

LEGAL OPINION

THE PROJECT: STRIKE PLATFORM



Legal Kornet

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LEGAL OPINION

THE STRIKE PROJECT

To	Strike Finance	From	Legal Kornet OÜ
Attention	Vlantimir Ovtarov	Date	October 18, 2022
Subject	Regulatory advice on STRK	Client	Strike Finance

I. Introduction

We have been instructed by Strike Finance, a company incorporated under the laws of Bulgaria (“**Company**”), which is the founder of the STRIKE (“**Project**”), to issue this legal opinion to advise whether the STRK tokens (“**Tokens**”) issued by the Company can be considered as a security under the United States Federal Securities Laws.

We have not considered any other issues, other than that as set out at the paragraph above, and in particular we will not be aware of the status of any future rights and features that may be added to or removed from the Tokens, and have also not conducted any independent enquires or due diligence in respect of the operation of the Company (or its affiliates). This legal opinion is based on the United States Federal Securities Laws as at the date hereof and must not be read as extending, by implication or otherwise, to any other matter.

This legal opinion should be read together with the appendixes attached hereto, which form an integral part of this legal opinion.

In rendering this legal opinion, we have made the assumptions (without enquiry) as set out in Appendix 1 of this legal opinion (“**Assumptions**”).



This legal opinion is also subject to the qualifications as indicated in Appendix 2 of this legal opinion (**“Qualifications”**).

When issuing this legal opinion, we also relied on the reliability of the Representation and Guaranties as stipulated in Appendix 3 of this legal opinion (**“Legal Representation and Guaranties”**).

II. Legal Framework

A. Security Law

Congress enacted the Securities Act of 1933 (**“Securities Act”** or **“Security Law”**) to regulate the offer and sale of securities. The Securities Act establishes a set of requirements with the aim to provide investors with the opportunity to make an informed decision as well as to eliminate information asymmetry between the promoters and investors. Among these requirements are such as:

- To register offers and sales of the securities to the public with the SEC.
- To disclose material information about the issuer, its affiliates, and the securities, including financial and management information, as well as risks affecting the project.
- To make periodic public disclosures, including significant events and annual reports.

The definition of a “*security*” under the Securities Act includes a wide range of forms. Within the framework of this legal opinion, we will consider such investment vehicle as “*investment contract*.” The law and law enforcement practice have formed an approach according to which an investment contract is understood as investment of money in a common enterprise with an expectation of profits derived solely from the managerial efforts of others.

As the United States Supreme Court noted in SEC v. W.J. Howey Co., 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.*”



The courts further have established that, subject to certain conditions, investment contracts can even be recognized as transactions where the assets are the orange groves, exclusive drinks, and the shares in virtual enterprises.

B. Security Law for Blockchain Tokens in Light of SEC Report

In re SEC v C.M. Joiner Leasing Corp., 320 U.S..344, 351 (1943), it is established that:

"The reach of the Securities Act does not stop with the obvious and commonplace. Novel, uncommon, or regular devices, whatever they appear to be, are also reached if it be proved as a matter of fact that they were widely offered or dealt in under terms or courses of dealing which established their character in commerce as "investment contract", or any interest or instrument commonly known as security."

The same was held in Reves v. Ernst and Young, 494 U.S. 56, 61 (1990):

"Congress purpose in enacting the securities laws was to regulate investments, in whatever form they are made and whatever name they are called."

The US Securities and Exchange Commission (“**Commission**” or “**SEC**”) adheres to this position and declares that any new forms of investments via smart contracts or blockchain technology fall under the purview of US federal securities laws and on July 25, 2017, it issued a Section 21(a) investigative report, Release No. 81207, on investigation of DAO case. Among others, the aforementioned SEC report distinguishes projects where tokens represent securities as described above.

Hence, in this analysis, we shall investigate and provide our legal opinion as to whether the Token is a type of an investment vehicle that triggers relevant federal security law provisions of the United States.

III. Findings of Fact

We begin our legal analysis by providing information about the facts related to the Project and the Tokens. At this stage, our goal is to identify and describe the facts that will allow us to understand the model underlying the Project as well as the nature of the Tokens.



Investigating the facts, we take into account the position of the US courts that form should be disregarded for substance and the emphasis should be on economic reality.

Having said that, we note that our findings of facts are limited to the Company's instructions and the scope of this legal opinion, as indicated in section I [*Introduction*] of this legal opinion.

A. White Paper

For the purposes of this legal opinion, we have examined the White Paper ("WP") (*Appendix 4 hereto*) submitted to us by the Company and posted on the Project website at <https://strike.org/Whitepaper.pdf>.

According to the WP:

- The Company launched a decentralized cryptocurrency market protocol based on the Ethereum blockchain. Thanks to the capabilities of the Project developed by the Company, users will be able to take loans, provide their assets and interact with each other within a single platform.

«Strike is a decentralized money market that enables users to borrow and supply digital assets to the protocol within a non-custodial environment directly within the Ethereum blockchain.»

- The lending protocol, which is the basis of the Platform, allows users to earn interest by depositing their cryptocurrencies in one of several markets available to the participants of the Project.

«The main functionality of Strike is to enable users to supply collateral to either earn as a supplier or to use as collateral to borrow other digital assets from the protocol.»

The screenshot shows the Strike platform interface. At the top, there is a navigation bar with links for Home, Market, Governance, Developers, Whitepaper (which is highlighted in blue), and Launch App. Below the navigation bar, a message says "12 markets available". A table titled "All markets" lists the following data:

Market	Total Supply	Supply APY	Total Borrow	Borrow APY
USD Coin USDC	\$13.07M 13,076,124 USDC	4.03% 1.43%	\$8.85M 8,849,911 USDC	0.72% 0.03%
Tether USD USDT	\$11.58M 11,587,076 USDT	5.52% 1.62%	\$9.3M 9,305,893 USDT	-0.65% 4.78%
ETH ETH	\$8.24M 6,348 ETH	6.16% 2.28%	\$4.93M 3,800 ETH	0.91% 9.2%
Binance USD BUSD	\$5.49M 5,696,575 BUSD	5.21% 2.76%	\$3.74M 3,748,228 BUSD	5.99% 10.14%
Wrapped BTC WBTC	\$4.17M 217 WBTC	6.35% 4.56%	\$2.49M 130 WBTC	15.23% 19.01%

At the bottom of the table, there are navigation arrows for page 1 of 3.



- According to the information provided in the White Paper, the process of users interacting with the Platform and with each other assumes that when a user contributes some tokens to the market, he receives other stokens in return. These tokens represent a person's share of the pool and can be used to redeem the cryptocurrency originally deposited in the pool at any time. The company states that the value of the initially deposited tokens may change over time.

«Within Strike, there are native tokens called “sTokens” that are pegged to the underlying supported digital asset. For example, sUSDC is pegged to USDC. These sTokens are portable and can be transferred between Ethereum Wallets. The primary purpose of sTokens are to represent the proportionate value of the underlying asset on the protocol and to redeem the underlying asset at any time.»

- Users of the Platform who are interested in a loan can take out a secured loan from any STRIKE pool by depositing collateral. The maximum loan-to-value ratio varies depending on the collateral asset. The interest rate paid varies depending on the borrowed assets.
- A feature of the Platform is its management and decision-making system. In the White Paper, the Company announces that it plans to operate a mechanism called Governors. Governors will be empowered to add whitelisted tokens to the Platform market. STRK Token holders will be able to propose changes to the protocol, discuss them and vote. The White Paper states that this process will be carried out without any involvement of the Company.

«The value proposition in Strike is to enable elected governors, similar to delegates, who can white list which assets can be added into the protocol and then enable the community to vote on them. Governors are community members voted in by their peers with delegated STRK tokens.»

- The Company declares that Tokens can only be used by holders within the framework of the Platform itself. The White Paper states that tokens are not securities, investment contracts.

«STRK is not intended to constitute securities or financial instruments in any jurisdiction.»

«Any purchase of STRK will be for consumptive purposes only and for within the protocol such as Governance, voting, and for mining.»



- In connection with the Project, the Company has distributed/will distribute a fixed number of the Tokens.
- The Tokens can be practically used as follows:
 - The Token can be used by holders to participate in the management of the Platform. According to the information contained on the official website of the Project and in the White Paper, users can make decisions related to the current and future development of the Platform by voting on individual ones. One Token is equal to one voting vote.

«Any address with more than 65,000 STRK delegated to it may propose governance actions, which are executable code. When a proposal is created, the community can submit their votes during a 3 day voting period. If a majority, and at least 130,000 votes are cast for the proposal, it is queued in the Timelock, and can be implemented after 2 days.»

In addition to the standard voting on the development of the Platform, Token holders will be able to be elected to the number of Governors. Governors are the 21 addresses with the largest STRK balance. Each elected Governors exercises his powers for 28 days. After the specified period, a new group of Governors will be elected, who may be the same re-elected or new ones who made it to the top 21.

- STRK Tokens can be used by holders to participate in staking and farming available within the Platform.

«This means users are able to mine the remaining approximately 3.5 million STRK which will be made available through liquidity mining (farming) incentives on the protocol.»

- According to the data provided by the Company, the STRK Token can be used by the participants of the Platform for "Supply token in lending". The loan mechanism is one of the main elements of the Platform's ecosystem. Project Strike is a decentralized money market that allows users to borrow.

«The process of which a user transfers digital asset to the protocol is through the mint function which correlates to supplying collateral to Strike.»



«When a user wants to initiate a borrow function, they are using their supplied digital asset as collateral that will be used to guarantee that the borrow balance gets paid back.»

- Analysis of the WP (in connection with the information from the sources specified in paragraphs 2 and 3 of this section III [Findings of Fact] of the legal opinion) allows us to draw a conclusion about the role of the founders in the current work and development of the Project. We believe that the founders are a separate category of users of the Project who have certain rights and obligations in relation to the Project.

Since the Project was already launched at the time of preparation of the legal opinion, we can evaluate the activities of the founders at the development stage and at the stage after the launch of the Platform.

So, at the stage of development of the Project of the founders, first of all, they were worried about organizational and technical issues. In particular, the founders developed a set of functions and capabilities of the Project and the Token, supported the Platform and tested it. After the launch of the Project, the founders negotiate with partners on establishing cooperation, maintain the work of the official website of the Project, and publish current versions of the White Paper for a wide range of potential users.

- Project users are Token holders interested in the most beneficial use of digital assets. According to the information provided by the Company, thanks to the functions of the Project, users will be able to issue loans, exchange cryptocurrencies, make decisions on some issues related to the development of the Project.

«Strike Tokens are built and deployed on the Ethereum blockchain and are ERC-20 based assets. STRK enables users to create proposals, vote on proposals, and participate in liquidity mining incentives on the platform.»

Analysis of the White Paper (in connection with the information from the sources specified in paragraphs 2 and 3 of this section III [Findings of Fact] of the legal opinion) allows us to conclude that all users of the Project are actively involved in the operation/development of the Project, since the more people become users of the Project, the more complex and flexible the Project becomes. This finding also applies to the Project mechanism.



At the same time, users performing transactions using the Tokens and the Project can determine its shortcomings and functions, which, in turn, may affect the further development and improvement of the Project.

Obviously, no legal opinion on the Howey Test may obviate the token analysis and we will scrutinize it not only in this part hereof. Just ensuring a practical use at the time of launch is insufficient to exempt the token from the securities laws. However, we describe what we have in our case.

B. Statements of Facts

In preparation for our legal analysis, we asked the Company to answer a number of questions concerning the basic features of the Project and the Tokens. We also asked the Company to issue these answers in the form of Statements of Facts (*Appendix 5 hereto*) (“**Statements of Facts**”), which we provide below.

According to the Statements of Facts, as at the date hereof:

- The Company did not start the sale of Tokens.
- The Project has been developed and is at the operation stage.
- Token holders can exercise real and substantial control over the Project through voting.
- The Company does not promise any ownership or equity interest in a legal entity, including a general partnership.
- The founders of the Project retain a stake in the Project.
- Tokens are not sold to a certain group of potential users of the Project.
- It is assumed that the Tokens are primarily held in amounts needed for expected use.
- The Tokens can be practically used in the Project.
- The Company does not promise any passive income or dividend distribution.



- The Company will sell the Tokens to general public, not to sophisticated investors.
- The marketing materials distributed do not contain any information about how the Tokens can be used for profit.
- The amount of benefits, which can be obtained by the users of the Project, depends on their own actions/amount of spending.
- The community takes a central role in development and growth of the Project.
- The Project is sufficiently decentralized so the Token holders would no longer reasonably expect the founders of the Project to carry out essential managerial efforts.
- The Company does not plan to support the secondary market for the Tokens.

Further in the text of this legal opinion, the WP and the Statements of Facts are also collectively referred to as the “**Project Documents**”.

Considering that, as at the date hereof, we are not aware of any circumstances giving a reason to assume that the Project Documents contain incomplete and/or inaccurate and/or misleading information, our legal opinion is based on the information contained in the Project Documents. The Company is exclusively responsible for the preparation and fair presentation of the Project Documents in accordance with the applicable laws. This legal opinion has no objective to obtain a reasonable assurance about whether the Project Documents as a whole are free from material misstatement, whether due to fraud or error. Under no circumstances will we be liable if the information contained in the Project Documents, in full or in any part, is incomplete and/or inaccurate and/or misleading.

IV. Law Enforcement Practice

Further in this section IV [*Law Enforcement Practice*] of the legal opinion, we provide references to legislation and key law enforcement practice, on the basis of which, *inter alia*, we analyzed the facts specified in section III [*Findings of Fact*] of this legal opinion and evaluated them in accordance with the elements of the Howey Test as specified in section V [*Analysis Under the Howey Test*] of this legal opinion.



A. The Howey Test and Its Adoption by the Federal Courts (will be analyzed further in the case)

In accordance with Section 2(a)(1) of the Securities Act, a security is:

“any note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement ... investment contract ... or, in general, any interest or instrument commonly known as a ‘security,’ or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.”

The federal Exchange and Securities Acts tend to control issuing of securities and to confirm particular interests attached to them. However, the Securities Act promotes a priority of the substance over the form. Therefore, if the Commission reveals any type of cooperation promising any future profits merely out of signing particular contract, it may investigate the case and declare this contract a security. Under such circumstances, promoters of such instrument shall disclose particular information and submit it to the SEC.

The Supreme Court case for determining whether an instrument meets the definition of a security is SEC v. Howey, 328 U.S. 293 (1946). In that case, a promoter offered to purchase certain services (cultivation of land) for the fixed price and cost of services. The promoter was delegated to distribute the net profits derived from the sale of fertile land among the holders of land plots during the harvesting period. There were only 42 investors interested in purchasing the land.

The Court construes the “*investment contract*” term within the definition of a security and notes that it has been used to classify those instruments that are of a “*more variable character*” that may be considered as a form of “*contract, transaction, or scheme whereby an investor lays out money in a way intended to secure income or profit from its employment.*” 11 Howey, 328 U.S. at 298; Golden v. Garafolo, 678 F.2d 1139, 1144 (2d. Cir. 1982).

More specifically, the court comes to the conclusion that the contract between the promoter and investor constitutes an investment contract. The court explains the definition of the security transaction as follows:



“a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party.”

Moreover, the court said that this definition was “*crystallized*” in the state courts cases long before adoption of the federal act. The Supreme Court continues that the term

“had been broadly construed by state courts so as to afford the investing public a full measure of protection. Form was disregarded for substance and emphasis was placed on economic reality.”

The Court stated that its definition of investment contracts

“embodies 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.”

Eventually, to determine that this is an investment contract, the court has to establish that the following applies: (i) *investment of money*; (ii) *common enterprise*; (iii) *expectation of profits*; (iv) *solely from the efforts of others* (e.g., from a promoter or third party).

With regard to the first prong “*investment of money*”, there is no basis for disagreement. The only issue that may arise here is whether cryptocurrency may constitute viable consideration interest in lieu of the obtained interests attached to the token. This issue is addressed by the Supreme Court itself holding that the first prong requires only

“tangible and definable consideration in return for an interest that had substantially the characteristics of a security.”

One of the legal issues related to the “*investment of money*” criterion, related to blockchain technologies, is that there could be smart contracts that are acting autonomously and independently: cryptocurrency may be transferred under one contract while tokens, in lieu thereof, will be transferred (“*airdropped*”) under another smart contract.

However, the Supreme Court fails to specify the definition of a common enterprise. Federal Court developed two different concepts to analyze underlying contractual



relationships of the parties. The first doctrine is “*horizontal commonality*” and the second is “*vertical commonality*. ”

Horizontal commonality is found when a) investors’ contributions are pooled together (and according to some courts, there is a pro rata sharing of profits) and b) the fortune of each investor depends on the success of the overall enterprise. In contrast, vertical commonality presupposes that common enterprise may be found where the investors’ fortune is dependent on the expertise of the promoter or third parties. In case of narrow vertical commonality, investors’ profits shall be tied to the profits of promoters.

It is not necessary that the funds of investors are pooled; what must be shown is that the fortunes of the investors are linked with those of the promoters, thereby establishing the requisite element of vertical commonality. Thus, a common enterprise exists if a direct correlation has been established between success or failure of the promoter’s efforts and success or failure of the investment. According to this view, the test is satisfied if the promoter and the investor are both exposed to risk and the profits and losses of investor and promoter are correlated.

In broad vertical commonality, investors’ success depends on the efficacy of the managers or third parties. Both the Fifth Circuit and the Eleventh Circuit follow this view. If the investor relies on the promoter’s expertise, then the transaction or scheme represents a common enterprise and satisfies the second prong of the Howey Test.

As mentioned above, the circuits now disagree over the term “*common enterprise*. ”

The third prong is an “*expectation of profit derived from the entrepreneurial or managerial efforts of others*. ” Analyzing this prong, courts consider whether potential investors expect to receive profits 1) from their own efforts (use of rights or services obtained from promoters) or 2) from the efforts (managerial expertise) of the founders.

Even though in *re Howey*, the Court used the phrase “solely” from the efforts of others, the lower courts relaxed this prong, adopting concepts of “*undeniably significant*” or “*predominantly*” (*Rivanna Trawlers Unlimited v. Thompson Trawlers, Inc.*, 840 F.2d 236, 240 n.4 (4th Cir. 1988) *SEC v. Life Partners, Inc.*, 87 F.3d 536, 545 (D.C. Cir. 1996); *SEC v. Int’l Loan Network, Inc.*, 968 F.2d 1304, 1308 (D.C. Cir. 1992). *SEC v. Koscot Interplanetary, Inc.*, 497 F.2d 473, 483 (5th Cir. 1974) (quoting *SEC v. Glenn W. Turner Enters., Inc.*, 474 F.2d 476, 482 (9th Cir. 1973)).



In *United Housing Foundation, Inc. v. Forman*, the Supreme Court stated, “*The touchstone is the presence of an investment in a common venture premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others.*” 421 U.S. 837, 852 (1975).

Since that time, some courts are investigating whether there is *de minimis* efforts of investors and whether efforts of them are insubstantial factor for the investor to participate in the contract.

Other courts check whether the efforts of offerors of the contract are predominant and more significant in comparison with those of investors in light of future expectation of profits or whether efforts of those other than the investors are “*the undeniably significant ones.*”

Finally, some courts hold that the fourth prong is satisfied when the expectations of profits derive from the managerial and entrepreneurial efforts of the offerors, “*in unspecified measure and unspecified comparative weight as to the relative significance with investors' efforts and offerors' or third parties' efforts.*”

B. Considerations of DAO Case by the SEC

Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: the DAO (hereinafter the “**DAO case**” or “**Report**” or “**Investigation**”) is the first investigation of the Commission in attempt to provide the ICO market with an interpretation or application of the US Security regulations (Securities Act of 1933) to a new paradigm of decentralized economy with the “*rule of code.*”

“*The investigation raised questions regarding the application of the U.S. federal securities laws to the offer and sale of DAO Tokens, including the threshold question whether DAO Tokens are securities. Based on the investigation, and under the facts presented, the Commission has determined that DAO Tokens are securities under the Securities Act of 1933 (“Securities Act”) and the Securities Exchange Act of 1934 (“Exchange Act”).*”

The Report revealed that tokens introduced by the DAO were security instruments, hence being subject to the federal securities laws. Among others, the Report claims that blockchain technology-based securities must be registered unless a valid exemption applies. Those participating in unregistered offerings may be liable for violations of the securities laws.



The Commission confidently stresses that federal law shall be equally applied both to conventional corporations issuing investment instruments and to virtual structures such as decentralized autonomous organizations—the DAO.

The four cornerstones formed by US judicial law shall be intact. And in this regard, the Report looks at the DAO Token through the prism of four elements of the well-known Howey Test: investment of money in a common enterprise for the expectation of profits solely from the managerial efforts of others.

As it is stated in the Investigation:

"This Report reiterates these fundamental principles of the U.S. federal securities laws and describes their applicability to a new paradigm—virtual organizations or capital raising entities that use distributed ledger or blockchain technology to facilitate capital raising and/or investment and the related offer and sale of securities.

The automation of certain functions through this technology, "smart contracts" or computer code, does not remove conduct from the purview of the U.S. federal securities laws. This Report also serves to stress the obligation to comply with the registration provisions of the federal securities laws with respect to products and platforms involving emerging technologies and new investor interfaces."

Without any doubt, DAOs have dramatic effect on legal reasoning as to whether a token is a security instrument. This Legal Opinion is not an exception, as it will apply conclusions of the Commission and the four-prong test.

It is clearly stated in the Report that registration of securities is required for the purposes of full disclosure of information to the investors. Such disclosure enables purchasers to make a considerable decision and facilitates legal scrutiny for investor protection.

Section 5 of the Securities Act declares:

"The registration provisions of the Securities Act contemplate that the offer or sale of securities to the public must be accompanied by the "full and fair disclosure" afforded by registration with the Commission and delivery of a statutory prospectus containing information necessary to enable prospective purchasers to make an informed investment decision.



Registration entails disclosure of detailed “information about the issuer’s financial condition, the identity and background of management, and the price and amount of securities to be offered ...”

The DAO is a drastic example that was used by the founders as a representation of a “virtual” organization incorporated in a form of a code. The DAO was thought as a for-profit organization that emits tokens to investors in order to form a set of assets that would be then used to fund “projects.”

Prospective holders of DAO tokens are supposed to share earnings from these projects as a return on their investment in DAO tokens. In addition, DAO token holders can monetize their investments re-selling tokens on a number of web-based platforms that support secondary trading in the DAO Tokens.

“DAO Token holders were not restricted from re-selling DAO Tokens acquired in the offering, and DAO Token holders could sell their DAO Tokens in a variety of ways in the secondary market and thereby monetize their investment as discussed below. Prior to the Offering Period, Slock.it solicited at least one U.S. web-based platform to trade DAO Tokens on its system and, at the time of the offering, The DAO Website and other promotional materials disseminated by Slock.it included representations that DAO Tokens would be available for secondary market trading after the Offering Period via several platforms.

During the Offering Period and afterwards, the Platforms posted notices on their own websites and on social media that each planned to support secondary market trading of DAO Tokens.”

“For example, customers of each Platform could buy or sell DAO Tokens by entering a market order on the Platform’s system, which would then match with orders from other customers residing on the system. Each Platform’s system would automatically execute these orders based on pre-programmed order interaction protocols established by the Platform.”

DAO construction was built in a way to allow any DAO token holder to have a vote right for a project that would promise certain investment returns. Each action of a token holder was executed via a smart contract.

“According to the White Paper, in order for a project to be considered for funding with “a DAO [Entity]’s [ETH],” a “Contractor” first must submit a proposal to the DAO Entity.



Specifically, DAO Token holders expected Contractors to submit proposals for projects that could provide DAO Token holders returns on their investments. Submitting a proposal to The DAO involved: (1) writing a smart contract, and then deploying and publishing it on the public ledger.”

The Report starts its legal analysis by applying each element of the Howey Test. The first one is straightforward. Each DAO participant invests a certain amount of funds to acquire tokens that would provide him with ownership rights and the right to vote in a project that promises to be profitable. Hence, the Commission finds the first element of the Howey Test to be satisfied.

“In exchange for ETH, The DAO created DAO Tokens (proportional to the amount of ETH paid) that were then assigned to the Ethereum Blockchain address of the person or entity remitting the ETH. A DAO Token granted the DAO Token holder certain voting and ownership rights. According to promotional materials, the DAO would earn profits by funding projects that would provide DAO Token holders a return on investment.”

The second element was found to be positive as well since the DAO was clear in its intentions and provided on its website information on the for-profit purpose of organization.

“[P]rofits” include “dividends, other periodic payments, or the increased value of the investment,” Edwards, 540 U.S. at 394. As described above, the various promotional materials disseminated by Slock.it and its cofounders informed investors that The DAO was a for-profit entity whose objective was to fund 12 projects in exchange for a return on investment. The ETH was pooled and available to The DAO to fund projects.”

The final element has been met as token holders were fully reliant on the actions of third parties.

“Investors in The DAO reasonably expected Slock.it and its co-founders, and The DAO’s Curators, to provide significant managerial efforts after The DAO’s launch. The expertise of The DAO’s creators and Curators was critical in monitoring the operation of The DAO, safeguarding investor funds, and determining whether proposed contracts should be put for a vote.”



C. Consideration of Munchee Case by the SEC

After the DAO Report, the next case of a paramount importance is the cease-and-desist order (hereinafter the “**Order**”) against a Californian corporation, Munchee Inc. (hereinafter “**Munchee**”) where the latter was declared to be a company that organized the unregistered sale of security instruments.

After the Howey Test scrutiny, the Commission found that Munchee tokens did not satisfy the third and fourth element of the test. The SEC implications in Munchee’s Order has a long-standing effect on the legal reasoning applied to the tokens of any ICO project.

Thereby the SEC has sent a clear message that it will take substantial approach to any ICO project.

That said, factual actions of a company may implicate that tokens are considered to be traded on a secondary market. For instance, if it is marketed beyond the targeted audience or burned for its price appreciation or endorsed for third-party statements on token attraction for investment purposes. All these factors, though not being explicitly stated, shall be weighted in every ICO project, and in this Legal Opinion we analyze this fact pattern also.

Munchee created an iPhone application for people to review restaurant meals. In October and November 2017, Munchee launched an offer of the digital tokens (hereinafter “**MUN**” or “**MUN token**”) to be issued on a blockchain.

Munchee offered MUN tokens to raise about \$15 million in cash so that it could, firstly, improve its existing application and, secondly, recruit application users (restaurants) to purchase advertisements, write reviews, post photographs or to buy food and conduct other transactions using MUN. The company communicated through its website, a white paper, and other means that it would use the proceeds to create the platform.

The SEC has investigated in the Order that in the white paper Munchee ensured investors that token shall be listed on several prominent US exchange markets or at least it will take all reasonable steps for that. Then, the trade has occurred far beyond the US while the visitors of the restaurants were in California.



What is more, Munchee declared support of token price appreciation. Hence, any prospective token holder may reasonably believe that their investments in tokens can generate a considerable profit. The following is stated in the Order by the SEC:

"In the MUN White Paper, Munchee stated that it would work to ensure that MUN holders would be able to sell their MUN tokens on secondary markets, saying that "Munchee will ensure that MUN token is available on a number of exchanges in varying jurisdictions to ensure that this is an option for all token-holders."

"Munchee represented that MUN tokens would be available for trading on at least one U.S.-based exchange within 30 days of the conclusion of the offering. It also stated that Munchee would buy or sell MUN tokens using its retained holdings in order to ensure there was a liquid secondary market in MUN tokens."

In the white paper, Munchee has tried to persuade investors that it would run its business in a way that would cause MUN tokens to rise in value. The so-called platform is structured to burn tokens taking them out of circulation and thereby raising their price. Or, in another case, it was stated in the white paper that the holder of more tokens would be rewarded with a major number of tokens.

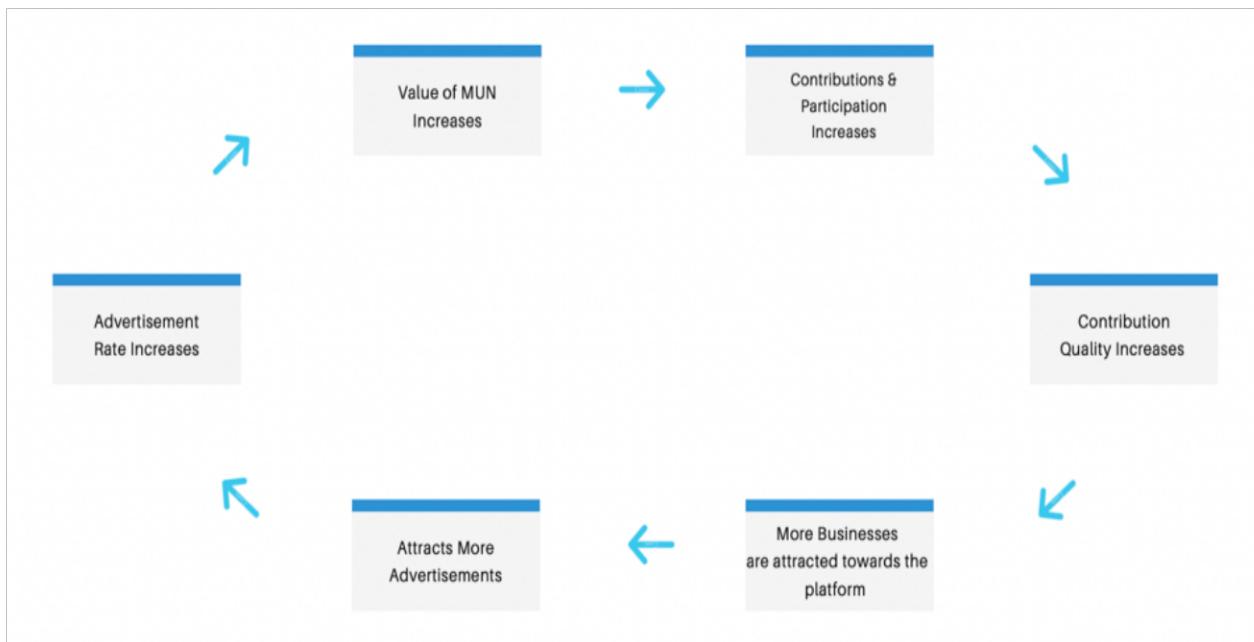
Besides that, the SEC defined that despite of Munchee statements in the white paper, no economic circulation has finally occurred within the platform. Thereby, it may be concluded that Munchee artificially intensified appreciation of token value. The following is stated in the Order of the Commission:

"In the MUN White Paper, on the Munchee Website and elsewhere, Munchee and its agents further emphasized that the company would run its business in ways that would cause MUN tokens to rise in value. First, Munchee described a "tier" plan in which the amount it would pay for a Munchee App review would depend on the amount of the author's holdings of MUN tokens.

For example, a "Diamond Level" holder having at least 300 MUN tokens would be paid more for a 5 review than a "Gold Level" holder having only 200 MUN tokens. Also, Munchee said it could or would "burn" MUN tokens in the future when restaurants pay for advertising with MUN tokens, thereby taking MUN tokens out of circulation. Munchee emphasized to potential purchasers how they could profit from those efforts:



While Munchee told potential purchasers that they would be able to use MUN tokens to buy goods or services in the future after Munchee created a “Platform,” no one was able to buy any good or service with MUN throughout the relevant period.”



As follows from the Order, the Munchee marketing campaign was aggressively designed as to deliver to investors an idea that MUN will be traded on a secondary market with an exponential growth. The more actively Munchee echoes this message, the less meaningful the economical use of the platform becomes. The SEC has traced the following blog post commercials that among others prove investors' expectations of profits.

“Munchee published a blog post on October 30, 2017, that was titled “7 Reasons You Need To Join The Munchee Token Generation Event.” Reason 4 listed on the post was “As more users get on the platform, the more valuable your MUN tokens will become” and then went on to describe how MUN purchasers could “watch their value increase over time” and could count on the “burning” of MUN tokens to raise the value of remaining MUN tokens.”

Munchee underlines the strong linkage between the number of participants, building of the platform and growth of MUN token value.

“Similarly, on or about October 23, 2017, one of Munchee’s founders described the opportunity on a podcast about the MUN offering: So, they [users] will create more quality content to attract more restaurants onto the platform.

So, the more restaurants we have, the more quality content Munchee has, the value of the MUN token will go up—it's like an underlying incentive for users to actually contribute and actually build the community.”

What is more, Munchee was negligent to endorse third party statements that touted the opportunity to profit.

“On October 25, 2017, Munchee created a public posting on Facebook, linked to a third-party YouTube video, and wrote “199% GAINS on MUN token at ICO price! Sign up for PRE-SALE NOW!” The linked video featured a person who said “Today we are going to talk about Munchee. Munchee is a crazy ICO.

If you don’t know what an ICO is, it is called an initial coin offering. Pretty much, if you get into it early enough, you’ll probably most likely get a return on it.”

This person went on to use his “ICO investing sheet” to compare the MUN token offering to what he called the “Top 15 ICOs of all time” and “speculate[d] that a \$1,000 investment could create a \$94,000 return.”

Finally, the MUN token marketing campaign strengthened beyond the United States where the restaurants were not located and focused primarily on the forums of people who are interested in crypto assets investments.

“Instead, Munchee and its agents promoted the MUN token offering in forums aimed at people interested in investing in Bitcoin and other digital assets, including on BitcoinTalk.org, a message board where people discuss investing in digital assets. These forums are available and attract viewers worldwide, even though the Munchee App was only available in the United States.”

Similarly, Munchee offered to provide MUN tokens to people who published promotional videos, articles or blog posts in forums such as BitcoinTalk.org or otherwise helped Munchee promote the MUN token offering.

More than 300 people promoted the MUN token offering through social media and by translating MUN token offering documents into multiple languages so that Munchee could reach potential investors in South Korea, Russia, and other countries where the Munchee App was unavailable”



In conclusion and for the purposes of this legal opinion, we note that in accordance with the SEC position in Re Munchee any ICO project may not meet the third and fourth prong (expectation of profits solely from the managerial benefits of others) of the Howey Test if the project represents only a veil without substantial economical underlying platform.

D. Comparison with the Verge Crypto-Currency General Partnership case

Plaintiffs Cameron James and the other plaintiffs filed their Complaint against Justin E. Valo. The case allegedly arises out of the theft of Plaintiffs' Verge virtual currency (the "**Verge Coins**"), which were themselves unregistered securities, from a smart phone "hot wallet" application called CoinPouch that was developed and marketed by two related Texas entities that are now in bankruptcy—Touch Titans, LLC, and Touch Titan Labs, LLC.

Among others, plaintiffs claim a Defendant Valo, the Lead Developer of Verge, and the Verge Crypto-Currency General Partnership, a common law general partnership formed to develop, market and benefit from the use of the Verge Coins (collectively the "**Partnership**"), engaged in intentional, reckless or negligent acts leading to the theft of their Verge Coins.

In accordance with the complaint, the Partnership violated Sections 5 and 12(a) of the Securities Act and the Computer Fraud and Abuse Act ("CFAA") [18 U.S.C. § 1030], in addition to other relevant Texas state law claims pleaded. The second count was securities law violation, the third count—conversion, the fourth—unjust enrichment, and the fifth claim was based on product liability.

For the purposes of this legal opinion, we consider one issue that, from our point of view, might be relevant to the fact pattern provided in the WP even though there is no court decision in the Justin E Valo case.

We do not consider how Plaintiffs came to the conclusion that Verge token *is not a security* in accordance with the Howey Test, since they do not provide explanations on the reasoning behind the claim. However, the question we have proposed is whether the Project amounts to a partnership.

In accordance with Uniform Partnership Act of 1997 Section 202:



- a) ...Association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.
- b) In determining whether a partnership is formed, the following rules apply:
 - (1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.
 - (2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.
 - (3) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

From the uniform law provided above, it can be inferred that a major difference between a partnership and other forms of incorporation relates to whether and to which extent the entire business may be declared to be a legal entity.

In this respect, it can be defined that legal entity is a separate subject of law having its own rights such as the right to own and dispose of property, to sue and be sued, and to enter into contracts. In other words, there are two separate subjects recognized by the law.

When individuals carry out a common enterprise as partners, the common law dictates that partnership does not exist. Under the common-law theory, a partnership is an aggregate word for individuals. The rights and duties recognized and imposed by common law are those of the individual partners.

Plaintiffs in their lawsuit did not unfold the doctrine of joint partnerships but did make such a conclusion as several people were listed in the Black Paper with the main goal of investment collection, such as founders, developers, marketers.

In this respect and considering the alleged claims to be true that people involved in building an ecosystem are those that “*receive a share of the profits*” members of the decentralized system could fall into the domain of Section 202 (a) (3) of the Uniform Partnership Act 1997.



Based on the Project Documents, we note that the profit-sharing element is not satisfied with respect to the Project tokens because:

- (a) Functions of the Tokens do not grant users any rights to participate in or receive any profit, income or other payments by virtue of their possession of the Tokens. An exception is the income that some users may receive from the staking and farming available on the Platform; and
- (b) Although a user using the Project may be able to receive tokens for their contribution to the Project, such distribution of rewards and / or incentives is based on the user contributing to the Project by providing liquidity to the Project's liquidity pool. Accordingly, rewards and / or incentives are allocated in accordance with such contributions of such user to the Project, and not because such user owns tokens.

The Project case is different since it is more likely that Tokens do not represent an investment instrument as analyzed below. Taking for granted that Tokens are not securities, we may come to the conclusion that Section 202 (a) (3) is not applicable here. Each user is not a partner to the Project and is not promised any share in any Project company.

Then, unlike with the Verge Case, in the Project none of the materials identify persons involved in the promotion of the Project, its tight circle, bonds, investments interests or forms of incorporation.

Yet, the Project might fall into a “safe harbor” under section 202 (a) 2 of the Uniform Partnership Act 1997 providing the mere sharing of gross returns does not establish partnership even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

Considering all the above, we note that the Verge case is a mere claim of a Plaintiff. No competent court has yet introduced the decision and underlined its point of view, therefore this case is not decisive to this legal opinion.

E. Consideration of the SEC vs. TELEGRAM GROUP INC. and TON ISSUER INC.

In the SEC vs. TELEGRAM GROUP INC. and TON ISSUER INC., the SEC sought to prevent Telegram Group Inc. and TON Issuer Inc. (collectively “**Telegram**”) from engaging in a plan to distribute Telegram’s tokens (“**Grams**”) in what it considered to be an unregistered offering of securities.



As established by the court decision, in early 2018, Telegram received \$1.7 billion from 175 sophisticated entities and high net-worth individuals in exchange for a promise to deliver 2.9 billion Grams. Telegram contended that the agreements to sell the 2.9 billion Grams were “*lawful private placements of securities covered by an exemption from the registration requirement.*” In Telegram’s view, “*only the agreements with the individual purchasers are securities.*”

According to Telegram, the Grams were not to be delivered to these purchasers until the launch of Telegram’s new blockchain, the Telegram Open Network (“TON”). Telegram viewed the anticipated resales of Grams by the 175 purchasers into a secondary public market via the TON as “*wholly-unrelated transactions*” and argued “*they would not be the offering of securities.*”

The SEC saw things differently. The initial purchasers are, in its view, “*underwriters*” who, unless Telegram is enjoined from providing them Grams, will soon engage in a distribution of Grams in the public market, whose participants would have been deprived of the information that a registration statement would reveal.”

The Court found that the SEC showed “*a substantial likelihood of success in proving that the contracts and understandings at issue, including the sale of 2.9 billion Grams to 175 purchasers in exchange for \$1.7 billion, are part of a larger scheme to distribute those Grams into a secondary public market, which would be supported by Telegram’s ongoing efforts.*” Considering the economic realities under the Howey test, the Court came to a conclusion that, “*in the context of that scheme, the resale of Grams into the secondary public market would be an integral part of the sale of securities without a required registration statement.*” Therefore, the Court granted the SEC’s motion for a preliminary injunction.

The case under consideration is valuable for understanding, as in its Opinion and Order dated March 24, 2020, the Court summarized the law enforcement practice in the field of securities legislation and formulated a number of conclusions concerning the public sale of cryptocurrencies.

Among other things, the Court introduced a position regarding at what point in time it is necessary to evaluate the token under the Howey Test. The Court rejected the Telegram’s arguments that Grams had to be evaluated under the Howey Test at the time of their delivery to the purchasers, i.e., at the launch of the TON Blockchain (in view of the Telegram, once the TON Blockchain is launched the delivery of the Grams is not to be part of a common enterprise and will not provide essential managerial efforts).



The Court stated that “*Howey requires the Court to examine the series of understandings, transactions, and undertakings at the time they were made*” and “*for the purposes of the securities laws, a sale occurs when “the parties obligated themselves to perform what they had agreed to perform even if the formal performance of their agreement is to be after a lapse of time ...”*

Of great importance is the Court’s position in relation to such Howey prong as “Common Enterprise.” According to the previous law enforcement practice, the existence of a common enterprise may be demonstrated through either horizontal commonality or vertical commonality. Horizontal commonality is established when investors’ assets are pooled and the fortune of each investor is tied to the fortunes of other investors as well as to the success of the overall enterprise. In contrast, vertical commonality requires that the fortunes of investors are tied to the fortunes of the promoter.

In the SEC vs. TELEGRAM GROUP INC. and TON ISSUER INC., the Court expands this approach based on whether the project was launched on the date of the token sale or not.

The Court states that “*the ability of each Initial Purchaser to profit was entirely dependent on the successful launch of the TON Blockchain. If the TON Blockchain’s development failed prior to launch, all Initial Purchasers would be equally affected as all would lose their opportunity to profit, thereby establishing horizontal commonality at the time of 2018 Sales.*”

The Court notes that “*the SEC has made a substantial showing of strict vertical commonality ... Telegram’s own fortunes were similarly dependent on the successful launch of the TON Blockchain as Telegram would suffer financial and reputational harm if the TON Blockchain failed prior to launch.*”

Thus, in the context of the SEC vs. TELEGRAM GROUP INC. and TON ISSUER INC., we can conclude that should the sale of tokens take place before the launch of the project, such tokens may be qualified by American courts as securities.

The Court also expressed its opinion as to which circumstances are of the greatest importance for evaluating the tokens under the Howey Test. We will explain this in more detail in the Section V [*Analysis Under the Howey Test*] of this legal opinion.



F. Consideration of SEC vs. RIPPLE LABS, INC., BRADLEY GARLINGHOUSE, and CHRISTIAN A. LARSEN

On December 22, 2020, the SEC filed an action against Ripple Labs Inc. and two of its executives, who are also significant security holders, alleging that they raised over \$1.3 billion through an unregistered, ongoing digital asset securities offering.

According to the SEC, Ripple and its executives raised capital to finance the company's business. The complaint alleged that Ripple raised funds, beginning in 2013, through the sale of digital assets known as XRP in an unregistered securities offering to investors in the U.S. and worldwide. Ripple also allegedly distributed billions of XRP in exchange “*for non-cash consideration, such as labor and market-making services.*” The complaint alleged that the defendants failed to register their offers and sales of XRP or satisfy any exemption from registration, in violation of the registration provisions of the federal securities laws.

According to the SEC, “*Issuers seeking the benefits of a public offering, including access to retail investors, broad distribution and a secondary trading market, must comply with the federal securities laws that require registration of offerings unless an exemption from registration applies . . . ,*” and “*The registration requirements are designed to ensure that potential investors—including, importantly, retail investors—receive important information about an issuer's business operations and financial condition*”

The SEC stated that Ripple never filed a registration statement, thus, it never provided investors with the material information that other issuers included in such statements when soliciting public investment. Instead, Ripple “*created an information vacuum*” such that Ripple could sell XRP into a market that possessed only the information Ripple chose to share about the project.

The SEC accused the defendants that they continue to hold substantial amounts of XRP and—with no registration statement in effect—can continue “*to monetize their XRP while using the information asymmetry they created in the market for their own gain, creating substantial risk to investors.*”

When determining whether XRP counted as a security, the SEC applied the Howey test.



The SEC claimed that because XRP was fungible, the fortunes of XRP purchasers were tied to one another, and each depended on the success of Ripple's XRP strategy; XRP investors stood “*to profit equally if XRP’s popularity and price increase, and no investor will be entitled to a higher proportion of price increases*”; Ripple pooled the funds it raised due to the offer of XPR and used them “*to fund its operations, including to finance building out potential “use” cases for XRP, paying others to assist it in developing a “use” case, constructing the digital platform it promoted*”; Ripple recognized and repeatedly emphasized “*these common interests to prospective investors, including by explaining to the market that Ripple used proceeds from XRP sales to fund its operations and that Ripple wanted XRP to succeed,*” and these circumstances were qualified by the SEC as though purchasers of XRP invested into a common enterprise.

The SEC pointed out that Ripple’s publicly stated goal was “*to increase demand for XRP*”; Ripple assured investors that Ripple would “*protect the trading markets for XRP*”; Ripple “*touted investors’ ability to easily buy and sell XRP*” highlighting XRP price was increasing, and in this regard, the SEC stated that Ripple led investors to reasonably expect a profit from their investment.

According to the SEC, Ripple promised to undertake significant efforts to build value for XRP as well as to develop and maintain a public market for XRP investors to resell XRP; Ripple promoted “*the ability of its team to succeed in its promised efforts*”; economic reality dictated that XRP purchasers had “*no choice but to rely on Ripple’s efforts for the success or failure of their investment,*” and all the above indicates that Ripple led investors to reasonably expect that Ripple’s entrepreneurial and managerial efforts would drive the success of Ripple’s XRP project.

Based on the above, the SEC concluded that, “*at all relevant times during the offering, XRP was an investment contract and therefore a security subject to the registration requirements of the federal securities laws.*”

As objections, Ripple stated that it did not violate Section 5 of the Securities Act because XRP was not a security or “investment contract,” and Ripple’s distributions or sales of XRP were not “investment contracts”; no registration was required in connection with any distribution or sale of XRP by Ripple.

One of the main arguments in Ripple’s defense was that XRP had a variety of functions that differ from the concept of a “security” as the law understands it. XRP functioned as a virtual currency, a “*medium of exchange*” to facilitate transactions locally and internationally.



Moreover, Ripple noted that nowhere in the world has XRP been considered a “security,” citing interpretations by regulators in the UK, Singapore and Japan, where it has been defined as a virtual currency outside the scope of securities regulation:

“Securities regulators in the United Kingdom, Japan, and Singapore have likewise concluded that XRP is a virtual currency not subject to securities regulation. As the U.K. Treasury recently explained, ‘widely known cryptoassets such as Bitcoin, Ether and XRP’ are not securities, but “[e]xchange tokens” that “are primarily used as a means of exchange.”

Further, Ripple claimed that it did not have, and the SEC failed to provide, fair notice that Ripple’s *“conduct was in violation of law, in contravention of Ripple’s due process rights. Due process requires that laws give a person of ordinary intelligence a reasonable opportunity to know what is prohibited. Here, due to the lack of clarity and fair notice regarding Defendants’ obligations under the law, in addition to the lack of clarity and fair notice regarding Plaintiffs’ interpretation of the law, Ripple lacked fair notice that its conduct was prohibited.”*

Ripple also asserted that the SEC lacked *“extraterritorial authority over all or some of the transactions alleged in the Complaint that took place outside the United States and/or were made on foreign exchanges.”*

As at the date of this legal opinion, this case is under consideration and the court has not made a final decision.

G. Consideration of the SEC’s order in the matter of Tierion, Inc.

The SEC initiated an administrative proceeding against company Tierion, Inc. (“Tierion”) for conducting in what the former considered to be *“an unregistered offering of securities in the form of a token sale.”*

Tierion is a digital technology company established as a software-as-a-service (SaaS) company focused on blockchain receipts. The company's marketing policy was aimed at multiple industries, including insurance, healthcare, real estate, financial services, e-commerce etc.

In July 2017, Tierion announced that it would launch a new network for creating and verifying blockchain receipts, and that it was going to distribute the tokens (“TNT”) to fund the continued development of the network. Tierion issued approximately one billion TNT.



During the token sale, which was accessible to investors worldwide, including in the U.S., Tierion sold approximately 350 million TNT to approximately 4,800 people, and raised approximately \$25 million comprised of digital assets such as Bitcoin or Ether.

According to the SEC, the Tierion network was still in development at the time of the token sale, and, in SEC's opinion, reasonable investors would have understood that their money was funding the network continued development. Considering that in its whitepaper Tierion told investors that "*we have plans for future services that will be built on top of Chainpoint and will announce these services in the future*", the SEC concluded that TNT investors' money was pooled and funded the continued development of the Tierion network.

The SEC claimed that TNT were distributed to individuals and entities with no restrictions on the tokens' transfer or resale, thus, immediately upon the distribution, TNT has traded on the secondary market.

As it follows from the SEC's order, TNT had no consumptive use at the time of the token sale; Tierion told potential investors that it planned for TNT to be used as a medium of exchange within the network, however, it could take an indefinitely long time for Tierion to build additional applications that would accept TNT as a medium of exchange.

According to the SEC, Tierion made investors to believe that it would continue its development of the Tierion Network, in particular, the company "*touted its founders' and early investors' backgrounds and experience in the blockchain industry, and publicized its past history of partnerships with prominent companies. Tierion took steps to ensure that TNT would be made available to trade on secondary markets ...*"

The SEC asserted that in its promotional materials Tierion highlighted the technology and blockchain experience, and management skills of its employees and consultants.

The SEC pointed out that "*Reasonable investors would have understood that Tierion was the developer of, and was responsible for maintaining, the Tierion Network, and that investors would have to rely on Tierion to improve the network and increase the value of TNT, and in that way return a profit for investors. Tierion's management had previously developed relationships with prominent corporate partners and customers and touted those relationships to investors as a basis to invest in TNT.*



Reasonable investors would have known that Tierion's management – not TNT investors – would be responsible for the success or failure of those relationships and the future development of other partnerships.”

Based on the fact that Tierion's sale of TNT was not registered with the SEC, nor did Tierion's sale of TNT satisfy any valid exemption from registration, the SEC came to the conclusion that Tierion violated Section 5(a) and Section 5(c) of the Securities Act.

Tierion consented to the order without admitting or denying its findings. As part of the settlement, Tierion agreed to pay a \$250,000 penalty and to disable trading of TNT. Tierion also undertook to provide compensation to holders of TNT who purchased in the token sale or in the secondary market, or who received TNT as a reward from Tierion, and to those who purchased TNT in the token offering and later sold at a loss.

H. Guidelines, Report on ICO and Other Sources Taken into Consideration in This Legal Opinion

- 1) SEC's order against blockchain company Block.one. to pay \$24 million penalty for unregistered ICO.
- 2) SEC's order against EtherDelta for operating an unregistered exchange.
- 3) SEC's order against international security-based swaps dealer XBT Corp that targeted U.S. investors.
- 4) SEC's order against ICO incubator ICOBox and founder for unregistered offering and unregistered broker activity.
- 5) SEC's order against Bitqy and BitqyM and its founders for defrauding investors in unregistered offering and operating unregistered digital asset exchange.
- 6) SEC's order against research and rating provider ICORating for failing to disclose it was paid to tout digital assets.
- 7) SEC against Kik Interactive, No. 19-cv-5244 (S.D.N.Y., filed June 4, 2018).
- 8) SEC's Investor Bulletin: Initial Coin Offerings, July 25, 2017.



- 9) SEC Investor Alert: “Bitcoin and Other Virtual Currency-Related Investments.”
- 10) SEC Investor Alert: “Ponzi Schemes Using Virtual Currencies.”
- 11) SEC Investor Alert: “Social Media and Investing—Avoiding Fraud.”
- 12) SEC Investor Alert: “Public Companies Making ICO-Related Claims” Aug. 28, 2017.
- 13) Statement on framework for investment contract’ analysis of digital assets, Bill Hinman, Director of Division of Corporation Finance, Valerie Szczepanik, Senior Advisor for Digital Assets and Innovation.
- 14) Chairman’s testimony on virtual currencies: “The Roles of the SEC and CFTC” Chairman Jay Clayton, Washington D.C., February 6, 2018.
- 15) Framework for “Investment Contract” Analysis of Digital Assets by the Strategic Hub for Innovation and Financial Technology.

V. Analysis Under the Howey Test

We provide our analysis of the token below based on each Howey Test factor.

A. Investment of Money

In determining whether an investment contract exists, the investment of “money” need not take the form of cash. See, e.g., *Uselton v. Comm. Lovelace Motor Freight, Inc.*, 940 F.2d 564, 574 (10th Cir. 1991).

“In spite of Howey’s reference to an ‘investment of money,’ it is well established that cash is not the only form of contribution or investment that will create an investment contract.”

In Re DAO Report:

*“Investors in The DAO used ETH to make their investments, and DAO Tokens were received in exchange for ETH. Such investment is the type of contribution of value that can create an investment contract under Howey. See SEC v. Shavers, No. 4:13-CV-416, 2014 WL 4652121, at *1 (E.D. Tex. Sept. 18, 2014) (holding that an investment of Bitcoin, a virtual currency, meets the first prong of Howey); Uselton,*



940 F.2d at 574 (“[T]he ‘investment’ may take the form of ‘goods and services,’ or some other ‘exchange of value.’”

As we can see in the case law analysis above, it was not difficult for courts to establish the “*investment money*” prong.

There are no questions regarding the public offering, since at the time of preparing the legal opinion regarding the Token and the Project, the Company published the White Paper on the official website of the Project.

To date, WP is available on the site for all interested third parties - visitors to the site. In addition, the Project website itself contains information about Tokens, their purchase and possibilities for further use within the Platform.



However, further distribution of the Tokens will ultimately be outside of the Project’s control. Hence, we may treat this as broad communications to the general public. It is stated in the court’s decision that Bitcoin may be used to purchase goods or services or to pay for individual living expenses. The only limitation of Bitcoin is that it is limited to those places that accept it as currency.

Since Bitcoin or any other cryptocurrency has all functions inherent to a real currency, it can be considered as the “*money*” when it is used as consideration in forming an investment contract.

Therefore, this element of the test is straightforward for us and points toward the Tokens being an “*Investment of Money*.”

B. Common Enterprise

In contrast with “*Investment of Money*” prong, the Token does not satisfy “*Common Enterprise*” element of the Howey Test.

A common enterprise exists if there is “*commonality*” between the promoter and investor. The law enforcement practice recognizes “*Horizontal Common Enterprise*” and “*Vertical Common Enterprise*. ”

“*Horizontal Common Enterprise*” is found where investors combine their investments in one pool and the fortune of each investor depends on the success of the overall enterprise. In some courts, judges are seeking to decide whether a pro rata sharing of profits takes place. However, it would be fair to note that, according to the general approach, while schemes with horizontal commonality often include a pro rata distribution of revenues or income, such a pro rata distribution is not obligatory for horizontal commonality.

The essence of “*Horizontal Common Enterprise*” is that investors are tied together in their risks either to receive or to lose everything. An example of this approach is the SEC vs. TELEGRAM GROUP INC. and TON ISSUER INC., where the court stated:

“The ability of each Initial Purchaser to profit was entirely dependent on the successful launch of the TON Blockchain. If the TON Blockchain’s development failed prior to launch, all Initial Purchasers would be equally affected as all would lose their opportunity to profit, thereby establishing horizontal commonality . . .”

Based on the analyzes of the Project Documents, we came to the conclusion that the Token does not contain any signs of “*Horizontal Common Enterprise*” for the following reasons.

The economic reality underlying the Project provides a wide autonomy to each individual user who has the opportunity to use various financial instruments. Among them are such as a payment transfer system, staking, crypto loans. Looking at the technical side of the Project, we see that any user of the Project acts as an independent consumer, and the Project provides IT support that can be used by the user to meet a set of personal needs. Among the Project's products are access to markets cooperating with the Project, tools for developers, a single platform for loans.



«Strike will enable users and developers to build decentralized finance (DeFi) based application on the Ethereum blockchain for their own use cases.»

«Build your own custom application by accessing a non-custodial money market with our developer APIs and SDKs. This will enable developers to quickly build their own application tailored to fit the Strike protocol.»

«The Strike App enables users access to a fully decentralized money market powered on Ethereum 24/7/365 with a user-interface, api, or smart contracts.»

We also take into account that according to the Statements of Facts, “*the amount of benefits, which can be obtained by the users of the Project, depends on their own actions/amount of spending.*” In this regard, the users of the Project are likely to be independent and bear the risks of adverse consequences caused mainly by their own actions or inaction.

As it was stated above, a pro rata distribution is not an absolute criterion for horizontal commonality. However, since some judges examine it as an auxiliary criterion, we note that the Project Documents do not contain any mention of pro rata distribution. Moreover, it is expressly indicated in the Statements of Facts that “*the Company does not promise any passive income or dividend distribution.*” It is important to note that users can earn rewards through staking, farming, and interest earned on issued loans.

Regarding the risk of loss due to the Project failure prior to launch, we note that according to the Statements of Facts “*the Project has been developed and is at the operation stage,*” therefore, the above risk is absent as at the date hereof.

To sum up, it cannot be inferred that in the case under consideration the fortune of each investor depends on the success of the overall Project.

Speaking of the “*Vertical Common Enterprise,*” it should be noted that there are two principal approaches to determining if a vertical commonality exists: 1) strict vertical commonality, and 2) broad vertical commonality.

In strict vertical commonality, it is not necessary that the funds of investors are pooled; what must be shown is that the fortunes of the investors are linked to those of the promoters, thereby establishing the requisite element of strict vertical commonality.



Thus, a strict vertical enterprise exists if a direct correlation has been established between the profits and losses of the promoters and the profits and losses of the investors.

As an example of strict vertical commonality, we would like to quote another conclusion of the court in the SEC vs. TELEGRAM GROUP INC. and TON ISSUER INC.:

"Alternatively, the SEC has made a substantial showing of strict vertical commonality. Each Initial Purchaser's anticipated profits were directly dependent on Telegram's success in developing and launching the TON Blockchain. Telegram's own fortunes were similarly dependent on the successful launch of the TON Blockchain as Telegram would suffer financial and reputational harm if the TON Blockchain failed prior to launch."

In broad vertical commonality, investors' success depends on the efficacy of the managers or third parties. If the investor relies on the promoter's expertise, then the transaction or scheme represents a common enterprise and satisfies the second prong of the Howey Test.

The approach of broad vertical commonality has been heavily criticized recently. The fact is that there is no real difference between the broad vertical commonality and the fourth stage of the Howey Test "*Solely from the Managerial Efforts of Others.*" If a broad vertical commonality test is applied, then there is no reason to apply the fourth element of the Howey Test, since the result will be the same. Opponents of using the broad vertical commonality method say that if the Supreme Court in Howey had intended to provide a broad vertical commonality to satisfy the element of the "*Common Enterprise,*" the Court would not have added the fourth element of the test "*Solely from the Managerial Efforts of Others.*"

We believe that the above position is reasonable. For this reason, in this section of the legal opinion we only describe what the broad vertical commonality is, while a detailed assessment of whether the investors' success in the Project depends on the efficacy of the managers or third parties will be given in section V(D) [*Solely from the Managerial Efforts of Others*] of this legal opinion.

Analyzing the economic reality underlying the Project, we came to the opinion that the risks that Token users assume are more likely of a different nature as compared with those risks that promoters incur.



The Project's risks are associated with the inability to use funds in a way not specified in the WP, or to use them improperly, or to end up with a fiasco either with regard to the use of funds or to the lack of a critical number of users that could increase the economy of the Project.

In all other cases, it is more likely that the promoter's risks do not correlate with those of the users. We are inclined to believe that, in general, the Token users will only face risk if the declarations contained in the WP are not implemented.

According to the information provided by the Company, at the moment the Project is available for use by any authorized user who is interested in accessing the functionality of the Platform. For this reason, each participant in the Project begins to pursue its goals and thus, in such pursuit, will face its own risks, misfortunes and failures, which will not mix with the fate of the Project.

This is due to the fact that in the Project each individual user's profits are independent from those of the promoters. For example, a user may be unsuccessful in his operations and efforts and ultimately realize a net loss after business expenses are taken into account. The Project, in contrast, can turn a profit during the same period of time. Similarly, a company may have a down year, whereas individual users may find that despite the Project's losses, they generate a profit. In both scenarios, the profits and losses of the users and the promoters do not rise and fall synchronously, so the strict vertical commonality does not really exist.

It might be inferred that the Token is more likely to be a consumer goods than a security since consumer goods companies do not generally induce purchasers to purchase their products by advertising how the purchase money will be used. It is likely that the relevant information provided in the WP serves for informational purposes only, rather than to incentivize the prospective purchasers to buy the Tokens.

Based on the above, the Token is more likely not to match "*Common Enterprise*" element of the Howey Test.

C. **Expectation of Profits**

Despite the Token has a number of utility features, as will be further described herein, we believe that it appears to satisfy the third element of the Howey Test for the following reasons.



In Re DAO Report, it was stated as follows:

"The ETH was pooled and available to The DAO to fund projects. The projects (or "contracts") would be proposed by Contractors. If the proposed contracts were whitelisted by Curators, DAO Token holders could vote on whether The DAO should fund the proposed contracts. Depending on the terms of each particular contract, DAO Token holders stood to share in potential profits from the contracts. Thus, a reasonable investor would have been motivated, at least in part, by the prospect of profits on their investment of ETH in The DAO."

At the same time, in consideration of the Munchee case, an interesting point has been made:

"Like many other instruments, the MUN token did not promise investors any dividend or other periodic payment. Rather, as indicated by Munchee and as would have reasonably been understood by investors, investors could expect to profit from the appreciation of value of MUN tokens resulting from Munchee's efforts."

The SEC goes further in Munchee and underlines the uselessness of merely denoting token a utility as such:

"Even if MUN tokens had a practical use at the time of the offering, it would not preclude the token from being a security. Determining whether a transaction involves a security does not turn on labelling—such as characterizing an ICO as involving a "utility token"—but instead requires an assessment of "the economic realities underlying a transaction." Forman, 421 U.S. at 849. All of the relevant facts and circumstances are considered in making that determination. See Forman, 421 U.S. at 849 (purchases of "stock" solely for purpose of obtaining housing is not the purchase of "investment contract"); see also SEC v. C.M. Joiner Leasing Corp., 320 U.S. 344, 352-53 (1943) (indicating the "test . . . is what character the instrument is given in commerce by the terms of the offer, the plan of distribution, and the economic inducements held out to the prospect")."

The expectation of profits from a purchase of any subject of value often takes place. One may be motivated and has to have speculative interest, for example, to resell the commodity or the right rather than retain an interest in personally consuming the subject of value.



"It is an investment where one parts with his money in the hope of receiving the profits from the efforts of others, and not where he purchases a commodity for personal consumption or living quarters for personal use."

Further, we will give an example where the court explain in which cases a purchase can be made without the purpose of making a profit.

In Forman case the court stated that in contrast to an investment intent, an individual may acquire an asset with "*a desire to use or consume the item purchased.*" A transaction does not fall within the scope of the securities laws when a reasonable purchaser is motivated to purchase by a consumptive intent.

In consideration of Warfield v. Alaniz, the court introduced that the inquiry is an objective one focusing on the promises and offers made to investors; it is not a search for the precise motivation of each individual participant:

"Under Howey, courts conduct an objective inquiry into the character of the instrument or transaction offered based on what the purchasers were led to expect."

The above court's explanation is, in our opinion, of high importance for understanding. The fact is that expectation of profit is actually an internal subjective feeling. The expectation of profit for each individual person has no objective expression in the material world and can vary depending on age, education, occupation, life experience and many other factors. Realizing this, the court in Warfield v. Alaniz introduced an approach that allows to assess the expectation of profit on the basis of objective criteria, namely on the basis of "*what the purchasers were led to expect.*"

Thus, within "*Expectation of Profits*" prong, it is necessary to consider not the assumptions in relation to person's subjective feelings, but information objectively expressed in the material world that could form expectation of profits.

Having studied the Project Documents, we did not find any information that could lead the users of the Project toward expectation of profit. The Project Documents do not contain any promises and offers that the Token will increase in price or there is any possibility of using the Token for speculative purposes.



On the contrary, it is expressly stated in the Statement of Facts that “*the Company does not promise any passive income or dividend distribution*” and “*the marketing materials distributed do not contain any information about how the Tokens can be used for profit.*” In the White Paper, the Company announces that profits should not be expected from STRK tokens.

Another aspect that the courts traditionally investigate when analyzing the third element of Howey is whether an investor is simply purchasing a commodity for personal use, or if he is purchasing a commodity as a tool for making a profit. If the commodity has a practical application, this may indicate that the purpose is to use it with a consumptive intent, and not as investment of financial assets.

According to the Statements of Facts “*the Tokens can be practically used in the Project.*” Project documents cover the potential consumer use of the token and highlight Project products such as developer apps, a digital asset marketplace, and a loan and governance system. Given that the Project does not promise any return on holding Tokens, the usefulness of the Token may indicate that it will be acquired with consumer intent.

We also tend to believe that, in view of the foregoing, if someone acquires a Token for the purpose of making a profit, then this happens solely due to his subjective motivation, and not the marketing materials of the Project, expressed in an objective form.

The consumer purposes, as a rule, correlate with the purchase of commodity in the amount necessary for personal use. Conversely, when a commodity is purchased for investment purposes, the amount usually significantly exceeds what is reasonably needed for personal consumption. In this regard, we note that according to the Statements of Facts “*it is assumed that the Tokens are primarily held in amounts needed for expected use.*”

An essential criterion for distinguishing consumer goals and investment goals is the target audience to which sales and offers are directed.

In the SEC vs. TELEGRAM GROUP INC. and TON ISSUER INC. the court stated:

“*Consumptive uses for Grams were not features that could reasonably be expected to appeal to the Initial Purchasers targeted by Telegram. In seeking participants for the 2018 Sales, Telegram did not focus on cryptocurrency enthusiasts, specialty digital assets firms, or even mass market individuals who had a need for an*



alternative to fiat currency ... Instead, Telegram selected sophisticated venture capital firms (and other similar entities) as well as high net worth individuals with an inherent preference (i.e., their business model) toward an investment intent rather than a consumptive use . . . ”

In contrast to the example described above, and as it is mentioned in the Statements of Facts, “*the Company will sell the Tokens to general public, not to sophisticated investors.*”

As it follows from the WP, the Token, among other things, allows users to use it for staking. Whether such use of the Token is connected with the expectation of profits is, in our opinion, the controversial issue.

From a technical point of view, staking ensures the security and operability of a blockchain network using the consensus algorithm known as the Proof of Stake (**PoS**).

The consensus algorithm is a set of rules by which various participants of the blockchain network approve transactions. Since a decentralized blockchain network does not have a central authority to confirm transactions, consensus algorithm ensures that all network participants agree to one version of the blockchain.

PoS is a kind of consensus algorithm according to which randomly selected validation nodes (validators) put their own tokens to create or confirm new blocks in the current blockchain. Therefore, PoS is the method of protection in cryptocurrencies that allows to maintain reliability and transparency within the blockchain network.

According to the WP, the Project functions using PoS algorithm, thus, within the Project staking is primarily a tool designed to ensure the viability of the Project. It will be also fair to note that it is impossible to use the utility features of the Token without maintaining the proper operability of the Project.

In this context, we tend to assume that the main goal of a user who is engaged in the Tokens staking is to ensure the usability of the Tokens, while receiving a commission for staking is, under such circumstances, not profit, but rather compensation for depositing part of the Tokens, that is, inability to use the deposited part of the Tokens for their intended consumer purpose.



Having described the utility features of the Token, we consider it us necessary to take into account the following.

Cryptoassets can be structured in different forms, which are not mutually exclusive. In theory, a token issued as a utility one can be used as a security token during its lifecycle. We also realize that the economic and technical parameters of the project can change over time, which leads to variations in the nature of its native token.

Regarding the Project under consideration, we should note that despite the utility features of the Token, we cannot exclude the possibility of its use for speculative purposes aimed at making a profit, in particular, at the subsequent stages of the Project. Even if the Project promoters did not pursue the goal of issuing the Token as a tool for making profits, the Token can be used, subject to certain assumptions, with this intent giving us a reason to conclude that the Token meets the prong *Expectation of Profits* of the Howey test.

Therefore, we suppose this prong is more likely to push the scale towards the Token can be deemed as a security.

D. **Solely from the Managerial Efforts of Others**

The fourth prong of the Howey requires a finding that the investors anticipate profits based solely on the managerial efforts of others. Analyzing this prong, courts consider whether the potential investors expect to receive profits from their own efforts (use of rights or services obtained from promoters) or from the efforts of the others (promoters, managers).

As an example of the case where the court found that the investors' anticipation of profit was based solely on the managerial efforts of others, we would like to quote from the SEC vs. TELEGRAM GROUP INC. and TON ISSUER INC.:

"Thus, to realize a return on their investment, the Initial Purchasers were entirely reliant on Telegram's efforts to develop, launch, and provide ongoing support for the TON Blockchain and Grams ... Initial Purchasers' dependence on Telegram to develop, launch, and support the TON Blockchain is sufficient to find that the Initial Purchasers' expectation of profits was reliant on the essential efforts of Telegram."

We should add that not all the courts share the approach of the Supreme Court using the term "solely" that defines the efforts of others.



Some federal courts later relaxed this approach exploiting “*de minimis*” efforts of others or the concept of “*undeniably significant*” or “*predominantly*” after the Re Forman case. So even if the investor has the power to be involved, the transaction may still be an investment contract if the efforts of others predominate.

“*Whether the efforts made by those other than the investor are the undeniable significant ones, those essential managerial efforts which affect the failure or success of the enterprise*” (*The Forman case; SEC v Glenn W Turner Enters.*, 474 F.2 d 476 sec.28 (Feb. 1, 1973).”

In Re DAO, it was stated based on the facts:

“*The Curators exercised significant control over the order and frequency of proposals and could impose their own subjective criteria for whether the proposal should be whitelisted for a vote by DAO Token holders. DAO Token holders’ votes were limited to proposals whitelisted by the Curators, and, although any DAO Token holder could put forth a proposal, each proposal would follow the same protocol, which included vetting and control by the current Curators. While DAO Token holders could put forth proposals to replace a Curator, such proposals were subject to control by the current Curators, including whitelisting and approval of the new address to which the tokens would be directed for such a proposal. In essence, Curators had the power to determine whether a proposal to remove a Curator was put to a vote.*”

Then in the DAO case, the SEC underlined that investors mostly rely on the actions of Slock.it.

“*Although DAO Token holders were afforded voting rights, these voting rights were limited. DAO Token holders were substantially reliant on the managerial efforts of Slock.it, its co-founders, and the Curators.*”

We start the analyze under the fourth prong of Howey with a look at how much development needs to happen for the Token to reach its usefulness. According to the general approach, if a token is sold in an undeveloped state, that provides the stronger argument that purchasers are buying and expect profits “*from the efforts of others*” and the purchase itself is “*a bet on the success.*” Thus, the more work needs to be done on the token, the greater the risk the company takes at the time it sells that token.



First of all, we note that according to the Statements of Facts “*the Project has been developed and is at the operation stage.*” The interface of the Platform's website allows users to access the core functions stated in the White Paper.

In 2018, the SEC's Director of Corporate Finance William Hinman introduced the following approach:

“The impetus of the Securities Act is to remove the information asymmetry between promoters and investors ...But this also points the way to when a digital asset transaction may no longer represent a security offering. If the network on which the token or coin is to function is sufficiently decentralized—where purchasers would no longer reasonably expect a person or group to carry out essential managerial or entrepreneurial efforts—the assets may not represent an investment contract. Moreover, when the efforts of the third party are no longer a key factor for determining the enterprise’s success, material information asymmetries recede” and “the ability to identify an issuer or promoter to make the requisite disclosures becomes difficult, and less meaningful.”

Later, this position of the SEC's Director of Corporate Finance was consolidated in the SEC's letters dated April 2, 2019, and July 25, 2019, Re TurnKey Jet, Inc. and Pocketful of Quarters, Inc., accordingly, where the Commission introduced some major criteria exempting from registration under the Securities Act and the Exchange Act. In particular, the SEC concluded that the tokens are not securities providing that the founders “*will not use any funds from the token sales*” to build the platform, which has been fully developed and will be “*fully functional and operational*” immediately upon its launch and before any of the tokens are sold.

As it is expressed in the Statements of Facts “*the community takes a central role in development and growth of the Project.*” Based on the study of the Project Documents, we also note that, as at the date hereof, the Project permits all the parties involved to communicate and apply all functionality as they deem fit.

Considering the above, we come to the conclusion that in the case under consideration the managerial efforts of the promoters are not “*undeniably significant*” or “*predominant*” in terms of development and launch of the Project.

Since any project has not only a development stage, but also an operational stage, for the purpose of a comprehensive analysis, we also consider it necessary to pay attention to how it is planned to maintain the Project at the post-launch stage.



As it follows from the Statements of Facts “*the Company is not planning to support the secondary market for the Tokens*” and “*the Project is sufficiently decentralized so the Token holders would no longer reasonably expect the founders of the Project to carry out essential managerial efforts.*”

Decentralization is the process by which the actions, in particular those related to planning and decision-making, are distributed or delegated so as not to be concentrated in the hands of a central, authoritarian point or group. In the context of blockchain technologies, decentralization eliminates the need for unified management and promotes distributed and autonomous decision-making by independent participants. Decentralized community is the management model where control belongs to all users, and not to any one person or group.

As can be seen from the concept of decentralization, it is based on the distribution of competencies in such a way that the actions (or efforts) of one individual or group could not have a dominant influence on the entire system.

In the SEC vs. TELEGRAM GROUP INC. and TON ISSUER INC. the court stated:

“In the abstract, an investment of money in a cryptocurrency utilized by members of a decentralized community connected via blockchain technology, which itself is administered by this community of users rather than by a common enterprise, is not likely to be deemed a security under the familiar test laid out in S.E.C. v. W.J. Howey Co., 328 U.S. 293, 298–99 (1946).”

Taking into account the statement of the Company that “*the Project is sufficiently decentralized*”, and with due regard to the court’s position described above, we tend to believe that the viability of the Project at the operational stage does not depend solely on the managerial efforts of others.

Therefore, this prong is more likely not to be satisfied.

VI. Summary and Conclusion

Based on the information and facts described in the previous paragraphs and subject to all assumptions and qualifications, we believe that the Token is not a security.

The Token appears to satisfy the first prong of the Howey Test, and no one may reasonably conclude that the courts will determine otherwise.



The second prong is more difficult and debatable. However, our analysis has concluded that this element is not satisfied under both theories applied by the federal courts.

The third prong is more likely to be satisfied.

The fourth prong of the Howey Test is not satisfied.

To conclude, since not all the elements of the Howey Test are met, in our opinion, the Token does not meet the legal definition of a security under the United States law.

Nevertheless, it should be noted that only the United States court may definitively determine whether the Token is a security, based on its opinion and regulatory enforcement.

IN THE PROCESS OF PREPARING THIS LEGAL OPINION, WE ANALYZED ONLY THE PROJECT TOKEN STRK FOR ITS COMPLIANCE WITH THE HOWEY TEST.

WE HAVE NOT ANALYZED OTHER PROJECTS THAT THE FOUNDERS COULD USE IN THE FUTURE ON THE PLATFORM. ACCORDINGLY, THIS LEGAL OPINION MAY NOT BE COUNTED AS A PROFESSIONAL ASSESSMENT OF THE LEGISLATION BY THE EXCHANGE OR OTHER TOKENIZATION PLATFORMS.

THE ABOVE ANALYSIS IS BASED ON INFORMATION OBTAINED FROM A REPRESENTATIVE OF THE PROJECT, THE PROJECT DOCUMENTS, AND ITS WEBSITE. THE SEC OR A COURT OF COMPETENT JURISDICTION MAY REACH AN ALTERNATIVE CONCLUSION TO THAT STATED IN THIS LEGAL OPINION LETTER. NO WARRANTIES OR GUARANTEES OF ANY KIND AS TO THE FUTURE TREATMENT OF USERS OR SIMILAR TOKENS ARE BEING MADE HEREIN.



NOTICE TO RESIDENTS OF THE UNITED STATES

IF YOU ARE FROM THE UNITED STATES OF AMERICA, WE HEREBY INFORM YOU THAT TO THE BEST OF OUR KNOWLEDGE, THE OFFER OF SALE OF THE STRK TOKEN DOES NOT REPRESENT THE SALE OF A SECURITY. THEREFORE, THE OFFER OR SALE IS NOT REGISTERED IN ACCORDANCE WITH THE UNITED STATES SECURITY LAWS. IN CASE YOU BELIEVE OTHERWISE, PLEASE CONSULT WITH YOUR LEGAL COUNSEL AND NOTE THAT NO ACTION MAY BE BROUGHT ON THE BASIS OF THIS LEGAL OPINION.

Nikita Tepikin,

Lawyer, LLM, Esq. NY License Attorney

Registration number 5251814



Legal Kornet

Appendix 1

ASSUMPTIONS

- (a) All documents are authentic, accurate, and complete and all copies submitted to us as certified or reproduced copies conform to the originals and such originals are authentic, accurate, and complete, and no relevant document, information or arrangement has been withheld from us.
- (b) All facts, statements, representations, and/or information expressed in the documents and Instructions are and remain true, accurate and complete in all respects and not misleading due to the omission of any material matter, and we express no opinion on all such facts and information.
- (c) All documents remain and will remain in the form reviewed by us, without amendment or supplement (whether in writing or otherwise).



Appendix 2

QUALIFICATIONS

- (a) This Legal Opinion is limited and relates solely to US Federal security law as at the date of this Legal Opinion. This Legal Opinion is confined to matters of US laws and is given on the basis that it will be governed by and construed in accordance with the laws of US. Accordingly, we do not express or imply any opinion whatsoever as to any laws other than the laws of US and we have made no investigation of any other laws which may be relevant to the documents submitted to us.
- (b) Our statements on the provisions of Part III of the Securities Exchange Act discussed in this Legal Opinion have been given on the basis of our interpretation of the relevant provisions, current practice, and the positions expressed by the documents, and accordingly, where we provide a statement in this Legal Opinion, we are expressing our view but this does not guarantee that a court or any other regulatory authority of US would necessarily come to the same view.
- (c) This Legal Opinion is also given on the basis that we undertake no responsibility and are under no obligation to advise you of any other matters, including any matters in relation to any additional features of the Tokens that may be introduced in respect of the Tokens that are not set out in the documents and the instructions.
- (d) This Legal Opinion is addressed to, and for the sole benefit of, the Company, and except with our prior written permission, may not be transmitted or disclosed to or used or relied upon by any other person for any purpose or filed with any governmental agency or other person (other than pursuant to an order of a court of US).

