 540 U.S. 389, 393 (2004); United Housing Foundation, Inc. v. Forman, 421 U.S. 837, 852-53 (1975) ([t]he “touchstone” of an investment contract “is the presence of an investment in a common venture premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others.”). This determination is intended to be flexible in nature and the emphasis should be on the “economic realities” of a transaction and not on the name or label given to the instrument, device or transaction. United Housing, 421 U.S. at 849.¹²

The Howey Test is often applied as a four-prong test. For a contract, transaction or project to be considered an “investment contract”, there must be (1) an investment of money (or thing of value), (2) in a “common enterprise”, (3) with an expectation of profit, (4) derived solely or predominately from the efforts of the promoter or others. Unless all of the elements of the Howey Test are met, there is no investment contract. *See* SEC v. Edwards, 540 U.S. at 390.

a. Investment of Money (or Value).

Under the first prong of the Howey Test, a contract or transaction must involve “an investment of money or value”. The investment is not limited to cash, but may also include a contribution of goods and

¹¹ *See* Golden v. Garafolo, 678 F.2d 1139, 1144 (2d. Cir. 1982 (the concept of “investment contract” has been used to classify instruments that do not fall within the specific categories of “securities” in Section 2(a)(1) of the Securities Act).

¹² The Court in Howey described the typical “investment contract” paradigm – a paradigm sought to be captured by the Howey Test – as “profit-seeking business” in which “[t]he investors provide the capital and share in the earnings and profits; [and] the promoters manage, control and operate the enterprise. Howey, 328 U.S. at 300.

services or some other “exchange of value”. Uelton v. Comm. Lovelace Motor Freight, Inc. 940 F.2d 564, 574 (10th Cir. 1991).

b. Requirement of a Common Enterprise.

The second prong of the Howey Test requires that the investment be made in a “common enterprise”. The requirement of “commonality” suggests that some venture or enterprise must exist in which the investor and the promoter or others have some form of economic interdependence or mutuality that extends beyond a simple sale or offering of a physical or digital object.

In determining whether “commonality exists”, the courts have used three approaches:

(1) Under a horizontal approach, a common enterprise exists where multiple investors pool funds into a venture or project and each investor shares in the profits with other investors on a correlated basis. *See, e.g.,* Deckebach v. La Vida Charters, Inc., 867 F.2d 278, 283 (6th Cir. 1989) (holding no common enterprise exists where there was no pooling of venture capital); Curran v. Merrill Lynch, 622 F.2d 216 (6th Cir. 1980); Hirk v. Agri-Research Council, Inc., 561 F.2d 96, 102 (7th Cir. 1977) (applying a strict pooling requirement).

(2) Under a narrow vertical approach, the courts will examine whether the investor’s fortunes (i.e. profits or return on investment) are inextricably tied to the fortunes of a promoter. This implies some form of sharing of profits and/or losses from a venture or project. *See, e.g.,* SEC v. Eurobond Exchange Ltd., 13 F.3d 1334 (9th Cir. 1994) (sharing of losses between investors and promoters established commonality under the Howey Test); Brodv. Bache & Co., 595 F.2d 459, 461-62 (9th Cir. 1978).

(3) Under a broad vertical approach, the courts will examine whether the investor’s fortunes depend on the promoter’s expertise. If the success of the venture or project (and therefore the success or failure of the investor’s investment) depends on the expertise or skill of the promoter, a common enterprise will be deemed to exist. *See, e.g.,* SEC v. Koscot Interplanetary, Inc., 497 F.2d 473, 478 (5th Cir. 1974) (holding that the impact of the promoter’s efforts in managing the investment is the critical factor in determining whether commonality exists).

c. Expectation of Profits (or Return on Investment)

Under the third prong of the Howey Test, the investor must have a “reasonable expectation of profits”. The term “profits” may include “dividends, other periodic payments, or the increased value of the investment”. Edwards, 540 U.S. at 394. However, simply because an expectation of profit exists will not render a contract or transaction an investment contract.

d. Derived from the Managerial Efforts of Others.

Under the fourth prong of the Howey Test, any profits received by the investor from the venture or enterprise must be derived from solely from the entrepreneurial or managerial efforts of others”. United Housing, 421 U.S. at 852-53. Although the Court in Howey included the word “solely” in describing the level of managerial control that must be exercised by the promoter or manager of the venture or project, the courts have not applied the term “solely” literally. *See, e.g.,* Koscot Interplanetary, Inc., 497 F.2d 473 (5th Cir. 1974); SEC v. Glenn W. Turner Enterprises, Inc., 474 F.2d 476, 482 (9th Cir. 1973). The critical factor is whether the efforts of the promoter or person other than the investor are “undeniably significant

ones” that are “essential managerial efforts which affect the failure or success of the enterprise”. Turner Enterprises, 474 F.2d at 482.¹³

Analysis of the case law makes clear that, where (1) an investor retains or exercises a significant degree of managerial control over his/her investment, or (2) the promoter (or others) does not or cannot provide “essential managerial efforts” that affect the success of the venture or the investor’s investment, in either case no “commonality” exists under the Howey Test.

2. The Tesla Token is Not a “Security” Under the U.S. Securities Laws.

Based on an analysis of the Tesla Token, including both its design and structure, an offer or sale of Tesla Tokens cannot qualify as an “investment contract” under the Howey Test.

a. The Tesla Token Includes Only Basic Property Rights.

First and foremost, the Tesla Token was designed as a “commemorative cryptocurrency” that includes – and will only vest purchasers with – rights inherent in basic property ownership. These ownership rights – like rights existing in ownership of any physical or digital object – consist of the right to hold or store, gift, sell, transfer or trade Tesla Tokens in the marketplace. Ownership of a Tesla Token does not include or attach any other “external rights” that provide an investment or economic link to any venture or enterprise (such as equity or economic interests in any enterprise or a right to production sharing, dividends or distributions, or sharing in profits or losses).

Viewed properly, the Tesla Token and the rights inherent in its ownership are no different than the ownership rights that are acquired in any physical or digital object.¹⁴ In this respect, the Tesla Token is a true cryptocurrency and is a virtual analog to the “physical” commemorative coins, medals and tokens offered and sold to the public throughout American history.

b. The Tesla Token Offering is Not an “Investment Contract” Under Howey.

When evaluated within the context of the Howey Test, the sale or offer of Tesla Tokens on the Bitcoin Blockchain fails to meet the elements of an “investment contract” within the meaning of Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Securities Exchange Act. 15 U.S.C. § 77b-77c.

(1) No “Commonality” Exists in the Offer or Sale of Tesla Tokens.

Under the first prong of the Howey Test, almost any purchase of Tesla Tokens on the Bitcoin Blockchain will likely involve an investment or payment of money or something of value. However,

¹³ Other courts have held that, to meet the second prong of the Howey Test, the success or failure of the investment must rest solely on the managerial efforts of the promoter or other person. Hirsch v. Dupont, 396 F. Supp. 1214, 1218-20 (S.D.N.Y. 1975, *aff’d*, 553 F.2d 750 (2d Cir. 1977 (the term “solely” in Howey must be applied literally).

¹⁴ Whether a product or property is a physical object (i.e. an interest in real property or an interest in either tangible or intangible personal property) or a digital object (e.g. basic ownership of Blockchain Tokens), the owner possesses certain inherent ownership rights, such as the right to hold or store, gift, exchange, sell, transfer or trade the property).

applying the second prong of the test, the Tesla Token does not include or attach any rights that provide an economic link to a “common enterprise”.

Under the horizontal commonality approach for determining “commonality”, there is no pooling of investment funds or shared profits by purchasers of Tesla Tokens. Moreover, under either vertical commonality approach, each investor or purchaser acquiring Tesla Tokens on the blockchain receives a transfer of tokens into his/her personal wallet, giving the investor or purchaser exclusive managerial control over his/her investment. Since the design of the TeslaCoil Coin will vest purchasers with no rights other than pure ownership rights – and no rights of managerial control are granted to the Company or any other person (other than the “owner”) – there is no element of interdependence, profit or loss sharing, or reliance that would suggest any form of commonality. Under these circumstances, principles of the blockchain preclude commonality in a simple offer and sale of Tesla Tokens.

(2) No Expectation of Profit from the Managerial Efforts of Others.

Applying the third prong of the Howey Test, it is not clear whether purchasers or investors in Tesla Tokens will be motivated by an “expectation of profit”. The Tesla Token is a fiat virtual currency that, like any other virtual currency, may function as a store of value, a medium of exchange, or for value appreciation. However, any expectation of profit by investors or purchasers of Tesla Tokens must be tempered by statements by the Company, in public filings, that ownership of the token “does not represent ownership in any entity and does not pay dividends or provide earnings to its owners . . .”¹⁵

Applying the fourth prong of the Howey Test, the critical question is whether the success (or failure) of any investment in, or purchase of, Tesla Tokens, will depend entirely or predominately on “essential managerial efforts” conducted by the Company or other person. *See Turner Enterprises*, 474 F.2d at 482. Since the Tesla Token is designed to vest purchasers only with rights of basic property ownership, each purchaser will have the exclusive right of managerial control over his/her investment. Nothing in the design, structure or terms of purchase of the Tesla Token suggests that an investor or purchaser will be relying on “essential management efforts” of the Company or anyone else for the success of his/her investment.¹⁶ In reality, the only factors that can affect or influence the success or failure of an investment in Tesla Tokens are (i) the managerial decisions that, by virtue of the blockchain, must be made exclusively by the purchaser/owner, and (ii) the perception of functional, commemorative, and market values placed on the TeslaCoil Coin in the cryptosphere.

¹⁵ Press Release dated August 2, 2017, issued by the Company and posted in the website of OTCMarkets.com. This release may be found at the Company’s website at: <http://bitcoincapitalcorp.com/category/company-news/>.

¹⁶ Once the Omni Foundation placed the software layer (i.e. the Omni Protocol) on the Bitcoin Blockchain, neither the Company nor anyone else retained the right or ability to alter or change the Omni Protocol except to add features that improve or enhance usage by participants.

Based on decentralized “peer-to-peer” consensus-based principles of the blockchain, the managerial control over any investment in Tesla Tokens will be vested exclusively in the purchaser/owner. Absent some other arrangement, contract or transaction between an investor and a promoter (or others) that is “external” to the blockchain, no issuer, seller or anyone else (other than the owner) has the right or ability to exercise managerial control over investments in Tesla Tokens or other decentralized virtual currencies on the blockchain. Under these circumstances, the offer and sale of any virtual currency on the blockchain cannot qualify as an “investment contract” under Howey and its progeny.

D. Under a Long-Standing Principle Consistently Recognized by the SEC, the TeslaCoil Coin May be Distributed as a Dividend Regardless of Whether It is a Security of Company

The SEC and its Staff has consistently taken the position that there is no sale of securities when a company declares and pays a stock dividend and receives no consideration in return. *See, e.g., Letter of General Counsel Discussing Question of Whether a Sale of a Security is Involved in the Payment of a Dividend*, Securities Act Release No. 33-929 (July 29, 1936) and JDN Realty Corporation (October 26, 1999), including the Staff no-action letters cited therein.

This view is also consistent with Staff guidance included in Q&A Number 103.01 of the Compliance and Disclosure Interpretations related to Securities Act Sections:

“Question: If a company declares a dividend that is payable in either cash or securities at the election of the recipients, does the declaration of the dividend need to be registered under the Securities Act?”

Answer: No, as there is no sale of the dividend shares under the Securities Act.”

Even if the Company elected to introduce blockchain tokens or any other digital object on the blockchain that qualified as the issuance of “securities” – which is not the case with the TeslaCoil Coin – under Securities Act Release No. 33—929, the Company would still be entitled to distribute the tokens or objects to shareholders as a dividend, if no consideration is paid by shareholders, since the distribution of securities of the Company would not constitute a “sale” within the meaning of Section 2(a)(3) of the Securities Act.

E. Conclusion.

The TeslaCoil Coin is simply a commercial offering on the Bitcoin Blockchain that – like offerings of any other physical or digital objects that do not include “external rights” and “investment interests” – are not “investment contracts” and therefore do not qualify as “securities” under the U.S. securities laws. The Tesla Tokens that will be distributed to shareholders as a dividend are clearly the property of the Company and the Company has taken steps internally to authorize the payment of Tesla Tokens as a dividend to shareholders. Finally, consistent with the SEC’s long-standing practice with respect to the distribution of a company’s securities as dividends, the Company’s distribution of Tesla Tokens as a dividend will not constitute a sale of securities within the meaning of the Securities Act.

For the above and foregoing reasons, the TeslaCoil Coin may be distributed as a dividend to shareholders without registration under Section 5 of the Securities Act.