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M. Roland Lescure
First Constituency for French Residents Overseas
General Rapporteur
Special Commission to Review The "PACTE" Bill
Assemblée nationale
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BY E-MAIL-URGENT

RE: « Crypto-Assets » amendment submitted by Valeria Faure-Muntian, Christine Hennion and Eric Bothorel

Mr. Assemblyman:

Our firm represents the Bitcoin Foundation, Inc. (hereinafter "the Foundation"), a non-profit organization founded in September 2012 in the United States. Comprised of senior leaders in the financial technology industry with a concentration on cryptocurrency technology, the Foundation coordinates efforts to educate institutional and governmental audiences about the benefits of cryptocurrencies, its use and its related technology requirements.

Our firm is represented in France by Caroline Gaffodio, a French attorney, whose contact information is provided below.

The Foundation's audience includes technologists, regulators, at both the national and local levels, as well as media outlets specialized in this area. Even though the Foundation is incorporated in the United States, its audience is global, since this technology is completely decentralized, and allows entrepreneurs in this field a complete mobility in terms of physical presence.

As an example, in November 2013, Patrick Murck, general counsel of the Foundation, testified before a United States Senate committee convened to assess digital currencies. After engaging with lawmakers, a near-unanimous consensus emerged that the federal government



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needed to be careful to avoid hampering the growth of the world's first completely decentralized payment system.

According to the newspaper *Les Echos* dated September 21, 2018 (see Laurence Boisseau, *Crypto-assets: France wants to create a legal framework for all actors*, *Les Echos*, September 21, 2018, available on <https://www.lesechos.fr/finance-marches/marches-financiers/0302288696694-crypto-actifs-la-france-cree-un-cadre-juridique-for-tous-les-acteurs-2207262.php>), an amendment to the bill on the growth and transformation of businesses ("PACTE bill"), may have been submitted by three LREM MPs, Valeria Faure-Muntian, Christine Hennion and Eric Bothorel, in order to extend the approach adopted on September 12, 2018 by the Special Committee to examine the PACT bill (hereinafter "the Commission").

This amendment, not yet published on the National Assembly website, making it impossible for us to review it on behalf of our client, would extend the approach applied to "Initial Coin Offerings" adopted on September 12, 2018 (see amendments No. 1862 & No. 1914, sub-amendments No. 2383 & No. 2385, available at <http://www.assemblee-nationale.fr/15/amendements/1088/CSPACTE/2383.asp>, <http://www.assemblee-nationale.fr/15/amendements/1088/CSPACTE/1862.asp>, <http://www.assemblee-nationale.fr/15/amendements/1088/CSPACTE/2385.asp>, <http://www.assemblee-nationale.fr/15/amendements/1088/CSPACTE/1914.asp>, requiring issuers to seek approval from the Autorité des Marchés Financiers) for the purpose of operating in France, and in particular extend the right to a professional bank account, and which would be applied to all entrepreneurs involved with "crypto-assets" in France.

In addition, the *Les Echos* article states that this amendment may be examined and adopted by the Commission starting as early as Monday, 24 September 2018.

If the existence of this amendment is confirmed, our client will have to express its public opposition throughout the legislative process, even through litigation, for the following reasons.

As to the legislative adoption process, no economic or legal emergency appears to exist to justify the adoption of such an amendment. The underlying technology supporting cryptocurrencies or other crypto-assets targeted by this amendment is at a very timid and limited stage of adoption, not only in France but in the world, so that there is no kind of threat that would justify such legislative haste.

Furthermore, my client is unable to formulate precise objections to this amendment, as it has not yet been published, and could be put to a committee vote in the coming hours according to the article in *Les Echos*.

Moreover, if this information is confirmed, it is surprising to observe the introduction of such an amendment, while the ad-hoc legislative commission on virtual currencies, chaired by



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Mr. Eric Woerth, has not yet, according to its public record, completed its work, even after many hearings since the beginning of 2018. Such a contradiction between the various proceedings of the National Assembly would lead my client to question the quality of the economic or legal reasoning that led to such a hasty adoption of this amendment.

On the basis of the article in Les Echos, and without the possibility of analyzing this amendment, the approach described in this article raises very serious questions regarding the relevance and the legal validity of this amendment.

First, on the basis of the ICO amendments mentioned above, if they represent the framework for an extension of this approach to all crypto-assets, such an extension would raise serious jurisdictional issues regarding the AMF's ability to regulate all activities related to crypto-assets. Indeed, the definition of a crypto-asset could cover any asset or token ranging from a cryptocurrency, such as Bitcoin, to an application developed on the basis of the blockchain methodology relying on non-financial assets, such as tracing artworks belonging to an art collection, or tracing the title of real estate assets. It should be noted that these specific applications are already being developed in the United States by several startups. Since when would the AMF have jurisdiction to regulate activities where, clearly, such jurisdiction does not currently exist, such as artistic activities or real estate transactions?

Moreover, it is surprising that the approval procedure provided in the amendment leads to the grant of the so-called "right to the professional bank account," as such a right is already provided for in the Monetary and Financial Code, to the extent that any company properly in business already has access to such a right, without being forced to engage in any additional legal obstacle to seek a right it already has! Any argument towards facilitating access to banking services towards startups involved in new technologies through this amendment would implicitly acknowledge that banks apply a discrimination policy against these companies, and expose them to potential legal action against their banking practices!

In addition, the approval of such an amendment would open to the Government, most likely the Treasury Department or any other department of the Ministry of Finance, the ability to specify the exact requirements for issuing such approval. However, the only existing basis in the French administrative or legislative records for establishing a regulatory framework of such a legislative provision is only found in the report submitted to the Ministry of the Economy and Finance (hereinafter "Bercy"), on July 5, 2018 ("*Crypto-currencies, report to the Minister of Economy and Finance Jean-Pierre Landau with the collaboration of Alban Genais, July 4, 2018*" hereinafter "the Landau Report"). However, the regulatory approach recommended by the Landau Report is based on a regulation promulgated in New York State in August 2015, commonly known as the "Bitlicense." The Bitlicense was promulgated by the New York Department of Financial Services ("the Department") on June 24, 2015. Part 200 of Chapter 1 of Title 23 of the New York Codes, Rules and Regulations ("NYCRR").



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The Landau report recommends that the French government adopts an "intermediate" regulatory approach, concluding that the Bitlicense represents a so-called "reasonable" option, implementing a supposedly "flexible" regulatory framework in France. This recommendation appears to have been adopted after meetings limited to the Department.

However, the conclusion of the Landau report, insofar as it relies on Bitlicense as a credible regulatory or legislative model in France and in Europe, is erroneous and based on largely incomplete information. Indeed, the "Bitlicense" is, at this very moment, challenged in court in New York for both technical and economic reasons. Indeed, this regulation led to a significant exodus of many startups immediately after its promulgation, due to disproportionate regulatory restrictions against startup companies focused on new technological projects, and because of its doubtful legal basis. In addition, this regulatory approach was disavowed by most other U.S. states following its promulgation in New York. Furthermore, during the winter of 2017, the New York State legislature held hearings for the purpose of either abolishing or fundamentally reforming the Bitlicense because of its destructive economic effects, during which my client submitted detailed testimony. Finally, the U.K. Parliament formally published similar conclusions against the Bitlicense regulatory approach in a recent report on cryptocurrencies (JD Alois, *New York State Department of Financial Services and BitLicense Slammed in UK Crypto Report*, CROWDFUNDINSIDER, September 19, 2018, available at <https://www.crowdfundinsider.com/2018/09/139198-new-york-state-department-of-financial-services-bitlicense-slammed-in-uk-crypto-report/>).

Therefore, it is clearly established that the economic impact of such a regulation would be counter-productive towards the ecosystem developing this technology, and that any similar regulation would lead to an inevitable exodus of startups involved in this field outside of France.

If the Commission opens the door to a regulatory approach on the basis of the Bitlicense, and without any public consultation on the impacts of such an approach, we ask that, at the very least, you suspend any vote on this amendment and that you hear the technical, economic and legal objections which the Landau report has clearly not been able to take into account. The stakes for the French National Assembly are very clear, and they involve the future of the fintech sector specialized in crypto-currencies, which is perfectly able to trigger an exodus from France, as well as a boycott of any project by a foreign entity in France following the promulgation of any legislation or regulation based on the Bitlicense, such as what happened in New York.

We are available for any conversation with your office to clarify the significant issues surrounding any regulatory approach involving this new and rapidly developing technology. Our corresponding attorney in Paris, Caroline Gaffodio, will be happy to coordinate this interview with your office.

I thank you in advance for your response. If you have any questions, please let us know.

Sincerely,



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