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September 29, 2020

Via Email

Timothy Henseler, Esq.
Chief, Office of Enforcement Liaison
Division of Corporate Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549
Attn: Johanna Losert

Re: In the Matter of Salt Lending Holdings, Inc.

Dear Mr. Henseler:

We write on behalf of Salt Blockchain Inc. (formerly Salt Lending Holdings, Inc.) ("Salt Lending" or the "Company"). We understand that the U.S. Securities and Exchange Commission (the "SEC" or the "Commission") is considering a matter that would result in the issuance of an order (the "Order") directing Salt Lending to cease and desist from committing or causing violations and future violations of Section 5 of the Securities Act of 1933, as amended (the "Securities Act"). Salt Lending understands that the entry of the Order would disqualify it from relying on certain exemptions under Rule 506 of Regulation D promulgated under the Securities Act. We are respectfully requesting waiver from such disqualification in the event that the SEC issues the Order.



A. BACKGROUND

Salt Lending has engaged in settlement discussions with the staff of the Division of Enforcement in connection with the above-referenced anticipated administrative proceeding. As a result of those discussions, Salt Lending has submitted an offer of settlement pursuant to which Salt Lending will consent to the Order. Under the terms of the settlement, Salt Lending will neither admit nor deny the findings of the Order, except as to jurisdiction. As a result of the settlement discussions, Salt Lending and the staff of the Division of Enforcement have reached a settlement in principle with respect to the Order.

The Order will charge non-scienter based violations of the Securities Act involving the unregistered sale of digital assets securities ("Salt Tokens"). Specifically, the Order will find violations by Salt Lending of Section 5(a) and Section 5(c) of the Securities Act in connection with the sale to the general public of \$47 million of Salt Tokens in exchange for US currency, Ether, and Bitcoin digital

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assets from June 2017 to December 2017 (the "Salt Token ICO"), and with the sale of \$1,200,000 of post-ICO sales of tokens, following the Salt Token ICO.

The Order will find that Salt Lending offered, sold and distributed the Salt Tokens to investors within in the United States. The Order will also find that Salt Lending used general solicitation for its offers by distributing its Abstract and other marketing materials and documents through its website, internet forums and in-person presentations. The Order will find that following the Salt Token ICO, Salt Lending began to offer loans secured by blockchain assets on a limited basis to the public and continued to sell Salt Tokens to the public until August 2019.

The Order will require Salt Lending to cease and desist from committing or causing any violations or future violations of Section 5(a) and 5(c) of the Securities Act, offer a claims process specified in the Order's undertakings, and pay \$250,000 in civil penalties to the Commission.

Salt Lending understands that, absent a waiver, the entry of the Order will disqualify Salt Lending and its affiliates from relying on certain exemptions under Rule 506 of Regulation D for five (5) years following the date of the entry of the Order (the "waiver period").

The Commission, or the Division of Corporation Finance ("Division"), acting pursuant to its delegated authority, has the authority to waive these disqualifications upon a showing of good cause that such disqualifications are not necessary under the circumstances.¹ The Division's statement on Waivers of Disqualification under Rules 505 and 506 of Regulation D² provides that the Division will among other things, "consider the nature of the violation or conviction and whether it involved the sale of securities" and "whether the conduct involved a criminal conviction or scienter based violation, as opposed to a civil or administrative non-scienter based violation." That statement also provides that "where there is a ... scienter based violation involving the offer and sale of securities, the burden on the party seeking the waiver to show good cause that a waiver is justified would be significantly greater."

Based on the factors set forth by the Division for considering waiver requests and the facts and circumstances set forth below, Salt Lending respectfully submits that there is good cause to determine that the disqualifications are not necessary and therefore respectfully requests that the Division, on behalf of the Commission, or the Commission, waive any disqualifications that the Order would otherwise trigger under Regulation D.

B. DISCUSSION

Salt Lending respectfully requests a waiver of disqualification from relying on exemptions under Regulation D on the following grounds:

1) *The Nature of the Violations and Whether they Involve the Offer and Sale of Securities.*

The Order will find a violation of Section 5 of the Securities Act which involves the offer and sale of securities. The violations described in the Order will not constitute a criminal conviction. The Order will find that Salt Lending violated Section 5(a) and Section 5(c) of the Securities Act. The Order will not find that Salt Lending violated any scienter based sections of the federal securities laws.

¹ See Rule 506(d)(2)(ii) of Regulation D.

² See Division of Corporation Finance, *Waivers of Disqualification under Regulation A and Rules 505 and 506 of Regulation D*, available at: <https://www.sec.gov/divisions/corpfin/guidance/disqualification-waivers.shtml>.

Therefore, the Company should not be held to a "greater" burden under the Division's waiver policy.

As discussed below, Salt Lending has taken and will continue to take steps to ensure that violations of Sections 5(a) and 5(c) do not occur in the future.

2) *Responsibility for the Misconduct*

The Company engaged in the transactions discussed in the Order. As noted in the Order, the Salt Token ICO began June 2017.

The Order will not name any individual participants in connection with the conduct underlying the Order. At the time of the Salt Token ICO in 2017, there were eight executives, directors and/or founders of the Company, seven of whom were involved in management of the Company, and five of whom are no longer involved in management of the Company. The two founders still involved within the Company are discussed below.

First, a co-founder and former CEO of the Company is a director on the Company's Board of Directors (the "Board") and remains the largest shareholder in the Company. This individual served as CEO from September 2016 to August 2018 and was involved in the Salt Token ICO. In his role as CEO and in relation to the Salt Token ICO, this individual consulted with other founders, executives, and outside consultants attended meetings with internal employees and external parties, reviewed Company materials related to the Salt Token ICO, received information regarding the Salt Token ICO, and provided direction to Company employees in connection to the Salt Token ICO.

Second, another co-founder, whose role at the time of the initiation of the Salt Token ICO was Chief Strategy Officer, remains a member of the Board and is the second largest shareholder of the Company. During the Salt Token ICO this co-founder received regular updates from the Company's technology team responsible for the creation and distribution of the tokens and was involved in the overall strategy of the Salt Token ICO. Along with other employees, he focused on the creation of various uses for the Salt Tokens within the platform, such as accessing the lending services available on the platform, including using the Salt Tokens for an interest payment reduction.

There are five directors on the Board, including the two co-founders. Neither individually, nor together, do the two co-founders constitute a majority of voting power of the Board. Additionally, while the two co-founders are the first and second largest shareholders in the Company, neither individually controls a majority of the voting stock of the Company nor intends to vote his shares in a block together with the other; rather each intends to vote his shares individually according to his own interests.

The Company expects that as Board directors and significant shareholders these individuals will have limited and specific involvement in future offerings made by the Company, including offerings in reliance on Regulation D. This limited and specific involvement will be making themselves available to meet with potential investors if requested by the investors to do so, and does not include any legal determination as to whether such offering may rely on Regulation D.³ All legal

³ In connection with any such offering, these individuals will participate in and be subject to, as appropriate for directors and major shareholders, the remedial steps outlined in Section 4 of this letter.

determinations as to whether a Regulation D exemption applies to future offerings, will be made by Salt's Chief Legal Officer⁴ and outside securities counsel.

3) *The Duration of the Violations Described in the Order*

From June 2017 to December 2017, Salt offered and sold Salt Tokens and raised approximately \$47 million from these sales. Salt continued to raise an additional \$1,200,000 from post-ICO sales of Salt Tokens. Salt made its last sale of Salt Tokens on August 2019.

4) *Salt Lending Has Taken Remedial Steps and Will Continue to Take Remedial Steps*

If, during the five year waiver period following the date of entry of the Order or such shorter period as may be agreed by the Division and Salt Lending, Salt Lending or any of its affiliates intends to distribute a digital asset⁵ other than on a registered basis or pursuant to an exemption from registration,⁶ it will consult with the Division⁷ prior to distribution of such digital asset.⁸

The Order will acknowledge that the Commission considered the remedial acts already undertaken by Salt Lending, including the fact that Salt returned several million dollars to investors, and Salt's cooperation afforded to the Commission staff.

Additionally, Salt Lending has agreed to the following undertakings in the Order:

- 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 Salt 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 Salt Tokens from Salt Lending before and including December 31, 2019, of their right to submit a written claim on the Claim Form directly to Salt Lending "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";

⁴ The Company currently has a Chief Legal Officer. If the position is eliminated, all legal determinations as to whether a Regulation D exception applies to future offerings will be made by outside securities counsel.

⁵ This is not intended to apply to any distribution made solely for testing or engineering purposes.

⁶ "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.

⁷ Salt Lending 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.

⁸ This provision is intended to provide that Salt Lending 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 substantially changed.

- to pay the amount due to each person or entity that purchased Salt Tokens from Salt Lending before and including December 31, 2019, and that submitted a written claim to Salt Lending; and
- to submit monthly reports, and one final report, of the claims received to the Commission staff.

Additionally, it is Salt Lending's continued practice to engage law, accounting and consulting firms to assist its in-house legal and compliance program in developing compliance policies and procedures. These firms analyze Salt Lending's current corporate policies and practices, and identify areas within Salt Lending to develop targeted policies and procedures.

Salt Lending engaged outside counsel, who developed written policies and procedures and trainings, to ensure compliance with Regulation D (referred to together as the "compliance program"). The training and written policies and procedures were developed in the first half of 2020, and the written policies and procedures were formally adopted by the Company on September 21, 2020.

As part of the compliance program, the Company now holds training sessions and presentation meetings conducted by outside counsel or compliance consultants, to educate members of Company management and the Board on the specific requirements under Regulation D for a private placement of securities, including restrictions and limitations on communications and disclosure obligations under Rule 506(b) or Rule 506(c), as applicable.⁹ The most recent trainings occurred on August 6, 2020.

Furthermore, outside counsel already consult frequently, and will continue to consult frequently, with Salt Lending's executive officers regarding compliance with applicable securities laws, including, when applicable, Regulation D. For instance, currently, the Company is in discussions with outside counsel regarding a potential capital raise in the next twelve months.

The Company is committed to ensuring that all future offers and sales of securities will comply with applicable SEC regulations. To this end, the Company now requires senior management members, prior to the commencement of any offering, to seek advice and counsel from experienced securities attorneys.

Legal counsel will play a prominent role during the entire offering process for any offering the Company makes, in order to help the Company comply with securities laws and eliminate or reduce the risk of violation of the registration requirements under the Securities Act.

We note that in 2019, Salt Lending engaged experienced outside counsel to assist it with structuring a preferred stock offering to accredited investors in reliance on Rule 506(b) of Regulation D, in compliance with all applicable securities laws. The offering subsequently was put on hold, but, pending receipt of this waiver, when efforts are restarted, outside counsel will provide training, as described above, for Salt Lending employees and any other participants

⁹ As part of its securities offering compliance program the Company has adopted a "Bad Actor" questionnaire that will be provided to potential investors prior to any offering under Regulation D in order to preclude their investment in the Company absent a waiver from disqualification. Additionally, the questionnaire is provided to all prospective executive officers and directors prior to their hiring, election or appointment, as applicable, to make sure that offerings are not impacted by "bad actors."

involved in the offering with regard to the requirements and restrictions applicable to Regulation D offerings.

Finally, Salt Lending has incorporated its internal legal and compliance functions and external law and consulting firms into its development of new technologies and launch of potential new projects in order to include, from the earliest stage, design features or restrictions that support compliance with securities laws generally as well as other regulatory regimes.

5) *The Impact on Issuer and its Borrowers if Waiver Were Denied*

As described in detail below, a disqualification under Regulation D would have a significant impact on Salt Lending and its borrowers, and would negatively impact Salt Lending's users. Salt Lending is a growing lending company. Salt Lending's business allows borrowers to obtain United States dollar-denominated loans collateralized by digital assets such as Bitcoin or Ether.

In order to have the funds needed to pursue its core business of lending, the Company requires access to the private securities markets. Salt Lending previously raised capital through three offerings in 2016, 2017, and 2018, respectively, that relied on the exemption from registration under Regulation D. The Company anticipates a need for an additional capital raise in the next twelve months. Without the waiver of disqualification requested in this letter, Salt Lending could encounter significant challenges in raising capital, which would directly impact the funds available to make loans to borrowers. This would adversely affect the Company's ability to continue operating, and would negatively impact user's access to loans from Salt Lending, because Salt Lending will have decreased access to capital to develop its technology, expand operations and fund eligible loans. Salt Lending desires to make available to its users a comprehensive consumer financial services program that includes the ability to loan United States dollar-denominated loans collateralized by digital assets. If Salt Lending is not able to raise the capital needed to make loans available to borrowers, then the eligible borrowers will have to identify other lenders and open lending accounts with those lenders for the purpose of securing a loan that Salt Lending would have otherwise been able to offer. Further, if Salt Lending is not able to raise the capital needed to continue to improve its technology platform and operations, holders of Salt Tokens may be limited in their ability to utilize the Salt Tokens in exchange for discounts and services through the platform.

If the requested waiver is not granted, the Company will have to rely on the exemption provided pursuant to Section 4(a)(2) of the Securities Act to raise funds in private securities offerings. In the Company's experience, venture capital and strategic partners prefer to engage in transactions that rely on Regulation D over Section 4(a)(2) for a number of reasons. First, there is the certainty provided in an issuer's customary representations made to meet the objective standards set out in Regulation D. In addition, the Form D filing provides additional certainty to investors. If the Company must rely on Section 4(a)(2), a court could determine that even if the same representations were made, the offering did not ultimately qualify as an exempt offering. In addition, offerings conducted under Section 4(a)(2) do not have the benefit of Federal preemption of state registration requirements. As a consequence, if the Company could only offer securities in reliance on Section 4(a)(2), then each offering would require an analysis of state blue sky laws and, in many instances, offerings would have to be registered in multiple states. Together, the analysis and potential state registration would impose significant additional costs on the Company for each offering and likely delay many offerings pending state registration. Furthermore, as a commercial matter, the Company's most likely source of investors, the venture capital and strategic partner investor community prefer offerings that are exempt from state registration.

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Finally, as noted above, a 2019 offering under Regulation D was put on hold. When the Company returns to fund raising, the Company may have to identify new investors. The Company expects to engage in general solicitation to find new investors, which is not possible if the Company must rely on Section 4(a)(2). Rather, the Company intends to engage in general solicitation in reliance on Rule 506(c), but will not be able to do so if it is disqualified from relying on Regulation D. This would further impede the Company's ability to raise capital during the waiver period.

6) *Provision of a Written Description of the Order*

In the event that the Division, on behalf of the Commission, or the Commission grants the requested waiver, for a period of five years from the date of entry of the Order, Salt Lending will furnish (or cause to be furnished), at a reasonable time prior to any sale by Salt Lending of any securities, to each purchaser in an offering under Regulation D that would otherwise be subject to disqualification under Rule 506(d)(1)(ii) as a result of the Order, a description in writing of the Order and related waiver.

C. REQUEST FOR WAIVER

In light of the foregoing, Salt Lending 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 period of disqualification. Accordingly, Salt Lending respectfully requests that, pursuant to Rule 506(d)(2)(ii), the Commission waive the disqualification provisions of Regulation D that will otherwise disqualify Salt Lending, when the Order is issued.

Salt Lending reemphasizes to the Commission the comprehensive adverse impact that denial of the waiver would have on it and users and potential users of its lending services.

Salt Lending therefore reiterates its request that, for good cause shown, the Division, on behalf of the Commission, or the Commission grant the requested waiver.

We appreciate your consideration of this request. Please contact me at (202) 739-5746 or my colleague Emily Drazan Chapman at (202) 739-5699 with any questions.

Sincerely,



Amy Natterson Kroll

EDC

cc: Alex Fader, Chief Legal Officer, Salt Blockchain Inc.
Emily Drazan Chapman, Morgan, Lewis & Bockius LLP
Albert Lung, Morgan, Lewis & Bockius LLP