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November 19, 2025

VIA ELECTRONIC SUBMISSION

Securities Act of 1933 Sections 2(a)(1) and 5
Securities Exchange Act of 1934 Sections 3(a)(10) and 12(g)

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E., Washington, DC 20549-0213

Re: *Fuse Crypto Limited*

Ladies and Gentlemen:

We write on behalf of Fuse Crypto Limited (together with its affiliates, "Fuse"), a private limited company incorporated in Jersey, registered with the Jersey Financial Services Commission. Fuse proposes to offer and sell the Tokens (as defined below) without registration under Section 5 of the Securities Act of 1933, as amended (the "Securities Act"), and Section 12(g) of the Securities and Exchange Act of 1934, as amended (the "Exchange Act", and collectively with the Securities Act, the "Securities Acts").

On behalf of Fuse, Latham & Watkins LLP respectfully requests that the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "SEC") confirm that it will not recommend that the SEC take enforcement action if Fuse offers and sells the Tokens in the manner and under the circumstances described herein without registration under the Securities Acts.

About Fuse

Fuse is a vertically integrated energy technology group focused on accelerating the decentralization of electricity grids, optimizing energy delivery, and empowering consumers to lower their electricity related costs. Through its operations in the United States, United Kingdom (the "UK"), and Europe, Fuse endeavors to deliver tools that enable households and businesses to actively participate in the energy system—improving grid resilience, reducing congestion, and unlocking new forms of distributed value for consumers (the "Grid-Support Objectives").

Fuse operates across three primary business segments:

1. **Energy Supply & Services**: Fuse operates licensed retail electricity businesses. In the United States, Fuse is an authorized energy services company in the State of New York – while it is not currently active in the market, it is in the process of making its services as an energy supplier, and demand response provider and aggregator available to NY consumers, prior to further expansion in other US markets. In the UK, Fuse holds an electricity and gas supply license issued and regulated by the Office of Gas and Electricity Markets and has served domestic consumers since 2022. In Ireland, Fuse holds an electricity and gas supply license. Fuse's existing business in the UK has enabled consumers to access electricity, hardware, and services that will support participation in coordinated energy programs and will serve as a model for what can be achieved in the United States.

2. **Distributed Energy Infrastructure**: Fuse installs and maintains distributed energy resources ("DERs") including rooftop solar, electric vehicle ("EV") chargers, smart thermostats, and other flexible energy assets. Fuse is a certified Meter Operator[1], Meter Asset Provider[2], is MCS certified[3] and also has a licensed Distributed Energy Resource Supplier[4] in the State of New York.

3. **Grid-Connected Generation**: Fuse develops and owns utility-scale generation assets such as solar farms and wind turbines in the UK. Fuse develops and acquires electricity generation facilities that can be used to power homes and businesses. Fuse is developing utility scale generation assets in the State of New York.

Together, these business units form the operational foundation for the future of a more decentralized grid and energy system through the acceleration of DER installation, aggregation and grid support. By coordinating the efforts of individual participating consumers (the "Fuse Network") and deploying a token-enabled incentive system, Fuse aims to help expedite the shift towards consumer participation in grid support, energy shifting, and DER deployment, leaving behind current centralized incumbent utility systems.

I. Background

a. Challenges Facing Centralized Energy Grids

Today's electricity grids are fundamentally mismatched to the requirements of a modern, distributed energy system. They were built for a centralized model: large power plants generating electricity continuously and transmitting it over long distances through high-voltage power lines to reach consumers. One of the most urgent challenges we face today is grid congestion. As electrification accelerates, with the

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[1] As a certified Meter Operator, Fuse can install, maintain, and operate energy meters in compliance with UK industry regulations.

[2] As a Meter Asset Provider (MAP), Fuse is allowed to finance, install, procure and maintain energy meters, leasing them to suppliers.

[3] Microgeneration Certification Scheme (MCS) certification confirms that the renewable energy DERs and installation services provided by Fuse meet industry standards in the UK.

[4] As a NY Distributed Energy Resource Supplier, Fuse is authorized to sell and manage local energy solutions, such as solar panels or batteries for homes and businesses, and to participate in utility-administered DER programs (such as DER tariffs) in New York.

rise of EVs, AI and energy-intensive infrastructure like data centers, demand on these centralized grids is becoming uneven, with spikes across regions and during peak hours. As urban areas are growing rapidly and face rising energy demands, transmission networks struggle to deliver power efficiently when it is most needed.

To fully unlock the potential of modern energy systems, the grid needs to be redesigned from the ground up. That means shifting away from centralized infrastructure and toward coordinated, distributed networks that can handle intermittent, localized energy flows and relieve the bottleneck that threatens to stifle innovation and growth. Distributed ledger technology is well-suited to enhance further development of solutions that improve energy affordability for end consumers by reducing costs, facilitating decentralized peer-to-peer transactions, and promoting sustainability through advancements in renewable energy generation and low-carbon solutions.

By leveraging blockchain technology, the Fuse Network can coordinate DERs across its system into a Virtual Power Plant (a "VPP"), creating a secure and transparent system that empowers consumers to most effectively take control of their energy generation, usage and costs by adopting DERs, shifting consumption to more efficient times, exporting power when needed, and making DERs available for use by the local electricity grid. Their actions can all help decongest the electricity grid, allowing consumers to control their energy participation, and providing them with cost savings as a direct result of their actions.

b. Distributed Energy Resources

DERs are small-scale electricity generators and related appliances that are connected to the grid at the distribution level. Examples of DERs include rooftop solar panels, smart thermostats, batteries, EV chargers, backup generators, heat pumps, solar thermal systems, and other products of similar cost of installation, energy consumption or regulation.

DERs enable smart, flexible, and responsive use of capacity from energy-generating (e.g. solar panels) and energy-storing (e.g. batteries) assets that are at or close in proximity to where such energy will be used based on real-time data, pricing, and grid conditions (so-called "smart" or "intelligent" conditions). This results in power being generated by consumers where and when they choose to consume it, saving them from expensive, and avoidable, grid congestion charges and reducing their transmission load based on smarter consumption. DERs can provide grid support as soon as they are installed, immediately working to alleviate grid issues when there is a surge in demand and insufficient supply. They can do so by (i) producing power locally at or near the site where it is consumed; (ii) shifting, reducing or even increasing demand by adjusting DER settings (*e.g.*, turning up or down your thermostat to reduce electricity consumption); (iii) releasing stored energy into the grid (*e.g.*, from a battery); or (iv) activating generators and using existing energy stores when there is a grid malfunction.

While consumers are able to leverage their DERs in a similar way today, most are not able to harness their full potential because of a lack of an efficient and automated way for them to further leverage their existing operational flexibility. The Fuse Network allows consumers to realize these opportunities and correspondingly shift their energy consumption and/or output, resulting in more efficient electricity consumption and related cost savings.

VPPs – systems of DERs that are coordinated to balance supply and demand – allow users to access flexible markets that provide compensation to incentivize distributed supply and demand responses. Unfortunately, VPPs currently only exist in their infancy across a small number of very mature electricity

markets[5]. Furthermore, the most advanced VPPs today do not integrate products from other manufacturers (*e.g.*, Tesla operates VPPs today using only Tesla products). While households can provide similar benefits to the grid on an individual level (*e.g.*, by programming their solar panels or battery to optimally charge or discharge energy into the grid), to properly capture the potential of VPPs, a universal aggregator is needed to coordinate generation and consumption across the full spectrum of DERs across manufacturers – that is the goal of the Fuse Network today.

c. The Fuse Network

i. The Fuse Market

Fuse will interact with consumers in markets as (i) the consumer's electricity supplier; (ii) a demand-side response provider/aggregator ("DRP"); and/or (iii) in the provision of DER installation services (*e.g.*, installing solar panels in a consumer's home). While consumers with pre-existing DERs can participate in the Fuse Network to enjoy the cost savings that come from the efficiencies of a coordinated energy system, the ability to purchase and install DERs directly through the Fuse App (as defined below) will empower more consumers to realize these cost savings from their power generation and consumption.

In order to provide services to consumers in new markets (each defined by the geographic designation of the grid), Fuse will typically be required to register with a local regulator. Prior to registration, Fuse may partner with third-party market access providers to be fully operational in such markets as a DRP on day 1. As an example, DERs deployed by households typically provide around 5 kW of power, and so Fuse would need aggregations from 10 to more than 200 DERs to participate in some markets directly (i.e., not through a third party). While households may choose to deploy more than one DER, they are naturally limited in the amount of DERs they are incentivized to deploy. Once the energy capacity of a consumer's DERs exceeds the consumption needs of their household for the relevant period, the value of any additional energy generated would be subject to diminishing returns as the grid limits the amount of energy that can be exported at one time on each region's current grid transmission system. These are the same inherent limitations faced by larger electricity projects today – exporting such excess energy to the grid requires ensuring sufficient capacity and connections to the grid, which currently face years' long delays in required upgrades.

As a result of these grid limitations, consumers are incentivized to optimize their generation and use of electricity within the bounds of their household's consumption and flexibility. The redemption limitations of the Fuse Token (as defined below) discussed below are specifically designed to further encourage such smarter energy behavior on the part of consumers, not simply to incentivize the generation of more electricity. Together, these limitations act to enable the Fuse Network to balance the grid by coordinating distributed energy assets across many consumers, rather than encouraging large-scale generation at a single connection point. At the same time, consumers are able fully realize the benefits and savings that DERs can provide to individual consumers, while also contributing to broader grid stability.

ii. Consumer Onboarding and DER Enrollment

Individual consumers will join the Fuse Network via a mobile application or web application (such applications, the "Fuse App"). As part of their onboarding process, consumers will register their existing

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[5] Examples of VPPs in mature markets today include AGL in Australia (https://www.agl.com.au/residential/solar-and-batteries/virtual-power-plant) and Next Kraftwerke in Belgium and Germany (https://www.next-kraftwerke.be/nl).

DERs within the Fuse App. These DERs are then connected to the Fuse Network via API integrations. As part of the sign-up process, consumers may also connect Fuse with their account at the local utility provider, allowing Fuse to monitor a consumer's consumption and electricity bill, in accordance with the standard terms of service of the Fuse App or switch their energy supply to Fuse, in markets where Fuse is an electricity supplier.

Consumers will then be able to set detailed preferences for their participation in the Fuse Network within the Fuse App, allowing Fuse to adjust their DERs to respond to grid signals based on each consumer's view of their energy needs and desire for cost savings. These preferences that consumers can toggle in the Fuse App may include the below or substantially similar settings:

- device-specific thresholds (*e.g.*, only allow thermostat adjustments within a preferred temperature range);
- time-of-day participation windows (*e.g.*, only respond to grid events between 6 p.m. and 9 p.m.);
- minimum contribution settings (*e.g.*, participate only if at least 2 kWh can be shifted, exported, or consumed);
- opt-in vs. automated participation (*e.g.*, choose to respond manually to each event upon notice from Fuse or allow fully automated participation under predefined rules); and
- setting their DER to be "available for use" for a future time period.

As an example, a consumer who has a smart thermostat and a solar panel in their home may choose to only allow for the use of air-conditioning in their home to be restricted during weekday hours when they will not be home, to allow the energy from their solar panels to be contributed to the grid only when they know they will not otherwise utilize it for other household purposes, or to allow their EV to be charged only during times of day when demand on the grid is lower. The consumer determines what flexibility is appropriate to match their individual needs, which directly impacts the amount of savings they can realize.

By providing their preferences, consumers choose how and when to allow Fuse to adjust their DER, therefore participating in the VPP and supporting the Fuse Network. Consumers will benefit by being rewarded with redeemable Tokens (defined below) and by reductions to their electricity bill resulting from their reduced electricity usage, including during peak (and so likely more expensive) hours.

iii. Fuse as a DRP

In its eligible markets, Fuse or its third-party market access provider partners will be registered with grid operators or electricity system authorities as a recognized DRP or flexibility service provider. This will enable Fuse to respond to grid signals; such grid signal responses would include, for example, frequency balancing, relieving congestion and reducing electricity consumption during hours of peak demand using proprietary software to dynamically control participating DERs on behalf of consumers in accordance with the usage parameters described above.

Fuse then aggregates the enrolled DERs across participating households into coordinated VPPs. When there is an opportunity to support the grid with the VPP, the DERs would be coordinated to respond by reducing or increasing demand (load shaping), exporting energy stored in batteries, exporting energy from solar panels and/or consuming excess grid power (*e.g.*, battery and EV charging during excess

generation periods). Similarly, consumers can help with stabilizing future grid events by enrolling their DERs as "available for use" during a specified time-period, signaling to Fuse that such energy supply is available to respond to grid events if needed.

Fuse receives payment for these activities directly from the applicable utility provider, state regulator, or third-party access provider, depending on the jurisdiction. Such payment is not passed on to or shared with consumers.

iv. Fuse as a Distributed Energy Resource Provider

In certain markets Fuse or its partners may also provide consumers with the opportunity to purchase and coordinate installation of DERs through the Fuse App.

d. The Fuse Token

In addition to reductions in consumers' electricity consumption (and corresponding reduction in their electricity bill), consumers will also earn rewards for deploying their DERs and participating in VPPs via demand flexibility by receiving a blockchain-based crypto-asset (the "Fuse Token" or "Token") native to the Fuse Network. The purpose of the Fuse Token is to reward consumers for their contributions within the Fuse Network, and so to support smarter energy behavior such as shifting demand to align with grid needs or generating and storing energy for peak times – not to serve as an appreciating or investment asset.

i. Earning Tokenized Rewards

Consumers will be eligible to earn Tokens for their contributions to the Fuse Network in the following ways:

- deploying DERs (*e.g.*, installing rooftop solar systems, battery storage systems);
- making DERs available for use (*e.g.*, ensuring their DER will be available at a specified future point in time); and
- enabling demand flexibility (*e.g.*, adjusting energy consumption in response to grid conditions, exporting power from batteries and/or solar panels and/or consuming excess grid power).

In addition, consumers who engage in certain activities in the Fuse App (*e.g.*, joining Fuse as a customer, referring friends to join Fuse, registering a DER with Fuse, engaging with Fuse on social media platforms, or substantially similar activities relating to the Fuse App and social media), may earn Tokens.

For certain contributions to the Fuse Network, Fuse will measure each consumer's activity and contribution in accordance with the rewards formula set forth below, providing a measurable basis for determining reward distribution to all consumers based on the actions they have chosen to take and their proportional impact. While Fuse sets the rewards formula, it does so in advance and applies the same criteria to all consumers based on their measurable activity. These actions contribute to grid stability and efficiency, making the Token a direct incentive for a consumer's positive energy behavior.

ii. The Rewards Formula

Token rewards earned for consumer participation on the Fuse Network are calculated based on a transparent formula. Within a given time period $\boldsymbol{n}$, a preset number of Tokens ($\boldsymbol{R_n}$) will be made available

for distribution (*e.g.*, for the month of July, X Tokens will be available to be earned). These Tokens are then allocated pro-rata to consumers based on their share of the total value[6] contributed to the network that day. Specifically, a consumer's reward (r_n) is calculated as:

$$r_n = \frac{v_n}{V_n} R_n$$

where v_n represents the individual consumer's value[7] and V_n represents the total network value[8] created during the period (n). This framework ensures rewards are activity-based and proportional to measurable contributions.

The pro-rata formula for Tokens distributed in any given time period (R_n) governs the allocation of rewards and is applied uniformly across all consumers. The methodology will be published in advance to ensure transparency and consistency with consumptive behavior. Because the Token reward is earned based on a consumer's quantifiable energy actions (i.e., shifting kWh, consuming/generating kWh, or making DERs available for use), and the formula is applied uniformly, the model reinforces the Token's consumptive utility and market forces act to limit the number of rewards that a consumer can earn in a given time period. The Fuse Network will have a fixed maximum supply of 10 billion Tokens, distributed progressively over a 25-year period in accordance with the rewards formula set forth above. Fuse Tokens awarded in accordance with the formula above, are earned solely based on a consumer's activity in relation to the energy grid, and neither represent a claim on, nor are correlated in any way to, Fuse's income, business or profits.

Once earned, consumers will have the ability to claim earned Tokens to their self-custodial wallet within the Fuse App, from which they can freely transfer the Tokens to a third party self-custodial wallet of their choosing.

iii. Redeeming Rewards

The Tokens will be redeemable solely within the Fuse App to receive discounts or rebates on costs related to participation in the Fuse Network ("Fuse Goods and Services") not otherwise available to other consumers within the Fuse App. For example, consumers will be able to redeem their Token for exclusive discounts on purchases of EV chargers, installation of batteries or other DERs, and to offset monthly electricity bills in markets where Fuse is the consumers' electricity supplier. While Tokens do not expire until redeemed, they can only be redeemed for Fuse Goods and Services outstanding or procured at the time of redemption and cannot be used to offset future costs (for example, as a credit toward future electricity bills not yet incurred). This means that the earned Tokens have consumptive utility and purpose, allowing the user to receive tangible benefits for their prior actions.

The redemption value of the Tokens for Fuse Goods and Services will be based on the average market price of the Tokens on third-party unaffiliated digital asset markets at the time of the redemption, ensuring fair and market-reflective conversion. However, the discount that a consumer may receive will

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[6] Value measured in (1) kWh shifted (for consumption shifting), kWh consumed or exported, and/or kWh made available (for DERs enrolled as "available for use") and (2) unit rate (in fiat) per kWh.

[7] Value measured in (1) kWh shifted (for consumption shifting), kWh consumed or exported, and/or kWh made available (for DERs enrolled as "available for use") and (2) unit rate (in fiat) per kWh.

[8] Value measured in (1) kWh shifted (for consumption shifting), kWh consumed or exported, and/or kWh made available (for DERs enrolled as "available for use") and (2) unit rate (in fiat) per kWh.

necessarily be capped by market forces (*i.e.*, the discount will not exceed Fuse's profit margins on such goods or services), and the maximum discount will be clearly publicized to consumers during their redemption in the Fuse App. The redemption limitation is designed to encourage smart energy consumption on the part of consumers (i.e. shifting demand to align with grid needs or generating and storing energy for peak times) rather than excess generation, as any Tokens received that exceed a consumer's electricity usage and household DER capacity (and so, available discounts on Fuse Goods and Services) would be subject to diminishing returns, including the economic realities of the secondary market described below.

To redeem their Tokens, consumers will execute a burn transaction for the requisite number of Tokens, removing them from circulation – once that transaction is validated, the discount on the applicable Fuse Goods and Services will be applied within the Fuse App. The number of Tokens to be burned will be based on the dollar amount of the effective discount being applied for the applicable Fuse Goods and Services (not to exceed Fuse's profit margin on such goods or services), with the price per Token based on the average market price of the Tokens on third-party unaffiliated digital asset markets at the time of redemption. Fuse will retain operational control over the redemption system to ensure it functions effectively and aligns with the Fuse Network's Grid-Support Objectives.

iv. Secondary Markets

Tokens earned by consumers will also be freely transferable and tradable on third-party unaffiliated digital asset markets. The secondary market would allow consumers who may have generated rewards in excess of the discounts for Fuse Goods and Services of which they may wish to avail themselves to convert their Tokens into cash – similar to how the holder of a coupon may choose to sell it if they have a surplus for a specific product.

Again, similar to the market for discount coupons, the underlying economic reality acts to limit market speculation in the Tokens, disincentivizing rational actors from treating the Tokens as an investment vehicle and limiting rational demand to consumers who are looking to redeem the Tokens for Fuse Goods and Services but do not have sufficient DER resources or flexibility to earn sufficient Tokens for their needs. This is primarily achieved in two ways (i) the capped redemption – as the discount amount for each consumer is necessarily capped by the market and Fuse's profit margins on such goods or services – and (ii) the redemption value of each Tokens will be based on the average market price of the Tokens on third-party unaffiliated digital asset markets at the time of the redemption. That is, if the price of Fuse Tokens were to exceed the applicable discount a consumer could apply in the Fuse App, rational consumers who have not already earned Tokens would not seek to purchase Tokens on the secondary market, rather opting to pay for their Fuse Goods and Services at full price out of pocket, therefore limiting demand for the Tokens. In the same way that discount coupons would not be expected to trade above their face value, the value of the Tokens on the secondary market would necessarily be limited by this redemption cap.

Furthermore, as detailed above, given the natural limits on the amount of DERs any one household is incentivized to install, a consumer will be limited in the number of Tokens they are likely to earn. Moreover, because the redemption value of the Tokens is indifferent to the success of the Fuse Network, the typical "network effects" sought by investors in other crypto assets would be absent with respect to the Tokens.

e. Building Adoption and Fuse Network Utility

Consumer participation in the VPP contributes to grid stability and efficiency, making the Token a direct incentive for positive energy behavior within the Fuse Network. Increased participation in grid-related programs and services (like VPPs and demand response) by consumers enhances the Token's

attractiveness to such consumers, leading to organic adoption and reinforcing its role as a reward mechanism.

The rollout of additional decentralized energy generation and smart grid technologies creates a growing need for incentives that drive intelligent energy usage. The Tokens align with this trend by offering a flexible, scalable consumptive rewards system that benefits both users and the energy infrastructure. Unlike traditional cash incentives, the Token creates alignment among VPP contributors by fostering a sense of collective purpose and long-term engagement among consumers. This growing network of aligned participants drives better grid optimization, as a VPP only succeeds with coordination of at least thousands of households, more efficient generation and consumption, energy cost savings for consumers, and increased demand for rewards, reinforcing the positive feedback loop.

By ensuring that the Token maintains real-world applicability, Fuse fosters an ecosystem where the value of the Tokens is derived from its consumptive use rather than speculative investment. As additional consumers join the Fuse Network and introduce additional DERs, the grid system becomes more distributed and provides new outlets for coordinated action to address the needs of the grid – the Fuse Network follows the principle that wholesale electricity prices are driven lower by energy efficiency and abundance and incentivizes it accordingly. In return, consumers benefit directly from lower electricity prices and usage, as well as through the incentives provided by the Tokens.

II. Legal Analysis

For the reasons set forth below, we are of the opinion that Fuse's proposed transactions in the Tokens, if conducted in the manner and under the circumstances described above, will not involve the offer and sale of a "security" within the meaning of Section 2(a)(1) of the Securities Act or Section 3(a)(10) of the Exchange Act[9] and, therefore, that registration under the Securities Acts is not required. In particular, we conclude that the Token is not an investment contract, and consequently not a security, because consumers will earn Tokens for their own consumption and not based on a reasonable expectation of profit from the efforts of Fuse or others.

a. Definition of a "security" under the Securities Act

Section 2(a)(1) of the Securities Act defines the term "security" broadly to include a number of specifically enumerated financial instruments, such as notes, stocks, and bonds. Where an instrument does not fall within any of the specifically enumerated items in Section 2(a)(1), the SEC analyzes transactions involving such arrangements under the "investment contract" test set forth in *SEC v. W.J. Howey Co*.[10] Under *Howey*, instruments or arrangements not otherwise listed as securities in Section 2(a)(1) are analyzed based on their "economic realities."[11] This analysis involves assessing whether there is (i) an investment of

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[9] The Supreme Court in *SEC v. Edwards* indicates that the definition of a security in Section 2(a)(1) of the Securities Act is "essentially identical in meaning" to the definition of security in Section 3(a)(10) of the Securities Act. See *SEC v. Edwards* 540 U.S. 389, 393 (2004). As such, our reasoning that follows applies to both Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act.

[10] *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946).

[11] *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 689 (1985), where the U.S. Supreme Court suggested that the proper test for determining whether a particular instrument that is not clearly within the definition of "stock" in Section Securities Act 2(a)(1), or that otherwise is of an unusual nature, is the economic realities test set forth in *Howey*. In analyzing whether an instrument is a security, "form should be disregarded for substance," *Tcherepnin v.*

money, which is broadly understood to include any transfer of value, (ii) in a common enterprise, (iii) in which the investor is led to expect profits, (iv) that are derived from the entrepreneurial or managerial efforts of one or more third parties.[12] The Court in *Forman* indicated that essential to such determination is whether the purchased instrument is purchased upon the premise of a "reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others."[13] Satisfying the requirement for the "efforts of others" prong further required that such efforts are "undeniably significant ones, [the] essential managerial efforts which affect the failure or success of the enterprise."[14]

We believe the offer and sale of the Tokens, in the manner and under the circumstances described above, would not be considered to involve an "investment contract" under *Howey* and its progeny. Fuse will not sell Tokens to consumers for cash, and all distributions of Tokens reward consumers for their substantive actions on the Fuse Network described herein, such as, to adopt DERs in their households and to participate more efficiently in the energy system. Furthermore, Tokens can only be redeemed with Fuse, and only for limited discounts on Fuse Goods and Services. As a result, the economic reality is that the Tokens are an incentive, along with the lower energy consumption, utility cost savings, and better utilization of DER assets, that effectively compensate consumer participation in the Fuse Network. The Token's value is directly tied to its utility in the Fuse Network and not for speculative investment purposes. That is, the value of the Token will not be based on the overall success of the Fuse Network or other efforts undertaken by Fuse. Moreover, the redemption value of each Token will be based on the average market price of the Tokens on third-party unaffiliated digital asset markets at the time of the redemption, which will act to limit demand for the Tokens on the secondary market and to support the orderly and stable trading of the Tokens. That is, if the price of Fuse Tokens were to exceed the applicable redemption value, consumers would simply choose to pay for their Fuse Goods and Services out of pocket rather than purchasing Tokens on the secondary market.

For the present purposes, the truly relevant portion of the *Howey* test is the "reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others" prong, and accordingly, we will focus on that element of the *Howey* test.[15]

b. The Tokens are earned for consumptive intent and not with an expectation of profit.

In *Forman*, the Court examined whether the purchaser is "attracted solely by the prospects of a 'return' on his investment" or "motivated by a desire to use or consume the item purchased."[16] In analyzing this question, the Court conducted an "objective inquiry … into what the purchasers were 'led to expect',"[17] specifically whether marketing of the Co-op and purchase of Co-op "stock" in that case induced a purchaser to expect profit[18] and whether the economic reality of owning Co-op "stock" would cause a purchaser to

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Knight, 389 U.S. 332, 336 (1967), "and the emphasis should be on economic realities underlying a transaction, and not on the name appended thereto." *United Housing Found., Inc. v. Forman*, 421 U.S. 837, 849 (1975).

[12] *Howey* at 301.

[13] *Forman*, at 852.

[14] *Forman*, at 852.

[15] Accordingly, we do not address the "investment of money" or "common enterprise" elements of the *Howey* test.

[16] *Forman*, at 852 (citing *Howey*, 328 U.S. at 300).

[17] *Warfield v. Alaniz*, 569 F.3d 1015, 1021 (9th Cir. 2009).

[18] *Forman,* at 852 - 854 (discussing the impact of the "Information Bulletin" on the expectations of purchasers of Co-op "stock"); *see Teague v. Bakker*, 35 F.3d 978, 989 (4th Cir. 1994) ("the Court in *Forman* focused not on the

have an expectation of profit.[19] Applying such objective analysis to the Fuse Network and the Tokens yields the same result as in *Forman* – the Tokens are utilized to participate in the Fuse Network for the purpose of receiving discounts on Fuse Goods and Services. Moreover, the Tokens have not been, are not and will not be marketed as an investment or otherwise in a manner that would cause a purchaser to have an expectation of profit. Because the economic reality of any upside for earning, holding, redeeming, and selling the Token has nothing to do with the success of Fuse or the Fuse Network, it would not cause a reasonable purchaser to have an expectation of profit based on such success and efforts.

The Token has been designed for one purpose: consumptive use in connection with the Fuse Network. A consumer's primary motivation for participating in the Fuse Network is (i) a reduction in their electricity bill that may occur due to more efficient grid conditions (leading to reduced electricity prices), and consumption (based on flexibility determined by the consumer) and (ii) the ability to redeem the Tokens for Fuse Goods and Services. As in the CommunitySun, LLC No-Action Letter, such a reduction or redemption capability should not be considered "profits" to the consumer; rather, it is more akin to a rebate to encourage certain consumptive behaviors – in the same manner as the consumption of clean energy and promotion of Grid-Support Objectives in the case of CommunitySun and Fuse, respectively.[20]

Fuse's marketing will emphasize the consumptive use of the Tokens and make clear to consumers that the Tokens are not intended as investments, and will not inherently provide any return, profit, dividend or distribution or other similar feature to consumers as a result of Fuse's efforts. While Fuse may market the Tokens to consumers, it will do so by showcasing the redemption opportunities on the Fuse Network, not by promoting any secondary market. Furthermore, the Fuse App terms of service will comport with these marketing descriptions and formalize the Token's consumptive purpose and the available redemption opportunities (and limitations) for consumers. Furthermore, the Tokens will be marketed and distributed "solely for consumptive use as a means of interacting with" the Fuse Network, and the Tokens will be immediately useable for their intended purpose at the time they are awarded, aligning with the Pocketful of Quarters, Inc. No-Action Letter and IMVU No-Action Letter.[21] The focus of marketing efforts solely on the consumptive use of the Tokens as a means of exchanging value on, and in connection with, the Fuse Network further aligns with the Staff's views in the Pocketful of Quarters, Inc. No-Action Letter.[22]

The economic reality of the redemption mechanism for the Tokens clearly indicates to consumers the consumptive purpose of the Token and its maximum discount value, which effectively acts to limit potential speculation in the Token, creating a relatively stable, capped value for the Tokens, thus reducing or eliminating any reasonable expectation of profit. Specifically, immediately upon the public launch of the Tokens, the Tokens will be redeemable for a specified and exclusive discount on Fuse Goods and Services – their sole utility. While that discount amount is set from time to time by Fuse, it will not exceed 100% of

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testimony of purchasers of cooperative apartments, but on whether the marketing approach adopted by the sellers was likely to induce purchasers interested in turning a profit").

[19] *Forman, at 855 – 858 (*discussing potential manners in which holders of Co-op "stock" may receive revenue or cost savings and whether the possibility of such created an expectation of profit).

[20] CommunitySun, LLC SEC No-Action Letter (Aug. 11, 2011), at page 11.

[21] Div. of Corp. Fin., *Response of the Division of Corporation Finance Re: Pocketful of Quarters, Inc.*, U.S. SEC. AND EXCH. COMM'N (July 25, 2019) [hereinafter "Pocketful of Quarters No-Action Letter"]; https://www.sec.gov/corpfin/pocketful-quarters-inc-072519-2a1; Div. of Corp. Fin., *Response of the Division of Corporation Finance Re: IMVU, Inc.*, U.S. SEC. AND EXCH. COMM'N (Nov. 19, 2020), https://www.sec.gov/rules-regulations/no-action-interpretive-exemptive-letters/division-corporation-finance-no-action/imvu-111920-2a1 [hereinafter "IMVU No-Action Letter"].

[22] Pocketful of Quarters No-Action Letter.

Fuse's profit margin on such Fuse Goods and Services and will only be redeemable for specific Fuse Goods and Services. Furthermore, the effective discount rate for consumers electing to redeem Tokens will be clearly publicized, and the redemption value of each Token will be based on the average market price of the Tokens on third-party unaffiliated digital asset markets at the time of the redemption. Such economic realities will be clearly visible and transparently communicated to all consumers prior to their redemption. This is intentionally designed to avoid speculative intent on the part of rational consumers and secondary market participants. While the redemption value for VCOIN in the IMVU No-Action Letter was set at a fixed price, here, both the set discount amount and redemption value mechanism act similarly to maintain a stable value in the Token, minimizing any reasonable incentive that consumers may have to speculate with the Token, as well as encouraging stable and orderly trading on the secondary market. As with VCOIN, taken together with the fact that the Tokens are marketed solely for their consumptive use, reasonable consumers will not have an expectation of profit.[23]

Furthermore, as in the CommunitySun, LLC No-Action Letter, even if purchasers choose to speculate on the price of the Tokens increasing, any such intent would be completely divorced from the entrepreneurial or managerial efforts of Fuse or the success of the Fuse Network. If consumers attempt to invest in Fuse based on their projections of fluctuations in electricity prices or technological advances in clean energy or any other reason, any such "profit" would solely be derived from broader market activity, including that of the electricity market more generally, rather than from the entrepreneurial or managerial efforts of Fuse.[24] While the Fuse Network will continue to grow as consumers adopt more DERs into the energy ecosystem, its growth will be based on consumer activities in meeting the Grid-Support Objectives, and such growth is not expected to correlate to the value of the Token on the secondary market.

Rather, the value of the Token will remain based on its consumptive use and will not gain additional leverage or value from increased usage of or demand relating to the Fuse Network or so-called "network effects." Consumers undertake actions to increase the impact of DERs in the system, improve the efficiency of the grid, redeem their rewards for Fuse Goods and Services, and reduce their ongoing electricity costs. While it is possible that the consumers could also sell any excess Tokens on the secondary market, such expectation of profit is "far too speculative and insubstantial to bring the entire transaction within the Securities Acts."[25] Moreover, speculation in the Tokens will be limited by the aforementioned redemption mechanics and the technological constraints of the grid in the amount of capacity any one consumer can export, which work to limit the number of DERs any one household would want to install, reducing any economic incentive a rational actor would have to speculate with the Token – that is, any managerial efforts undertaken by Fuse to increase usage or demand of the Fuse Network would not reasonably be expected to result in an increase in the value of the Token.

In the Fuse Network, consumers are motivated to derive value from using their Tokens for their intended purpose – providing an immediate and tangible benefit to reduce their ongoing monthly costs, or investing in a DER to match their household consumption and so lower their long term electricity costs –

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[23] IMVU No-Action Letter.

[24] CommunitySun, LLC SEC No-Action Letter (Aug. 11, 2011), at page 12 (discussing that while the value of a SolarCondo may increase under certain economic conditions, including due to rising energy costs, such a potential gain would not be "profit" derived from the entrepreneurial or managerial efforts of others) *see also Noa v.Key Futures, Inc.*, 368 F.2d 77, 79 (9th Cir. 1980) (discussing how the resale of silver bars by the original purchasers did not constitute profits derived from the managerial efforts of the defendants because they depended on the fluctuations of the broader silver market).

[25] *Forman*, at 856.

not as the result of any appreciation in the value of the Token arising out of the efforts of or developments by Fuse or the Fuse Network.[26] While it is possible that some consumers may realize value by selling excess Tokens on a secondary market, such sales would be incidental to the ability to redeem the Tokens within the Fuse App. Conversely, while some consumers may purchase Tokens on the secondary market, their primary incentive to do so is consumptive in nature as the underlying economic reality is such that if the price of Fuse Tokens were to exceed the applicable discount a consumer could apply in the Fuse App, consumers would simply choose to pay for their Fuse Goods and Services out of pocket, therefore limiting demand for the Tokens. Moreover, the economic reality of the redemption mechanics leads to an expectation that any secondary market trading would occur within a relatively narrow price band, limiting speculative intent. All of this supports the Court's reasoning in *Forman* that "what distinguishes a securities transaction – and what is absent here – is an investment where one parts from his money in hope of receiving profits from the efforts of others, and *not where he purchases a commodity for personal consumption*"[27] – as is the case here. Furthermore, Fuse will not encourage or promote any such secondary market activity, nor will it engage in actions intended to artificially manipulate or increase the price of the Token on the secondary market.

III. **Conclusion**

For the foregoing reasons, we respectfully request, on behalf of Fuse, that the Staff confirm that it will not recommend that the SEC take enforcement action if Fuse offers the Tokens in the manner and under the circumstances described herein without registration under the Securities Acts.

Should you require additional information or wish to discuss this request further, we are available at your convenience. We appreciate your consideration of this matter and look forward to your response.

Respectfully,

/s/ Stephen P. Wink

Stephen P. Wink
of LATHAM & WATKINS LLP

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[26] *Tcherepnin*, at 339.

[27] *Forman*, at 858 (emphasis added).