

Securities Regulation Daily Wrap Up, BLOCKCHAIN—Sparkster agrees to remove SPRK tokens from any further trading on crypto-asset platforms, (Sep 20, 2022)

By Jeffrey H. Brochin, J.D.

Whitepaper disseminated on website and on Telegram channel sought to raise funds via token sales for research, development, and marketing of a 'no-code' software platform for developing apps using a 'drag and drop' instead of writing code.

The SEC has settled charges against Sparkster, Ltd. (Sparkster or Company), a privately-owned entity incorporated in the Cayman Islands with activities in multiple countries, including the United States, and against Sajjad Daya, a UK resident who was founder and CEO of Sparkster. Neither Sparkster nor its securities were registered with the Commission in any capacity, and Daya has never been associated with an entity registered with the Commission. The charges arose out of Sparkster's unregistered offer and sale of crypto asset SPRK. The Company and Daya raised \$30 million from 4,000 investors in the United States and abroad by offering and selling SPRK tokens to raise money to further develop Sparkster's 'no-code' software platform (*In the Matter of Sparkster, Ltd.*, [Release No. 33-11102](#), September 19, 2022).



'No code' software development. In April 2018, Sparkster began circulating a whitepaper containing details about an offering of SPRK tokens. The whitepaper was disseminated on Sparkster's website and promoted on its Telegram channel. The stated purpose of the whitepaper was to raise funds for further research and development and for marketing of a 'no-code' software platform that would allow users to develop software applications using a 'drag and drop' graphical interface instead of writing code.

The 'no-code' platform was to run on 'the world's fastest Decentralized Cloud for Smart Software' using a network of cell phones and other personal devices held by 'miners' who would be rewarded with SPRK tokens for contributing their spare computing capacity to the network. The whitepaper also proposed a marketplace for users to buy and sell software created using the 'no-code' platform, with SPRK tokens as the exclusive form of payment.

SPRK tokens were securities. The whitepaper also stated that SPRK tokens 'may be placed on third-party exchanges' and that any users seeking to buy SPRK tokens after the Offering would have to buy them on those exchanges. The SEC Complaint alleged that the promotion and marketing of the SPRK tokens by Sparkster and Daya from April 2018 into July 2018, constituted an unregistered securities offering of crypto asset securities. The tokens were sold in a so-called 'presale' phase in May 2018 and a 'crowd sale' phase in July 2018. Sparkster and Daya represented to investors that SPRK tokens would increase in value, that Sparkster management would continue to improve Sparkster, and that one of the goals was to make the tokens available for trading on a crypto asset trading platform.

Sparkster and Daya also utilized promoters to help spread their message to potential investors. However, Sparkster did not register the offer and sale of the tokens pursuant to federal securities laws, and no exemption from registration was available. The SEC determined that the SPRK tokens were offered and sold as investment contracts, and were therefore securities, pursuant to the test laid out by the U.S. Supreme Court in *SEC v. W.J. Howey Co.*, 328 U.S. 293, 298-99 (1946).

Violations and resolution. The SEC's Order found that Sparkster and Daya violated the offering registration provisions of Sections 5(a) and 5(c) of the Securities Act of 1933. Without admitting or denying the SEC's findings,

Sparkster agreed to destroy its remaining tokens, request the removal of its tokens from trading platforms, and publish the SEC's Order on its website and social media channels. Daya, without admitting or denying the SEC's findings, agreed to refrain, for a period of five years, from participating in offerings of crypto asset securities. The SEC also [ordered](#) Sparkster to pay \$30 million in disgorgement, \$4,624,754 in prejudgment interest, and a \$500,000 civil penalty. The SEC's Order also imposed a \$250,000 civil penalty against Daya.

The release is [No. 33-11102](#).

Attorneys: The SEC's investigation was conducted by Ivan J. Snyder and supervised by David Frohlich and Ms. Welshans. The litigation is being conducted by Fernando Campoamor Sánchez and Ivan J. Snyder and supervised by Melissa Armstrong. The SEC noted with appreciation the assistance of the United Kingdom's Financial Conduct Authority (FCA) and the Cayman Islands Monetary Authority.

Companies: Sparkster, Ltd.

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