LEGAL OPINION

THE PROJECT: TRATOK PLATFORM

Legal Kornet

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THE TRATOK PROJECT

To	Tratok Holding Limited	From	Legal Kornet OÜ
Attention	Kenneth George Bearder	Date	March 12, 2024
Subject	Regulatory advice on TRATOK	Client	Tratok Holding Limited

I. Introduction

We have been instructed by Tratok Holding Limited, a company incorporated under the laws of the British Virgin Islands **("Company")**, which is the founder of the TRATOK **("Project")**, to issue this legal opinion to advise whether the TRATOK 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, than set out at the paragraph above, and in particular we are not 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.

We also have to mention that this legal opinion is not aimed to make conclusions about any sale of tokens before their generation (agreement for future sale of tokens) or about any sale of tokens to sophisticated investors via personal contacts with the Company or its representatives. The objective set before us by the Company is to determine whether promotion and distribution of Tokens via online platforms can be considered a security.

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

In preparing 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 SEC Interpretation

In 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.

Commission takes active position in the issue of cryptocurrency. Only in 2022 SEC brought more than 20 actions linked to cryptocurrency to courts. Some of such actions are terminated due to agreement with defendant, some of them are still pending in the court. Although in strict sense of the law SEC position does not have straight legal power, we believe that one should not ignore SEC position.

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 considering such official positions of SEC (where applicable).

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://tratok.com/.

To prepare a legal opinion, the Company has provided additional information about the properties and features of the Token and the Project in relation to the Howey Test (*Appendix 7 hereto*).

According to the WP:

- The travel and tourism industry has a number of serious problems that hinder its development. The Company highlights several of the most serious problems in this area. Disadvantages include currency risk, high transaction costs, delays in payments and refunds, ineffective intermediaries, time costs, review and credit card fraud, and communication problems both during the booking and travel periods.

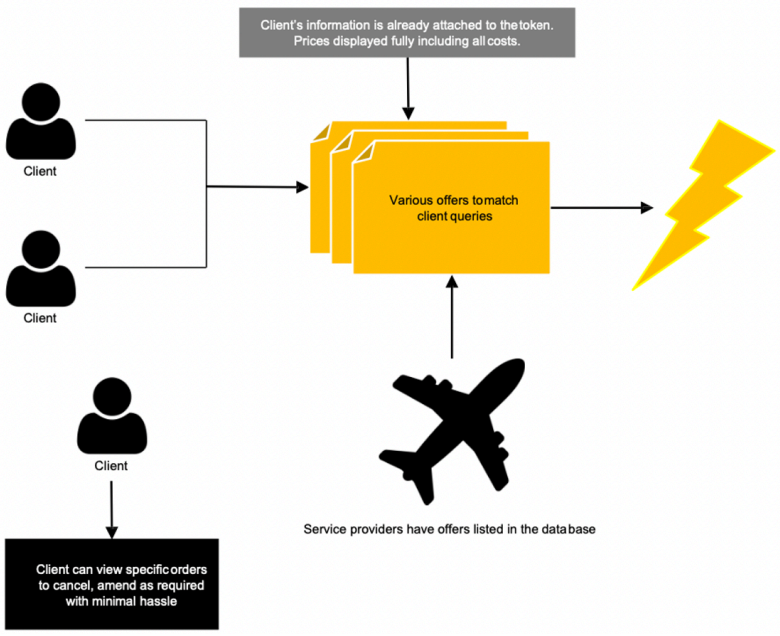
According to the Company, a Platform called TRATOK can solve these problems.

"The Tratok token can solve all of these problems by powering a purpose designed multi-platform application whiach can link consumers with suppliers."

- The White Paper states that the Platform provides mutually beneficial interaction between parties involved in the organization of tourism. Under TRATOK, registered stakeholders will be matched accordingly in the digital marketplace using artificial intelligence. Project participants will be offered prices for services in the field of tourism in real time. All fees and transaction costs will be available to users for review from the very beginning. In the Company's opinion, this approach will ensure complete transparency.

  In addition to this, service providers registered on TRATOK have ownership rights to orders. Service providers are charged transaction fees and receive trade receivables within hours.

  "Combined with a massive reduction in fraud, such a revolution is not only productive to industry health, but also the next revolutionary step. In an environment of rising costs and increasing competitions, an increase in profit margins and faster cash turnovers will result in the industry thriving. Tratok strives to take this further and be more than just a token, but rather an entire ecosystem that is powered by blockchain."



- The TRATOK Project aims to provide interested users with more affordable travel and booking options. The platform aims to address inefficiencies in the industry by using blockchain technology to eliminate hidden transaction costs, fraud, and high commission fees. According to the Company, the use of blockchain in the tourism industry will ensure market transparency and provide users with the ability to quickly book and access efficient approaches to making changes and refunds.

  "The vision behind the Tratok token has always been to make travel and tourism more cost-effective, transparent, free of fraud and fairer to all relevant stakeholders."

  "The project has to solve real problems and enhance the current systems in place for all stakeholders."

- The Company reports that the smart contract used by TRATOK includes functions that solve many security problems for users of the Platform. In the White Paper, the Company writes about the blocking and unlocking function that allows you to block accounts that have received Tokens fraudulently and prevent them from interacting with the ecosystem. In addition, the Project has a function that allows you to cooperate with regulatory and law enforcement agencies to combat money laundering and other illegal and fraudulent activities.

  Also, according to WP, security is ensured by the confiscation function. This security measure allows the transaction to be reversed in certain cases. This allows you to protect user tokens in the event of an account hack or exchange hack.

- In connection with the Project, the Company will distribute a fixed number of the Tokens.

- The Tokens can be practically used as follows:

  - The TRATOK token will be used in the TRATOK app for booking travel and other travel services. It is assumed that TRATOK can be used by holders to book hotel rooms, air tickets, car rentals and other services related to the tourism industry. Thus, we can conclude that the Token can be used as a unit of exchange in the payment infrastructure built into the Project ecosystem. It is assumed that TRATOK can be used to pay for the purchase of goods and services sold within the Platform.

- TRATOK can be used by Platform participants to access the functions and capabilities of the Project. The Company does not disclose in the White Paper information that the booking capabilities provided by the Project may be available to holders of tokens other than TRATOK Tokens. Using blockchain technology, TRATOK offers users significant benefits in the tourism industry.

  "The token, Tratok is an ERC20 standard utility token powered by the Ethereum ecosystem."

- 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 at the time of preparation of the legal opinion the Project has already been developed and is available for use by all interested parties, we can evaluate the activities and role of the founders both at the stage of development of the Platform and after its launch.

  "Tratok has deployed its travel ecosystem and currently has over 1.97 million verified users from 109 different countries (January 2021)."

  So, in the process of developing TRATOK, the founders were primarily concerned with solving organizational and technical issues related to the development and ensuring the technical functioning of the Platform and TRATOK Tokens. In addition, the founders maintain the official website of the Project (link: https://tratok.com/), and also developed basic documentation regarding the Platform and its functionality.

  After the launch of TRATOK, the founders worked on publishing current versions of the White Paper and other documents related to the work of the Project, as well as potential partners of the Platform, and carried out marketing work.

- Users of the Project are Token holders interested in accessing the functions and capabilities of the Platform related to the global tourism industry. According to WP, the Project ecosystem allows for two types of users. The first type of users includes tourism service providers who sell their services using the Platform. The second type of users includes consumers interested in secure access to the services of providers.

  Tratok uses blockchain technology to create a global travel ecosystem. Be it booking a hotel room, booking a flight or renting a car, this application will lead to more cost-effective, hassle-free activities for both customers and service providers. Tratok offers significant advantages over existing conventional platforms. This reduces transaction fees, eliminates the need for intermediaries, saves time on bookings and results in greater profits for service providers and savings for consumers.

  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 Project has been developed and is at the operation stage.
- The Company is not the only owner of the Tokens and the share of overall Tokens belong to the Company is less than 30%.
- The Company will not use any funds from the Tokens sales to develop the Project as the Project has been developed already.
- The Company does not guaranty to any persons and does not tout to any person that it will use any funds from the Tokens sales to promote the Token to increase the price of the Tokens.
- The Token holders cannot exercise real and significant control over the Project via 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.
- 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 does not give any prognoses about future rise of the price of the Tokens.
- The Tokens will be available for purchase only by blind bid/ask method via online platforms.
- The Company sells/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."

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.

"Profits" 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."

The DAO case showed that all elements of Howey test are totally applicable to the ICO and crypto assets without any amendment. The more generally that case remains the most important case to explain, that the first element *"investment of money"* of the Howey Test applicable not only to cash, but to any form of investment. That is why in this Legal opinion we will apply the Howey Test to answer the question under consideration.

C. Consideration of Munchee Case by the SEC

The next case of an 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 met all four elements of the Howey test. In the Order the Commission specifically evaluated 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 a 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 the 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 blog post commercials that among others prove investors' expectations of profits' by promising rise of the user over time and burning of tokens.

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."

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 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 a substantial functional underlying platform.

D. 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. This Idea has been also proven in SEC vs. Ripple Labs, Inc., Bradley Garlinghouse, and Christian A. Larsen, which will be shown further.

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.

One more thing important to notice that according to the position of the court, Telegram, as well as its officials, employees, agents and affiliates, is prohibited *"delivering Grams to any person or entity or taking any other steps to effect any unregistered offer or sale of Grams"*.

A literal interpretation of the court's findings means that Telegram cannot issue Grams to anyone - not even non-US citizens. Given these circumstances, on March 27, 2020, Telegram filed notice of appeal with request of clarification regarding the scope of the ban. The company requested to confirm that ban would not apply to foreign investors.

Telegram motivated its position by the lack of extraterritorial application of US securities laws, and the company also gave a guarantee that it would prohibit foreign owners of Grams from reselling them to US citizens.

It is true that the jurisdiction of a US court does not extend to securities transactions made wholly in other countries. But in this case the court, after analysis of the notice of appeal of Telegram, has come to the following:

There are several problems with Telegram imposition of new restrictions for Gram holders. First, Telegram does not explain how the imposition of these new restrictions would be lawful modifications of the Gram Purchase Agreements entered into in 2018. Second, and more fundamentally, the TON Blockchain was designed and is intended to grant anonymity to those who purchase or sell Grams. Therefore, any restriction as to whom a foreign Initial Purchaser could resell Grams would be of doubtful real-world enforceability.

On April 1, 2020, the court rejected Telegram's application and left in full legal force and effect the restriction to sell TON to any third person (both to US and non-US based investors).

That shows that US courts have enough authority and use it to ban worldwide sales of crypto assets, not only in the US.

E. 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."*

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 "exchange 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."*

After evaluation of the case, the court just like the Commission have divided the offer and sale of XRP into three categories:

(1) Institutional sales under written contracts to sophisticated individuals and entities

(2) Programmatic sales on digital asset exchanges

(3) Other distributions under written contracts. *"These Other Distributions include distributions to employees as compensation and to third parties as part of Ripple's Xpring initiative to develop new applications for XRP and the XRP Ledger"*

The court in that case have thoroughly examined the XRP distribution using the Howey test for each category of investors.

Regarding the **Institutional sales** the court concluded that Ripple's Institutional Sales of XRP met all elements of the Howey test and thus constitutes the offer and sale of investment contracts.

It was without any doubt that the Institutional sales met the first element of the Howey test – "investment of money". Although Ripple tried to demonstrate that investment of money is not the same as payment of money, court have declined that argument and stated that for the first prong of the test intention of the payer is irrelevant.

Regarding the second element of the "Howey test" ("common enterprise") the court decided that it also presents, because the assets of Institutional Buyers were pooled together into *"horizontal commonality"*:

"Ripple pooled the proceeds of its Institutional Sales into a network of bank accounts under the names of its various subsidiaries. Although Ripple maintained separate bank accounts for each subsidiary, Ripple controlled all of the accounts and used the funds raised from the Institutional Sales to finance its operations. […]"

"Further, each Institutional Buyer's ability to profit was tied to Ripple's fortunes and the fortunes of other Institutional Buyers because all Institutional Buyers received the same fungible XRP. […] Ripple used the funds it received from its Institutional Sales to promote and increase the value of XRP by developing uses for XRP and protecting the XRP trading market. […] When the value of XRP rose, all Institutional Buyers profited in proportion to their XRP holdings […] The Court finds the existence of a common enterprise because the record demonstrates that there was a pooling of assets and that the fortunes of the Institutional Buyers were tied to the success of the enterprise as well as to the success of other Institutional Buyer. […]"

The third and fourth elements – *"expectation of profit through the efforts of others"* were also substantiated by the court as being present. Pointing to a large amount of materials that were distributed by Ripple, to the terms of contracts with Institutional Buyers, which included lockup provisions or resale restrictions based on XRP's trading volume, the court stated as follows:

"Based on the totality of circumstances, the Court finds that reasonable investors, situated in the position of the Institutional Buyers, would have purchased XRP with the expectation that they would derive profits from Ripple's efforts. From Ripple's communications, marketing campaign, and the nature of the Institutional Sales, reasonable investors would understand that Ripple would use the capital received from its Institutional Sales to improve the market for XRP and develop uses for the XRP Ledger, thereby increasing the value of XRP. "

But the Programmatic sales on digital asset exchanges is the different case. The Court found that Programmatic sales "*occurred under different circumstances*" than the institutional sales.

"Whereas the Institutional Buyers reasonably expected that Ripple would use the capital it received from its sales to improve the XRP ecosystem and thereby increase the price of XRP, [,,,]. Programmatic Buyers could not reasonably expect the same. Indeed, Ripple's Programmatic Sales were blind bid/ask transactions, and Programmatic Buyers could not have known if their payments of money went to Ripple, or any other seller of XRP. [,,,] Since 2017, Ripple's Programmatic Sales represented less than 1% of the global XRP trading volume. [,,,] Therefore, the vast majority of individuals who purchased XRP from digital asset exchanges did not invest their money in Ripple at all. An Institutional Buyer knowingly purchased XRP directly from Ripple pursuant to a contract, but the economic reality is that a Programmatic Buyer stood in the same shoes as a secondary market purchaser who did not know to whom or what it was paying its money. "

The Commission have also argued that Ripple intentionally targeted the speculators during the Programmatic sales. The Court stated that fact is irrelevant for the purposes of the Howey test:

Further, it is not enough for the SEC to argue that Ripple "explicitly targeted speculators" or that "Ripple understood that people were speculating on XRP as an investment," […], because a speculative motive "on the part of the purchaser or seller does not evidence the existence of an 'investment contract' within the meaning of the Securities Act," Sinva, Inc. v. Merrill, Lynch, Pierce, Fenner & Smith, Inc., 253 F. Supp. 359, 367 (S.D.N.Y. 1966) […]

Here, the record establishes that with respect to Programmatic Sales, Ripple did not make any promises or offers because Ripple did not know who was buying the XRP, and the purchasers did not know who was selling it. SEC 56.1 Resp. 96; Defs. 56.1 Resp. 652–54. In fact, many Programmatic Buyers were entirely unaware of Ripple's existence.

One more fact that the Court have took into consideration is that Ripple's promotional materials *"were widely circulated amongst potential investors like the Institutional Buyers. But, there is no evidence that these documents were distributed more broadly to the general public, such as XRP purchasers on digital asset exchanges. Nor is there evidence that Programmatic Buyers understood that statements made by Larsen, Schwartz, Garlinghouse, and others were representations of Ripple and its efforts".*

"There is no evidence that a reasonable Programmatic Buyer, who was generally less sophisticated as an investor, shared similar "understandings and expectations" and could parse through the multiple documents and statements that the SEC highlights, which include statements (sometimes inconsistent) across many social media platforms and news sites from a variety of Ripple speakers (with different levels of authority) over an extended eight-year period".

Having said that, the Court stated that the Programmatic sales of XRP does not constitute the sale and offer of investment contract under the Security Act.

Lastly in respect of the other distribution such as to employees and to third parties as remuneration for participation in promotional activities, the Court denied the first element of the Howey test – *"investment of money"*:

Here, the record shows that recipients of the Other Distributions did not pay money or "some tangible and definable consideration" to Ripple. To the contrary, Ripple paid XRP to these employees and companies. And, as a factual matter, there is no evidence that "Ripple funded its projects by transferring XRP to third parties and then having them sell the XRP," SEC Mem. at 31, because Ripple never received the payments from these XRP distributions.

This case shows several essential ideas of approach to Howey test. First, it is necessary to evaluate sale and purchase of crypto assets with all facts surrounding such sale and purchase. If we have several different methods to distribute crypto assets, each method of distribution must be evaluated separately.

Second, even if some asset is an investment contract in some circumstances, it does not necessarily mean that it will be an investment contract in other circumstances. We may express this fact even more strongly by noting, that a secondary sale of a crypto asset does not necessarily inherit its nature as an investment contract during a previous sale.

Taking into consideration the stated above we will not evaluate the nature of sale or purchase the Token before so called *"Token Generation Event"* (sale of future tokens or similar deals), because as shown, it is irrelevant for the future nature of such Token. Thus we will evaluate only sale of Tokens to the general public after Token Generation Event.

F. 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.

16) SEC Complaint against Terraform Labs PTE Ltd and Do Hyeong Kwon filed on 16th of February 2023

17) SEC Complaint against Payward Ventures, Inc. and Payward Trading Ltd. filed on 9th of February 2023

18) SEC`s order against Sparkster, Ltd. ("Sparkster") and Sajjad Daya, September 19, 2023

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).

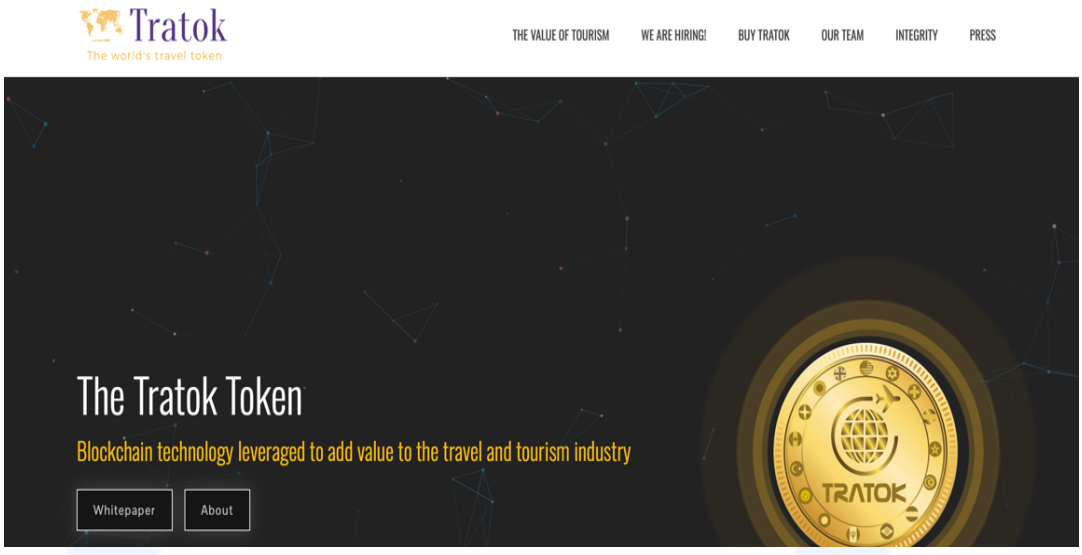
"In spite of Howey's reference to an 'investment of money,' it is well established that cash is not the only form of contribution or investment that will create an investment contract."

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 "The '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.

The question of a public offering does not arise, since at the time of preparation of the legal opinion, the White Paper was posted by the Company on the TRATOK Project website and is available for review to all interested third parties visiting the official website of the Platform (link: https://tratok.com). In addition, the website of the Project itself contains information about TRATOK Tokens and the possibility of obtaining them and further using them in the future.



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.

In Sec v. Ripple case the defendant raise another question. Ripple noticed that an *"investment of money"* is different from *"merely payment of money"*. And that the Howey test requires not just payment of money but an intent to invest that money. But the court in that question after thorough examination of the case law disagreed with Ripple and stated that *"The proper inquiry is whether the Institutional Buyers "provided the capital," (Howey, 328 U.S. at 300), "put up their money," (Glen-Arden, 493 F.2d at 1034), or "provided" cash (Telegram, 448 F. Supp. 3d at 368–69)",* thus intention of the purchasers is irrelevant for this prong of the Howey Test.

Therefore, this element of the test is straightforward for us and points toward the TRATOK 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 TRATOK Project provides broad autonomy to each individual user, who has the opportunity to use various financial instruments. Among them are such as a system of discounts on commission fees and a system of payment transfers.

Looking at the technical side of the Platform, we see that any TRATOK user acts as an independent consumer, and the Project provides IT support that can be used by the TRATOK user to meet a range of personal needs. The main product of the platform is an application that provides secure purchase of travel goods and services.

"The TRATOK token can solve all of these problems by powering a purpose designed multi-platform application which can link consumers with suppliers. Both stakeholders will register and be matched appropriately in the digital marketplace via a self-improving (machine learning) AI. "

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."*

The TRATOK Platform combines two of the world's largest distribution systems, Amadeus and Sabre, and orders are processed through their API using the Tratok token. The token is intended to be used on the Platform as a coupon for booking services from suppliers in the travel and tourism industry. Thus, the success of each user will depend on his own decisions regarding the sale or purchase of tourism goods and services. In this regard, users of the Project are likely to be independent and bear the risks of adverse consequences caused primarily by their own actions or inactions.

"The Tratok project exists to make travel more accessible. The project aims to address shortcomings in the industry by leveraging blockchain technology to eliminate fraud, hidden transaction costs, excessive commissions from financial service providers and online middlemen and ensure a transparent marketplace with fast booking times and efficient approaches to amendments and refunds."

As it was stated above, a pro rata distribution is not an absolute criterion for horizontal communality. 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."*

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"*.

In the White Paper the Company also states the following:

"Tratok has overcome its challenges and finds itself in a healthy position with a working ecosystem product seven months ahead of schedule."

"Tratok has deployed its travel ecosystem and currently has over 1.97 million verified users from 109 different countries (January 2021)."

"Tratok's travel ecosystem currently features over 1.2 million rooms in 153 different countries (January 2021)."

Consequently, this risk does not exist as of the date of this legal opinion.

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."

"Further, each Institutional Buyer's ability to profit was tied to Ripple's fortunes and the fortunes of other Institutional Buyers because all Institutional Buyers received the same fungible XRP. The SEC also argues that the record establishes strict vertical commonality. See SEC Mem. at 51–53. The Second Circuit has not addressed whether the strict vertical commonality theory can give rise to a common enterprise. See Revak, 18 F.3d at 88. In this case, because horizontal commonality establishes the existence of a common enterprise, the Court does not reach the issue of strict vertical commonality or its viability as a theory. XRP.13 See id. 206–07. Ripple used the funds it received from its Institutional Sales to promote and increase the value of XRP by developing uses for XRP and protecting the XRP trading market. See id. 156–57, 161–68, 255–56. When the value of XRP rose, all Institutional Buyers profited in proportion to their XRP holdings. See Kik, 492 F. Supp. 3d at 178 ("The success of the ecosystem drove demand for the digital token Kin and thus dictated investors' profits."); Telegram, 448 F. Supp. 3d at 369–70 (finding horizontal commonality where the digital token purchasers "possess an identical instrument, the value of which is entirely dependent on the success or failure of the TON Blockchain" and "the investors' fortunes are directly tied to the success of the TON Blockchain as a whole"). The Court finds the existence of a common enterprise because the record demonstrates that there was a pooling of assets and that the fortunes of the Institutional Buyers were tied to the success of the enterprise as well as to the success of other Institutional Buyers."

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.

According to the White Paper *"The project will earn revenue based on flat and transparent transactions per fee, charged in Tratok. Therefore the company's success is directly tied to ensuring superior stakeholder user experiences to ensure the service continues to be used."*

Thus, the risks of the TRATOK Project are associated with the impossibility of using funds in a way not specified in the WP, or using them for other purposes, or suffering a fiasco either in terms of using the funds, or with the lack of a critical number of users who could increase the economy of the Project.

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

According to the Company's statements, the TRATOK Project is available for use by any interested user. Consequently, each participant in the Project begins to pursue his own goals and thus, in such an endeavor, faces his own risks, misfortunes and failures, which will not be mixed with the destinies 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.

Analyzing *"Common Enterprise"* prong, we also take into account that according to the Statements of Facts *"the Company will not use any funds from the Tokens sales to develop the Project as the Project has been developed already", "the Company does not guaranty to any persons and does not tout to any person that it will use any funds from the Tokens sales to promote the Token to increase the price of the Tokens"* which also indicates the absence of signs of common enterprise.

Finally we are also taking into consideration that according to the Statement of Facts *"the Company is not the only owner of the Tokens and the share of overall Tokens that belongs to the Company is less than 30%"*, and *"the Tokens will be available for purchase only by blind bid/ask method via online platforms"*. According to that any person buying Tokens cannot be sure that they are buying them from the Project, thus a lot of persons buying Tokens will not pass their money to the Project, which excludes the possibility of the *"Common Enterprise"* between the Token holders.

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

C. Expectation of Profits

We consider that the *"Expectation of Profits"* element is not matched 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 a 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.

In the 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 TRATOK Project Documents, we did not find any information that could lead Platform users to expect passive income or other profit. Please note that users who provide services within the Platform may receive remuneration in an amount depending on their activity and the quality of the tourism services provided.

"The Tratok project exists to make travel more accessible. The project aims to address shortcomings in the industry by leveraging blockchain technology to eliminate fraud, hidden transaction costs, excessive commissions from financial service providers and online middlemen and ensure a transparent marketplace with fast booking times and efficient approaches to amendments and refunds."

"The world-renowned team behind the project believe in the power of blockchain technology to revolutionize the existing sector models and have demonstrated that they can increase service provider profitability by more than 30% while at the same time resulting in lower costs for consumers"

The TRATOK Project Documents do not contain any promises or suggestions that the Token will increase in value or that 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."*

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."*

According to the Company, the Token is intended to be used on the platform as a coupon for booking services from suppliers in the travel and tourism industry. The TRATOK Platform combines two of the world's largest distribution systems, Amadeus and Sabre, and orders are made through their API using the TRATOK Token. The Platform uses blockchain technology to create a global travel ecosystem. TRATOK offers significant advantages over existing conventional platforms. This reduces transaction fees, eliminates the need for intermediaries, saves time on bookings and results in greater profits for service providers and savings for consumers.

Thus, the Project Documents cover the potential consumer use of the Token and highlight such Project products as an application for the purchase and sale of tourism goods and services. Considering that the Project does not promise any profit, the useful properties of the Token may indicate that it will be purchased for consumer purposes. We are also inclined to believe that, given the above, if someone purchases a Token for the purpose of making a profit, then this is solely due to his subjective motivation, and not from the Project's marketing materials 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."*

Having described the utility features of the Token, we consider it is 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 TRATOK Project under consideration, it should be noted that despite the useful features of the Token, we cannot exclude the possibility of its use for speculative purposes aimed at making a profit, in particular, at subsequent stages of the Project implementation. Even if the promoters of the TRATOK Platform did not intend to issue the TRATOK Token as a tool for generating profit, the Token may be used, under certain assumptions, with this intention.

This gives us reason to conclude that the TRATOK Token meets the *Expectation of Profits* element 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."

Lastly it is necessary to understand the connection between the profit generated by the Token and the managerial efforts. In many cases SEC and courts third and fourth elements of the Howey Test evaluate together to keep in mind the link between profit and managerial effort. For example, In SEC vs. Ripple case the court stated the following:

"It may certainly be the case that many Programmatic Buyers purchased XRP with an expectation of profit, but they did not derive that expectation from Ripple's efforts (as opposed to other factors, such as general cryptocurrency market trends)—particularly because none of the Programmatic Buyers were aware that they were buying XRP from Ripple. "

Thus even the fact of such effort itself is not sufficient – it is also necessary to evaluate the link between managerial efforts and the profit generated, and need to evaluate the expectation of purchasers of receiving profit solely from the managerial efforts of other.

We start the analysis 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."*

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 Company will not use any funds from the Tokens sales to develop the Project as the Project has been developed already"* and *"the community takes a central role in development and growth of the Project."*

Based on the study of the Project Documentation, we are also note that as of the date of preparation of this legal opinion, the Company allows all interested users to exchange information and use all available functionality at their own discretion.

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 are 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"*, "*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 guaranty to any persons and does not tout to any person that it will use any funds from the Tokens sales to promote the Token to increase the price of the Tokens."*

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.

Finally we are also taking into consideration that according to the Statement of Facts *"the Company is not the only owner of the Tokens and the share of overall Tokens belong to the Company is less than 30%"*, and *"the Tokens will be available for purchase only by blind bid/ask method via online platforms"*. According to that any person buying Tokens cannot be sure that it buying it from the Project, thus it can not expect the profit from the managerial efforts of the seller of the Token.

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 TRATOK TOKEN 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.

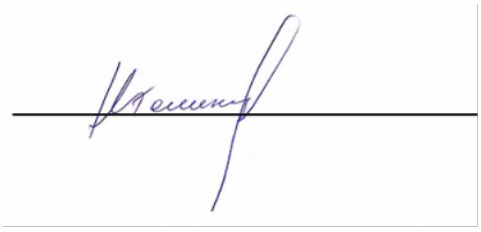
NOTICE TO RESIDENTS OF THE UNITED STATES

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 TRATOK 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



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