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LEGAL MEMORANDUM

TO: Alltra Smartchain Solutions
SP Monza Group of Companies

FROM: Arnold A. Spencer, Esq.
Spencer & Associates

RE: Analysis of Cryptocurrency Token as a Security Under United States Law

DATE: January 27, 2025

Question Presented

Based upon the facts and circumstances presented, would the AUSDT token be considered a security under the laws and regulations of the United States? Would the AUSDT token be required to register with federal authorities in order to be listed on a public exchange?

Summary Opinion

A cryptocurrency with the characteristics described herein and in the AUSDT White Paper, specifically, a cryptocurrency with the primary value and utility derived from collateralized assets held in trust and insured, would not constitute an investment contract, would not constitute an investment in a common enterprise, and would not constitute an emphasis on profiting from increased value of the cryptocurrency. Therefore the cryptocurrency as described should not be considered a security under the laws of the United States. And such a cryptocurrency would not be required to register under federal law with any regulator, including the Securities and Exchange Commission.

Factual Summary

The AUSDT token is described in the White Paper, attached as Exhibit A, and incorporated by reference. Exhibit A is the same version of the White Paper emailed to Spencer

& Associates in January 2025. The insurance referenced in the White Paper is supported by the Certificate of Crypto Insurance issued by SP Monza Insurance Holdings to Azima, LLC, a copy of which is incorporated by reference and attached as Exhibit B. The opinions expressed herein are strictly based upon the White Paper. The opinions herein do not extend to the legitimacy, applicability, or coverage of any insurance policies. No reliance should be placed upon this memo for insurance-related issues. The opinions in the memo are strictly limited to the legal principles related to United States securities laws and the determination that AUSDT should not be considered a security under such laws. Additional documents with supplemental and inconsistent statements could be used to distinguish or contradict the opinions presented herein.

The AUSDT White Paper describes a cryptocurrency stablecoin token, referred to as AUSDT, which is backed with an equivalent value of United States Dollars (“USD”). When USD is deposited into reserves, new AUSDT tokens are minted. Accordingly, the AUSDT should always be valued at least at the value of the collateral, and should not be valued at more than the collateral. As an additional measure securing the value of the token, an insurance policy has been secured to provide for value if there is fraud or other malicious behavior by an employee or a cyber breach by an external party.

AUSDT will be issued on a blockchain platform, specifically the ALLTRA Smartchain blockchain. Blockchains provide a ledger on which all transactions of the relevant tokens or coins are recorded or posted on a ledger. Such postings would be immutable, time stamped, auditable, and accessible by permission. Because of the transparency, immutability, and specificity, blockchains provide excellent ledgers for auditors to determine the veracity and operational compliance of cryptocurrencies.

The token holders have no expectation of financial return or distributions from the investment in AUSDT. The tokens theoretically should never appreciate or depreciate in value, because the value of AUSDT is systematically pegged to at least but no more than the collateral, specifically, the equivalent amount in value of USD. Relatedly, the token holders have no contractual rights to elect management or directors, and have no influence over any decisions or actions of the issuer. Finally, the token does not represent a debenture, debt, note, or other obligation of indebtedness of the issuer.

Analysis

Under the widely accepted interpretations of United States law, the definition of a “security” includes a range of investment vehicles, including stocks, bonds, and “investment contracts.” Investment contracts are transactions where an individual invests money in a common enterprise and reasonably expects profits to be derived from the entrepreneurial or managerial efforts of others. In a variety of circumstances, courts have found that investment

vehicles other than stocks and bonds constitute investment contracts, including interests in orange groves, animal breeding programs, railroads, airplanes, mobile phones, and enterprises existing only on the Internet. As the Supreme Court of the United States has noted, Congress defined security broadly to embody a “flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits.”

1. Investment Contract

First and foremost, the contract between the token issuer and the token purchaser is not an investment contract. A purchaser of a token is not engaging in the transaction with the primary purpose of profiting from the operations of the issuer. In this case, the primary purpose of the token purchase is to obtain a token of value which can be utilized in cross-border payments and remittances, similar to USD. Token purchasers would choose to use AUSDT instead of USD for a variety of reasons (e.g., transactions in AUSDT would be cheaper, faster and safer than transactions in USD), but token holders are not purchasing or minting AUSDT to obtain benefits under an investment contract.

Likewise, the issuer is not seeking to use the capital raised by the sale of the token to make profits for itself. The capital provided by the initial token purchasers is used as collateral for the token itself, is held in reserve, and is not available to the issuer. Regular audits and detailed reporting should confirm that the issuer is using the capital raised as collateral, and not as for risk-based opportunities.

The Kin digital token issuance by Kik Interactive, Inc. (“Kik”) provides a useful, contrasting example to the AUSDT token issuance.¹ Kik offered the Kin token directly to token purchasers in exchange for fiat currency and other, valuable cryptocurrencies. As a result of two stages of the offering process, Kik received almost \$100 million in proceeds from the sale of the tokens. The proceeds were booked directly to Kik’s financial statements, and used to offset operational losses from excess expenses that Kik was experiencing. In contrast, the AUSDT tokens are not booked to the issuer’s account, but rather are maintained in a reserve, settlement account.. In the words of the Supreme Court, Kik “used the money of others on the promise of profits,” while the proceeds from AUSDT issuance will be used as collateral, and explicitly will not be used to pursue to generate future profits.

The LBC token issuance by LBRY, Inc. also provides a contrasting example. When LBRY, Inc. issued LBC tokens, it engaged in several of the same structural strategies as Kik

¹ The Securities and Exchange Commission initiated a lawsuit against Kik Interactive, Inc., alleging that Kik Interactive, Inc., was an issuer of an unregistered security. See [SEC v. Kik Interactive Inc.](#), 1:19-cv-5244, Southern District of New York, United States District Court. The lawsuit is insightful because it is one of the few cases that the SEC has been forced to fully litigate and brief.

Interactive. First, the LBC tokens were marketed investment contracts. LBRY initially offered LBC tokens to institutional investors at a discount, with the expectation that early investors would profit when the LBC tokens were later distributed publicly at a higher price. LBRY, like Kik, also held back a portion of the tokens for themselves, structurally providing that the entity would benefit by the price appreciation. Most importantly, LBRY accepted proceeds from the LBC and directly used the assets for business operations, specifically, to buy content for the library. Accordingly, the SEC alleged that the fortunes of the company and the token holders were inextricably intertwined in a common enterprise. In direct contract, the issuer of AUSDT tokens has not held back any AUSDT tokens for itself, with the hope that these withheld tokens will be valuable in the future. The AUSDT token issuer has no vested interest in any future AUSDT tokens, and the “fortunes” of AUSDT token holders are based on the collateral, not the success or failure of the AUSDT issuer.

Finally, the allegations made by the United States Securities and Exchange Commission against Binance, as well as the District Court’s rulings, confirm the conclusion that AUSDT should not be considered a security under United States law. On June 5, 2023, the SEC sued Binance for offering and selling BUSD – its US dollar-backed stablecoin – as an unregistered security. The SEC alleged that Binance improperly marketed and touted BUSD as a profit-generating instrument by promising interest payments to investors who merely held BUSD on the Ethereum blockchain. Binance also advertised returns of up to 15 percent for users who deposited BUSD into its “Simple Earn” program – a savings-like instrument whereby Binance generated returns from staking, lending, and otherwise deploying deposited funds. Additionally, Binance and the issuer of BUSD and custodian of its supposedly one-to-one US dollar reserves allegedly agreed to invest the reserves underlying BUSD and split the net interest revenue earned thereon.

In dismissing the SEC’s allegations regarding secondary trading of the BUSD, the Court in the SEC v. Binance case specifically stated “[T]he SEC’s suggestion that the token is ‘the embodiment of the investment contract,’ as opposed to the subject of the investment contract, muddied the issues before the Court, [and] ignored the Supreme Court’s directive that the analysis is supposed to be based on the entire set of understandings and expectations surrounding the offering...” *SEC v. Binance Holdings Ltd., et al.*, No. 23 Civ. 1599, ECF No. 248 (D.D.C. June 28, 2024).

In the evaluation of AUSDT, the issuer has not marketed and touted AUSDT token as a profit-generating instrument by promising interest payments to investors. Further, the AUSDT issuer has not advertised returns for users who deposit the AUSDT token into a savings-like instrument. The key factual components that the SEC relied upon to allege that BUSD was a security are wholly absent in the issuance of the AUSDT token. The Binance Court’s

pronounced focus on the specific understandings and expectations of individual token issuances strongly suggests that no court would consider the AUSDT token to be a security.

2. Common Enterprise

The AUSDT token issuance likely involves a common enterprise, specifically a corporate entity in which multiple people joined together with the mutual purpose of operating a decentralized platform for issuance and transmission of cryptocurrencies. However, the existence of a common enterprise is a single element to be considered, and does not in and of itself establish that capital raised for a common entity constitutes a security.

3. Reasonable Expectation of Profits

AUSDT token purchasers will not purchase these tokens with a primary expectation of profiting from the purchase. In a traditional securities transaction, the purchaser expects to invest money in the enterprise and receive a return on his investment over time. However, in the case of AUSDT tokens, purchasers are expected to buy the tokens based on cost-savings and convenience of transactions. Purchasers of the AUSDT token do not expect a financial return on the money they spent on the token, just as the consumer of other payment platforms, such as credit cards, do not expect a financial return on their engagement with those platforms. These buyers are consumers, not investors. The issuer is creating a product that meets the needs and demand of its users, and is not issued to develop a business entity which may, aspirationally, generate new value. In public statements, the SEC refers to this as “consumptive intent,” as opposed to “speculative intent.”

Again, the Kin token issued by Kik Interactive, Inc. is illustrative. As Kik Interactive was preparing to issue the Kin token, both in internal and external communications, Kik Interactive executives and consultants directly promoted the concept that token purchasers would likely benefit from the token’s price appreciation. The SEC presented numerous examples of internal emails and public statements that emphasized Kik Interactive’s position that investors would profit from token appreciation, and that Kik itself would benefit, as the company also held Kin tokens in its treasury. In fact, Kik Interactive intentionally structured the two stages of the product offering in order to first induce institutional and other influential investors to purchase the Kin token at a discounted price, which would structurally create a profit when the second, following, public stage of the offering took place at a higher price.

4. Profits Derived from Entrepreneurial or Managerial Efforts of Others

Perhaps the clearest element of the Howey analysis, the AUSDT token issuance in no way involves an expectation by the token purchasers that they will profit from the entrepreneurial or managerial efforts of the individuals or companies associated with the issuance. To the contrary, purchasers of the AUSDT token are paying for the opportunity to use the token for cost savings associated with the individual transaction or convenience. The token holders do not expect dividends, distributions or other payments from the issuer. The token holders do not expect that their capital will be used to develop the underlying business, do not expect to receive a financial return from the issuer or based on the purchase, and do not expect that the issuers will perform any entrepreneurial or managerial which will result in an increase in the share price.

CONCLUSION

The AUSDT cryptocurrency token is not, and will not be considered by United States Courts or regulators, to be a security under United States law. This opinion is based on the specific facts and circumstances documented in the White Paper, as well as the precedential decisions of United States courts and public statements of the Securities and Exchange Commission. Accordingly, no registration with any securities regulator, including the Securities and Exchange Commission, is required before AUSDT is issued, minted or listed on public exchanges for sale or trade.

Yours faithfully,

Spencer & Associates