

**BOTCOIN TOKEN SALE AND APPLICABILITY OF
U.S. SECURITIES EXCHANGE ACT OF 1934 THERETO**

The present Opinion concluded that sale of BotCoin Tokens does not represent a sale of securities pursuant to Section 21(a) of the Securities Exchange Act of 1934 of the United States of America.

I. Introduction and Summary

The Intellectual Property Services firm (hereinafter: “the Firm”) hereby provides an analysis and an opinion on whether BotGaming, an incorporated organization; BotGaming inc., a Quebec corporation, a BotGaming Gibraltar company (hereinafter: “BotGaming”); BotGaming’s co-founders; and intermediaries would potentially be in violation of the federal securities laws of the United States of America if any of them was to offer BotCoin tokens for sale in the United States of America.

The present analysis of the federal securities laws of the United States of America is based on the application of the co-called “Howey” test. A brief indication to some similarity of the “Howey” test and the Canadian four-pronged test used to determine whether a contract is an investment contract test is also provided.

The BotGaming was created by Botgaming.me and Botgaming.me’s co-founders, with the objective of operating as a for-profit entity that would operate existing gaming bots for Internet instant messengers and create new gaming bots, as well as operate a blockchain powered in-app gaming currency intended to be used for gambling on the BotGaming platform consisting of the bots. The acquisition of the in-app gaming currency (hereinafter: BotCoin tokens) will be allowable through the purchase of BotCoin tokens by prospective players. The prospective players are BotGaming customers and may be anyone from the public. The holders of BotCoin tokens will have access to the BotGaming platform and all the gaming bots for making bets using the BotCoin tokens. In addition, BotCoin token holders will be able to monetize their BotCoin tokens by winning the BotCoin tokens during gaming sessions on the BotGaming platform and exchanging or re-selling the BotCoin tokens for either money or crypto currencies on a number of web-based platforms (“Platforms”) that support secondary trading in the BotCoin tokens, as well as via an exchange system embedded within the BotGaming platform. Thus, BotCoin token holders will be able to re-sell their unused or unwanted BotCoin tokens to third parties, which may be either individuals or legal entities. Such secondary re-sale may possible the Platforms if and only if BotGaming

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decides to introduce the BotCoin tokens onto such Platforms. However, the secondary trading of the BotCoin tokens would not be readily available at the time when an individual acquires the BotCoin tokens, as BotGaming is introducing a “Use restriction” that prevents the BotCoin token holders from freely re-selling their BotCoin tokens to third parties, thus, the only BotCoin token exchange option available to the token holders would be to use the exchange embedded within the BotGaming platform. A re-sale or any other use of the BotCoin tokens other than use on the BotGaming platform would only be possible after the removal of the “Use restriction”.

The present Opinion analyzes questions regarding the application of the U.S. federal securities laws to the offer and sale of BotCoin tokens, including the threshold question whether BotCoin tokens are securities. Based on our investigation, and under the facts presented, the Firm has determined that BotCoin tokens are not securities under the Securities Act of 1933 (“Securities Act”) and the Securities Exchange Act of 1934 (“Exchange Act”)¹. The Firm submits that automation of certain functions through computer code, blockchain technology, and/or “smart contracts,”², does not remove conduct from the purview of the U.S. federal securities laws³.

The present Opinion is based on an analysis of fundamental principles of the U.S. federal securities laws and an application thereto a set of facts provided to the Firm by BotGaming. The Firm submits that any conclusions drawn herein may be imprecise as we are analyzing a new paradigm where some virtual organizations may use distributed ledger or blockchain technology to facilitate capital raising and/or investment via offer and sale of securities, and other virtual organizations may sell digital units that are

¹ This Opinion does not analyze the question whether BotGaming is an “investment company,” as defined under Section 3(a) of the Investment Company Act of 1940 (“Investment Company Act”), in part, because BotGaming does not intend to commence any business operations regarding funding projects or regarding direct activities of investment of funds of customers. BotGaming intends not to have any access to customer’s funds and intends to limit its activity to providing data on predictions of market trends to customers. Should BotGaming decide to employ BotCoin tokens for a purpose of funding projects or investing funds, it should consider possible obligations arising from the Investment Company Act in the United States of America and/or other jurisdictions where BotGaming may decide to operate.

This Opinion does not analyze the question whether anyone associated with BotGaming is an “[i]nvestment adviser” under Section 202(a)(11) of the Investment Advisers Act of 1940 (“Advisers Act”). See 15 U.S.C. § 80b-2(a)(11) because BotGaming has not created the set of analytical tools that will be available to customers. Those who would use virtual organizations should consider their obligations under the Advisers Act.

² Computer scientist Nick Szabo described a “smart contract” as: a computerized transaction protocol that executes terms of a contract. The general objectives of smart contract design are to satisfy common contractual conditions (such as payment terms, liens, confidentiality, and even enforcement), minimize exceptions both malicious and accidental, and minimize the need for trusted intermediaries. Related economic goals include lowering fraud loss, arbitrations and enforcement costs, and other transaction costs. See Nick Szabo, *Smart Contracts*, 1994, <http://www.virtualschool.edu/mon/Economics/SmartContracts.html>.

³ See *SEC v. C.M. Joiner Leasing Corp.*, 320 U.S. 344, 351 (1943) (“[T]he reach of the [Securities] Act does not stop with the obvious and commonplace. Novel, uncommon, or irregular devices, whatever they appear to be, are also reached if it be proved as 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 contracts,’ or as ‘any interest or instrument commonly known as a ‘security’.”); see also *Reves v. Ernst & 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 by whatever name they are called.”).

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products and/or services and are not securities. In no case, we imply that BotCoin tokens, as we understand them, are a security or a financial instrument.

The Firm stresses the obligation to comply with the registration provisions of the U.S. federal securities laws and other applicable jurisdictions where similar obligations exist with respect to products and platforms involving emerging technologies and new investor interfaces. However, to the extent of the facts known to the Firm about BotGaming and BotCoin tokens, the Firm is of the opinion that no such obligations exist, at least, in the U.S.

II. Facts

1. Information and background

BotGaming is a gaming platform for Internet instant messenger bots that was launched in 2015. It was focused on a social gaming business model with a possibility monetization of the services solely via in-app purchases within the games. By September 2017, there was approximately 370,000 BotGaming bots installed on player's messengers. Currently the BotGaming platform hosts approximately 30,000 monthly active users.

Currently, the BotGaming Platform offers the following bots:

- (i) PokerBot in the Telegram messenger. PokerBot provides the means of playing Texas Holdem Poker for users at tables of five to nine (5-9) people. The bot is translated into fourteen (14) different languages. The total number of installs of PokerBot exceeds three hundred thousand (300,000) installs.
- (ii) SlotoBot is an arcade machine for numerous instant messengers. A version available on October 1st, 2017 offers a possibility to hold tournaments and duels between users, as well as a boosters store. The bot is translated into thirty (30) languages. Versions of SlotoBot are released for following instant messengers: Telegram, Facebook Messenger, Kik, Slack, Line and Wechat. The total number of bot installs exceeds seventy thousand (70,000) installs.

BotGaming is currently developing additional bots for multiple instant messengers. These bots include the following games: Dice, BlackJack, Baccarat and Roulette.

In 2017, BotGaming decided to create a fully-featured gaming platform for instant messenger apps by obtaining a MGA (Malta Gaming Authority) license, which would allow the company to legally offer on-line gambling services on the European market. Additionally, BotGaming decided to create an in-app gambling currency BotCoin that would be powered by the blockchain technology.

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The concept of a BotGaming is memorialized in a document (the “White Paper”), co-authored by the co-founders of BotGaming. The White Paper purports to describe the implementation of the BotGaming platform and the use of the BotCoin tokens. The White Paper posits that BotCoin tokens are an in-app currency.

The White Paper also has a section entitled “Financial Projections”, however, this section is quite short and describes the following:

“BotGaming offers a transparent business model to the tokenholders. All rewards and expenses of the company will be kept in blockchain, and will be available for tokenholders.”

No further details are given to what further projections the holders of BotCoin Tokens may benefit from.

Other documents drafted and made public by BotGaming, such as the Terms and Conditions of Token Sale also known as “Terms” and the Simple Agreement for Future Tokens also known as “SAFT” equally describe some BotCoin token functionality.

A description of BotGaming plans reads as follows:

“BotGaming is planning to employ an open source code Pseudo Random Numbers Generator (PRNG) capable of producing reproducible results, such that initializing the PRNG via the same seeds will yield the same results, making the in-game player interaction transparent and fair.”

“The PRNG will be written on Java, C++, and/or Python and the its code will be hosted on Github, making it available to the public for testing. A downloadable client that allows to playback any result the PRNG with a specific argument will be hosted on Github. Each spin in a slot machine bot will be provided with a link to the web-based PRNG, allowing the player to verify the correctness of the algorithm”.

“The Internet instant messengers will be used the frontend for all gambling operations.”

BotGaming co-founders, particularly, Kirill Pyrev - the CEO of BotGaming, Fedor Matasov, Ph.D. – CTO of BotGaming and Ruslan Mukhametkhanov – Marketing and PR Manager regularly stress in public that all in-app currency transactions of the BotCoin Tokens will be openly available via blockchain records to provide transparent and fair gaming. BotGaming co-founders informed the Firm

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that they actively engage in public appearances and presentations at numerous blockchain events and that what they say and display at those public appearances is in line with the information in the White Paper⁴.

To promote the BotCoin token sale, BotGaming co-founders launched a website Botgaming.me (hereinafter: “The BotGaming Website”). The BotGaming Website included descriptions of BotGaming such as:

“Blockchain powered gambling platform for messenger bots”, and

“BotGaming is a blockchain powered gambling platform for messenger bots. Verifiability of odds and building users' trust represent our core values. This is why BotGaming has been built using open source PNRG to make interactions inside the game session transparent and verifiable. BotGaming uses blockchain protocol at the game's session level. Once the game session begins, all transactions like slot machine spins or poker hands are gas-free and are processed almost instantaneously.”

The BotGaming Website also describes how BotGaming operates, and includes numerous links, for example, through which BotGaming bots could be downloaded. No links leading to the pages offering a possibility of acquiring the BotCoin tokens were identified. BotGaming Website also included a link to the White Paper, which provides some information about BotGaming structure and, together with the BotGaming Website, seems to serve as the primary source of promotional materials for BotGaming.

BotGaming's co-founders state that they to communicate to the public and promote BotGaming by soliciting media attention and by posting regular updates in instant messenger groups relating to BotGaming activities and plans.

The intentions to use the BotCoin tokens as an in-app currency and potentially introduce the BotCoin tokens onto the Platforms for trading seems to indicate that BotCoin tokens may be intended to become a crypto-currency in the future. The documents provided by BotGaming do not describe why such a crypto-currency may become popular or be of interest to other parties than players on the BotGaming platform, considering the restriction to re-sale of the BotCoin tokens on the secondary market.

2. BotCoin tokens

⁴ Specific events had not been identified and recordings thereof had not been provided by BotGaming. No investigation had been conducted by anyone from the Firm regarding public representations by BotGaming co-founders.

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In exchange for ETH, BotGaming aims to create BotCoin tokens (proportional to the amount of ETH paid) that will be then assigned to the Ethereum Blockchain address of the person or entity remitting the ETH. A BotCoin token is indented to grant the BotCoin token holder the right to gamble on the BotGaming bots, freely exchange the BotCoin tokens on the BotGaming platform and potentially freely exchange the BotCoin tokens on third-party Platforms. According to White Paper, BotGaming would earn profits by running the gambling bots like traditional online casinos and poker-room websites.

A section of the White Paper describes the BotCoin token as follows:

“The key feature of the token BotGaming is its use as ingame currency BotCoin. The user base and marketing activities create the demand for the currency and ensure natural growth of the token cost.”

The White Paper, the Terms and all versions of the SAFTs describe the following BotCoin token functionality as follows:

“BotGaming’s Token may be exchanged for the primary in-game currency for all of our games. BotGaming Token will be connected across all platforms and will allow users to play for BotGaming Tokens against each other on their devices.”

“BotGaming uses blockchain protocol as a strong bidirectional payment channel between players, casinos and affiliates. This solution guarantees the fairness of reward payout and gives players a complete control over their BotGaming Tokens.”

“At the beginning of a game session, a player is required to select an amount of BotGaming Tokens attributed to a game. Then a smart game contract is deployed; the game contract locks the corresponding number of BotGaming Tokens in a player’s digital BotGaming Token wallet and attributes this amount to the in-game currency within the game. At the end of a gaming session, the smart gaming contract matches the outcome of all operations within the game and respectively matches the amount of BotGaming Tokens in the player’s wallet on blockchain by either subtracting an amount of BotGaming Tokens or adding an amount of BotGaming Tokens on player’s wallet on blockchain.”

“BotGaming uses blockchain at the game session level only by linking the player’s digital BotGaming Token wallet to the in-gaming currency that may be used across the BotGaming Platform, allowing minimizing transactional cost and increasing transactional speed between gaming operations and BotGaming Token payments. Consequently, opening one game session

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via engaging a smart gaming contract gives access to a maximum of allowable transactions across the BotGaming Platform, including participating in various gaming bots, for example, slot machines or poker.”

Returns on investment to BotGaming are described in the White Paper in the section 3 of that is entitled “Product Specific Section”. It is not stated that the BotCoin token holders could or would benefit from any of those returns.

The promotional documents and the posts in instant messenger groups do not seem to indicate that that BotCoin token holders will not have any return on investment and may either use the BotCoin tokens to bet in the bots, to redeem the BotGaming Tokens from BotGaming or to sell the BotCoin tokens to third parties.

Sometime from September 2017 through December 2017 BotGaming is planning to offer private buyers and public buyers a possibility to acquire the BotGoin Tokens (the “Offering Period”). The acquisitions will be made “pseudonymously” (i.e., via an individual’s or entity’s pseudonym as their Ethereum Blockchain address) with a possibility of activating a simplified due diligence procedure for Know Your Client Rules (KYC), which would require the acquirer of the BotCoin tokens to provide a first name, last name and an address. To purchase a BotCoin token offered for sale by BotGaming, an individual or entity will send ETH from their Ethereum Blockchain address to an Ethereum Blockchain address associated with BotGaming.

The White Paper describes the BotCoin token as follows:

“To accelerate the velocity of our research and development we decided to make our investment products available to many people. We will conduct a Token Sale. By buying BotCoin tokens on the Token Sale, you are buying an access key to our investment products. After the Token Sale, BotCoin token may get listed at one or more crypto-exchanges, if that happens, you may be able

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to exchange your BotCoin tokens for other crypto-currencies if you no longer want to have access to our AI-products.

The supply of tokens is limited. Performance of our investment products permanently improves over time and more customers will want to access our products. It is possible that at some point in the future we will experience an extreme shortage of tokens. In that case, a secondary offering may be considered, but we will not conduct a it until the end of 2019.”

Additionally, the disclaimer section of the White Paper states:

“Please note that BotCoin tokens by themselves will not give you any return on investment. We are not selling a security or a financial instrument. We will not take any actions that may increase the value of BotCoin tokens over time and you will be subject to a restriction of selling the BotCoin tokens on secondary markers. The only reason why you should purchase the BotCoin tokens today is that the supply of the tokens limited and if you want to access our products at a reasonable cost or at all, your best opportunity is to purchase the necessary amount of BotCoin tokens at the Token Sale.”

There seems to be no descriptions of any returns on investment from purchasing the BotCoin tokens in the White Paper or the Mirocana Website. It is not clear if the BotCoin token holders could benefit from having acquired the BotCoin tokens even if they get access to the BotGaming analytical and prediction tools, as those tools are not yet developed and may not be operational as intended by the BotGaming management.

Therefore, the promotional documents and the posts in instant messenger groups seem to indicate that that BotCoin token holders will not have any return on investment and that they may use the BotCoin tokens only to subscribe to BotGaming or to maybe re-sell to third parties. Other than that, the BotCoin tokens seem to be non-refundable digital goods.

Sometime from September 2017 through December 2017 BotGaming is planning to offer private buyers and public buyers a possibility acquire the BotCoin tokens (the “Offering Period”). The acquisitions will be made “pseudonymously” (i.e., via an individual’s or entity’s pseudonym as their Ethereum Blockchain address) with a possibility of activating a simplified due diligence procedure for Know Your Client Rules (KYC), which would require the acquirer of the BotCoin tokens to provide a first name, last name and an address. To purchase a BotCoin token offered for sale by BotGaming, an individual or entity will send ETH from their Ethereum Blockchain address to an Ethereum Blockchain address associated with BotGaming.

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All of the ETH raised in the offering as well as any future profits earned by BotGaming will be held in BotGaming's Ethereum Blockchain address.

The BotCoin token price will start at 0.0001 ETH and may fluctuate depending on when the BotCoin tokens are purchased during the Offering Period. All acquirers of the BotCoin tokens are offered either a discount or a bonus on BotCoin tokens depending on when they purchase the tokens. The bonus starts at 60%. Some BotCoin token purchases are refundable and others are not as stipulated in the different versions of the SAFTs and the Terms.

Only select individuals or entities would be able to participate in closed BotCoin token sales, to which BotGaming co-founders would invite the buyers. Should closed sales of the BotCoin tokens fail to acquire desired amount of ETH, an open or public sale occur may occur and anyone would be eligible to purchase BotCoin tokens (as long as they paid ETH).

Each round of token sale has limitations to the number of BotCoin tokens offered for sale, such that only a certain number of ETH may be collected at each round, thus indirectly limiting the number of possible purchasers of BotCoin tokens at each round. The level of sophistication of token purchasers is not limited directly by BotGaming, however, the Terms and the SAFTs require the purchasers to verify if they are allowed to purchase the BotCoin tokens in their jurisdictions, as the sale of the BotCoin tokens is not registered in any jurisdiction. If BotGaming learns via applying due diligence steps of the KYC process to any of the purchasers that are not permitted to purchase the BotCoin tokens, BotGaming will return the ETH to such purchasers and destroy the associated BotCoin tokens. In order to provide BotGaming the possibility to apply the KYC process, all tokens will not be readily available to each purchaser in their wallet upon the purchase, instead a token allocation schedule (hereinafter: "vesting") will be applied to each purchaser.

All BotCoin tokens sold at all rounds pursuant SAFT V2 through to V5 that occur after the first round pursuant SAFT V1, which is a closed round with very few buyers, would be refundable.

BotCoin token holders will be restricted from re-selling BotCoin tokens acquired in the offering as follows:

““Use Restriction” means the general prohibition on the Contributor’s ability to sell, transfer, spend, exchange or otherwise make use of the Tokens on the Botgaming platform until an event identified as Platform Launch occurs as provided hereinbelow. All Tokens acquired pursuant to present SAFT are subject to the Use Restriction. The Tokens will cease to be subject to the Use

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Restriction at the moment of notification of the Contributor by Botgaming via any electronic means as per choice of Botgaming.”

“The Contributor is purchasing the Tokens for its own account, not as a nominee or agent, and not with a view to, or for resale in connection with, the distribution thereof prior to the termination of Use Restriction, and the Contributor has no present intention of selling, granting any participation in, or otherwise distributing the same prior to the termination of Use Restriction.”

The BotGaming Website and other promotional materials disseminated by BotGaming include representations that BotCoin tokens may be available for secondary market trading via several Platforms after the “Use Restriction” is lifted. During the secondary market trading on the Platforms, the BotCoin tokens should to be freely transferable on the Ethereum Blockchain.

3. Secondary Market Trading on the Platforms

After all closed and/or open sales, pursuant SAFTs S1 through S3, as well as following the Offering Period, the Platforms may become the preferred vehicle for BotCoin token holders to buy and sell BotCoin tokens in the secondary market using virtual or fiat currencies. Specifically, the Platforms would use electronic systems that allow their respective customers to post orders for BotCoin tokens on an anonymous basis. For example, customers of each Platform could buy or sell BotCoin 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. None of the Platforms can receive orders for BotCoin tokens from non-Platform customers or routed its respective customers’ orders to any other trading destinations. The Platforms will likely publicly display all their quotes, trades, and daily trading volume in BotCoin tokens on their respective websites. BotGaming is planning to provide an indication to the Platforms to restrict sales of BotCoin tokens to its U.S. customers.

III. Discussion

The U.S. Securities and Exchange Commission (hereinafter: Commission) claims to be aware that virtual organizations and associated individuals and entities increasingly may use distributed ledger technology to offer and sell instruments that may be possess some minor similarity to what is described above as

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BotCoin tokens to raise capital⁵. The Commission claims that these offers and sales may be referred to, among other things, as “Initial Coin Offerings” or “Token Sales.” Accordingly, the Commission deems it appropriate and in the public interest to issue this Report in order to stress that the U.S. federal securities law may apply to various activities, including distributed ledger technology, depending on the particular facts and circumstances, without regard to the form of the organization or technology used to effectuate a particular offer or sale. Particularly, the Commission issued a Report on July 25, 2017 of investigation on the particular facts and circumstances of the offer and sale of DAO Tokens, where it demonstrated the application of existing U.S. federal securities laws to this new paradigm and arrived at a conclusion that a token sale in particular facts of the DAO sale is considered a sale of securities⁶. In the present Opinion, the Firm applies the Commission’s approach to the particular facts of BotCoin token sale and following the discussion outlined below the Firm arrives at the conclusion that the BotCoin token sale does not represent a sale of securities pursuant analysis of applicable U.S. federal securities laws.

A. Section 5 of the Securities Act

The Commission and the courts state the following⁷:

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” *SEC v. Cavanagh*, 1 F. Supp. 2d 337, 360 (S.D.N.Y. 1998), *aff’d*, 155 F.3d 129 (2d Cir. 1998).

“The registration statement is designed to assure public access to material facts bearing on the value of publicly traded securities and is central to the Act’s comprehensive scheme for protecting public investors.” *SEC v. Aaron*, 605 F.2d 612, 618 (2d Cir. 1979) (citing *SEC v. Ralston Purina Co.*, 346 U.S. 119, 124 (1953)), *vacated on other grounds*, 446 U.S. 680 (1980). Section 5(a) of the Securities Act provides that, unless a registration statement is in effect as to a security, it is unlawful for any person, directly or indirectly, to engage in the offer or sale of securities in interstate commerce. Section 5(c) of the Securities Act provides a similar prohibition against offers to sell, or offers to buy, unless a registration statement has been filed. Thus, both Sections 5(a) and 5(c) of the Securities Act prohibit the unregistered offer or sale of securities in

⁵ U.S. Securities and Exchange Commission, Release no. 81207 / July 25, 2017, Report of investigation pursuant to section 21(a) of the securities exchange act of 1934: the DAO.

⁶ *Id.*

⁷ *Id.*

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interstate commerce. 15 U.S.C. § 77e(a) and (c). Violations of Section 5 do not require scienter. *SEC v. Universal Major Indus. Corp.*, 546 F.2d 1044, 1047 (2d Cir. 1976).

B. BotCoin tokens Are Not Securities

1. Foundational Principles of the Securities Laws Apply to Virtual Organizations or Capital Raising Entities Making Use of Distributed Ledger Technology⁸

Under Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act, a security includes “an investment contract.” *See* 15 U.S.C. §§ 77b-77c. An investment contract is an investment of money in a common enterprise with a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others. *See SEC v. Edwards*, 540 U.S. 389, 393 (2004); *SEC v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946); *see also United Housing Found., Inc. v. Forman*, 421 U.S. 837, 852-53 (1975) (The “touchstone” of an investment contract “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.”). This definition 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.” *Howey*, 328 U.S. at 299 (emphasis added). The test “permits the fulfillment of the statutory purpose of compelling full and fair disclosure relative to the issuance of ‘the many types of instruments that in our commercial world fall within the ordinary concept of a security.’” *Id.* In analyzing whether something is a security, “form should be disregarded for substance,” *Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967), “and the emphasis should be on economic realities underlying a transaction, and not on the name appended thereto.” *United Housing Found.*, 421 U.S. at 849.

2. Token Purchasers of BotCoin tokens Will Not Invest Money, rather they may be purchasing a digital product.

According to U.S. case law, 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). For example, “[I]n 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.”

The purchasers of BotCoin tokens will be using ETH to make their purchases, and BotCoin tokens will be received in exchange for ETH. In order to determine whether such purchase should or should not be

⁸ *Id.*

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interpreted as 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*); *Useton*, 940 F.2d at 574 (“[T]he ‘investment’ may take the form of ‘goods and services,’ or some other ‘exchange of value.’”) (citations omitted), it is important to evaluate all parts of the *Howey Test* and consider the outcome of such an evaluation as a whole. In case where all facts reasonably point to the contract being an investment contract, the purchase of BotCoin tokens may be determined to be an investment of money, however, in case where not all facts reasonably point to the contract not being an investment contract, the purchase of BotCoin tokens may be determined to be a transaction other than an investment of money.

3. *With a Reasonable Expectation of Profits*

BotCoin token holders who will purchase BotCoin tokens would be acquiring digital goods that will become gambling chips as in-app currency within the BotGaming Platform bots. Token holders are not investors that would be investing in a common enterprise and reasonably expected to earn profits through that enterprise when they send ETH to BotGaming Ethereum Blockchain address in exchange for BotCoin tokens. “[P]rofits” include “dividends, other periodic payments, or the increased value of the investment.” *Edwards*, 540 U.S. at 394. As described above, the various promotional materials disseminated by BotGaming and its co-founders informed purchasers that BotGaming will be for-profit entity whose objective is to provide a gambling platform that uses BotGaming Tokens as an in-app currency through which bets are to be made on the BotGaming bots. For example, BotGaming does not promise anywhere anything similar to what was discussed in DAO analysis, such as “to fund projects in exchange for a return on investment”⁹.

The ETH that BotGaming will acquire after the sale of the BotCoin tokens will be available to partly pay for expenses associated with creating, running and managing the BotGaming blockchain powered analytical platform and the remaining portion ETH will be available for payouts of players that would redeem their winnings on the BotGaming gambling bots.

BotGaming does not offer to create, analyze or acquire any projects (or “contracts”) would be proposed by third parties as was the case in DAO. BotGaming has developed its proprietary gaming bots that will be available for BotCoin token holders to gamble on.

Furthermore, BotCoin token holders will have no voting rights in any decisions made by BotGaming. BotCoin token holders are not promised any rights to share in potential profits from the subscription

⁹ Id. from footnote 35 “That the “projects” could encompass services and the creation of goods for use by DAO Token holders does not change the core analysis that investors purchased DAO Tokens with the expectation of earning profits from the efforts of others.”

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activities of BotGaming. The fact that BotCoin tokens are sold at a discount or with a bonus either via closed or open token sales to token holders seems to be the only reasonable motivation that may lead a reasonable buyer to purchase the BotCoin tokens at the discounted price. Thus, a reasonable investor would not be motivated, at least in part, by the prospect of profits on their investment of ETH in BotGaming. There is solely a speculation idea that may potentially motivate speculative buyers to buy at discount and re-sell in the future for full price the BotCoin tokens. However, BotGaming does not promise to the initial token buyers that additional BotCoin tokens will not be sold at a discount or with a bonus in the future or that the possibility of re-sale will readily be available at all. Moreover, the “Use restriction” forbids token holders to sell the BotCoin tokens at secondary market while the restriction holds. Thus, a reasonable investor would not be reasonably motivated, by the prospect of profits on their investment of ETH in BotGaming.

4. Derived from the Managerial Efforts of Others

a. The Efforts of BotGaming, BotGaming’s co-founders, and Advisors Are Essential to the Enterprise

BotCoin token holder’s profits will not be derived from the managerial efforts of others, specifically, BotGaming and its co-founders, and Advisors. The central issue is “whether the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise.” *SEC v. Glenn W. Turner Enters., Inc.*, 474 F.2d 476, 482 (9th Cir. 1973). The BotCoin token holders will rely on the managerial and entrepreneurial efforts of BotGaming and its co-founders, and Advisors, only to the extent to that the customers will expect BotGaming to create the BotGaming blockchain powered platform that will permit to utilize the BotCoin tokens gambling chips thereon. In order to earn profits, the token holders will have to place bets on the future gambling bots, win and redeem their winnings. The possibility of re-selling BotCoin tokens on secondary market is not possible until the “Use Restriction” holds and BotGaming, its co-founders or Advisors do not indicate when the “Use Restriction” will be lifted, if ever.

BotGaming management does not put forth project proposals that indicate a potential generation of profits for BotCoin token holders. Considering the unattractiveness of the BotCoin tokens as an investment instrument, BotCoin token purchaser’s expectations are primed by the marketing of BotGaming and active engagement between BotGaming and its co-founders with BotCoin token purchasers solely to the extent of promoting the sale of BotGaming digital product.

To market BotGaming and BotCoin tokens, BotGaming created BotGaming Website on which it published the White Paper explaining how the analytical platform would work and describing their vision of blockchain powered gaming.

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As any customer-oriented company, BotGaming plans to closely interact with all their token purchasers, answering questions from token purchasers about a variety of topics, including the future of BotGaming, security concerns, ground rules for how BotGaming would work, and the anticipated use of the BotCoin tokens in-app gambling currency. It is reasonable for a customer-oriented organization to hold themselves out to all token purchasers as experts in Ethereum, the blockchain protocol on which BotCoin tokens will operate, as employing blockchain technology in online trade analysis is novel to many people around the world and may represent a risk.

The conduct and marketing materials of BotGaming and its co-founders seem to lead token purchasers to believe that they could rely on BotGaming management to provide the significant managerial efforts required to build the BotGaming blockchain gambling platform. However, BotGaming and its co-founders seem to have not lead, and they currently state that they do not intend to lead, the token purchasers to believe that BotGaming will be a success in the meaning of investment success, as investment criteria does not reasonably apply to the BotCoin tokens or the BotGaming enterprise.

The token purchasers are not required to rely on the expertise of BotGaming to any other extent than the possibility to build an analytical platform where the BotCoin tokens will as the payment for subscription and possible future commission payable from token holders to BotGaming. For any management of an enterprise it is reasonable to expect to provide significant managerial efforts in all time of being employed by and/or related to the enterprise whether it is before the BotGaming launch or after.

As the BotCoin tokens are digital goods, consumer protection laws may be applicable. BotCoin token sale policy describes that if BotGaming fails to build a platform as intended, the purchasers of the BotCoin tokens pursuant SAFTs S2 though S5 will be able to get a refund for the digital goods, i.e the BotCoin tokens that they will have purchased. This policy follows from the concept that if BotGaming fails to build a platform whereon the BotCoin Tokens may be used as gambling chips, the purchasers of a product that can not be used as intended should be refunded.

The concept of relaying on expertise of BotGaming, its co-founders or Advisers is not applicable to BotCoin tokens as a security, as every person responsible for BotGaming construction of the platform has a pre-determined role: co-founders manage the business and IT, Advisors provide legal, marketing and other advises. At no point in time the Advisors may provide advice that may influence the cost of the BotCoin tokens, as the cost is solely determined by the co-founders.

BotGaming is a private business enterprise that sells digital goods for profit. Being a private business enterprise, BotGaming management is able to write and/or amend all business policies and protocols governing relationships between BotGaming, its co-founders, its Advisors and its consumers, which are

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the BotCoin token holders. The BotCoin token holders may exercise only rights they have as customers. Advisors, co-founders and other related players may exercise rights related to their respective roles within BotGaming.

b. BotCoin token Holders' Have No Voting Rights As They Are Customers Of BotGaming.

BotCoin token holders will not be afforded any voting rights. BotCoin token holders are BotGaming customers. They do not participate in the business decision making process, they have no influence on the enterprise and have no rights other than rights provided by consumer protection acts in select jurisdictions. It is reasonable to accept that the customers will be substantially reliant on the managerial efforts of BotGaming, its co-founders, and the Advisors to the extent of obligations towards BotCoin token holders from BotGaming pursuant SAFTs and the Terms.

The question of the token holders of participating in the business does not arise and the Commission's following analysis in DAO is not applicable to BotGaming:

Even if an investor's efforts help to make an enterprise profitable, those efforts do not necessarily equate with a promoter's significant managerial efforts or control over the enterprise. *See, e.g., Glenn W. Turner*, 474 F.2d at 482 (finding that a multi-level marketing scheme was an investment contract and that investors relied on the promoter's managerial efforts, despite the fact that investors put forth the majority of the labor that made the enterprise profitable, because the promoter dictated the terms and controlled the scheme itself); *Long v. Shultz*, 881 F.2d 129, 137 (5th Cir. 1989) ("An investor may authorize the assumption of particular risks that would create the possibility of greater profits or losses but still depend on a third party for all of the essential managerial efforts without which the risk could not pay off."). *See also generally SEC v. Merchant Capital, LLC*, 483 F.3d 747 (11th Cir. 2007) (finding an investment contract even where voting rights were provided to purported general partners, noting that the voting process provided limited information for investors to make informed decisions, and the purported general partners lacked control over the information in the ballots).

"In assessing whether agreements were investment contracts, court looked to whether "the investors actually had the type of control reserved under the agreements to obtain access to information necessary to protect, manage, and control their investments at the time they purchased their interests.'" *See, e.g., SEC v. Shields*, 744 F.3d 633, 643-45 (10th Cir. 2014). In the case of BotGaming, the token purchasers are not able to negotiate the terms of the proposal of purchase indicated in SAFTs and the Terms, as in essence, it is a take it or leave it proposition not subject to negotiation or feedback because it is quite lengthy and detailed, as it explains what the purchaser of the digital good entitled BotCoin token would be acquiring. Moreover, the Terms clearly indicate that if a purchaser is contemplating that the purchase

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of BotCoin token may be considered a security in the purchaser's jurisdiction, then the purchaser must either refrain from purchasing the BotCoin token or verify whether such a purchase is allowable, as BotCoin tokens are not registered with the Commission. Thus, BotGaming customers will never have any voting rights as BotCoin token holders and will never have any control over the enterprise, for the simple fact of being customers.

The Commission's analysis of "the pseudonymity and dispersion" of token holders that was applicable in DAO is not applicable to BotGaming facts as BotGaming never intended for BotCoin token holders to become partners of BotGaming. Moreover, as BotGaming bots are used on instant messengers, it is possible for token holders to communicate with each other, as they may play against each other via the gaming bots. Therefore the following analysis of DAO is irrelevant:

"there was great dispersion among those individuals and/or entities who were invested in DAO and thousands of individuals and/or entities that traded DAO Tokens in the secondary market — an arrangement that bears little resemblance to that of a genuine general partnership. *Cf. Williamson v. Tucker*, 645 F.2d 404, 422-24 (5th Cir. 1981) ("[O]ne would not expect partnership interests sold to large numbers of the general public to provide any real partnership control; at some point there would be so many [limited] partners that a partnership vote would be more like a corporate vote, each partner's role having been diluted to the level of a single shareholder in a corporation.")¹⁰.

The fact that BotCoin token holders fully rely on BotGaming management is reasonable in view of the sale of digital assets outlined in the facts section above.

C. Issuers Must Register Offers and Sales of Securities Unless a Valid Exemption Applies

The Commission states that:

¹⁰ The Fifth Circuit in *Williamson* stated that: "A general partnership or joint venture interest can be designated a security if the investor can establish, for example, that (1) an agreement among the parties leaves so little power in the hands of the partner or venture that the arrangement in fact distributes power as would a limited partnership; or (2) the partner or venturer is so inexperienced and unknowledgeable in business affairs that he is incapable of intelligently exercising his partnership or venture powers; or (3) the partner or venturer is so dependent on some unique entrepreneurial or managerial ability of the promoter or manager that he cannot replace the manager of the enterprise or otherwise exercise meaningful partnership or venture powers."

Williamson, 645 F.2d at 424 & n.15 (court also noting that, "this is not to say that other factors could not also give rise to such a dependence on the promoter or manager that the exercise of partnership powers would be effectively precluded.").

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The definition of “issuer” is broadly defined to include “every person who issues or proposes to issue any security” and “person” includes “any unincorporated organization.” 15 U.S.C. § 77b(a)(4). The term “issuer” is flexibly construed in the Section 5 context “as issuers devise new ways to issue their securities and the definition of a security itself expands.” *Doran v. Petroleum Mgmt. Corp.*, 545 F.2d 893, 909 (5th Cir. 1977); accord *SEC v. Murphy*, 626 F.2d 633, 644 (9th Cir. 1980) (“[W]hen a person [or entity] organizes or sponsors the organization of limited partnerships and is primarily responsible for the success or failure of the venture for which the partnership is formed, he will be considered an issuer ...”).

BotGaming whether acting, as an unincorporated organization or BotGaming incorporated acting as a Quebec corporation or as an Estonian company will not be an issuer of securities, and information about BotGaming will not be “crucial” to the BotCoin token holders purchase decision.

The analysis of *Murphy*, 626 F.2d at 643 (“Here there is no company issuing stock, but instead, a group of individuals investing funds in an enterprise for profit, and receiving in return an entitlement to a percentage of the proceeds of the enterprise.”) (citation omitted) is not applicable as the BotCoin token holders are not investing in BotGaming for profit, rather they want to acquire an in-game currency for online gambling activities. The mere possibility of potential and not guaranteed token speculation does not make the BotCoin tokens a reasonable investment opportunity, as the token holders would have to monitor the market and provide reasonable efforts to resell the BotCoin tokens at a higher price than the initial purchase price.

Moreover, BotGaming is aware the Commission may make an analysis that would be incorrect if the Commission determines that at least some of the BotCoin tokens are securities. Thus, to avoid any doubt, BotGaming is not intending to sell BotCoin tokens to U.S. residents or Canadian residents. However, should a U.S. resident or a Canadian resident acquire BotCoin tokens pursuant to any of the SAFTs, the valid exemption for registration should apply.

The Firm has indicated to BotGaming that those who participate in an unregistered offer and sale of securities not subject to a valid exemption are liable for violating Section 5. See, e.g., *Murphy*, 626 F.2d at 650-51 (“[T]hose who ha[ve] a necessary role in the transaction are held liable as participants.”) (citing *SEC v. North Am. Research & Dev. Corp.*, 424 F.2d 63, 81 (2d Cir. 1970); *SEC v. Culpepper*, 270 F.2d 241, 247 (2d Cir. 1959); *SEC v. International Chem. Dev. Corp.*, 469 F.2d 20, 28 (10th Cir. 1972); *Pennaluna & Co. v. SEC*, 410 F.2d 861, 864 n.1, 868 (9th Cir. 1969)); *SEC v. Softpoint, Inc.*, 958 F. Supp 846, 859-60 (S.D.N.Y. 1997) (“The prohibitions of Section 5 ... sweep[] broadly to encompass ‘any person’ who participates in the offer or sale of an unregistered, non-exempt security.”); *SEC v. Chinese Consol. Benevolent Ass’n.*, 120 F.2d 738, 740-41 (2d Cir. 1941) (defendant violated Section 5(a)

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“because it engaged in selling unregistered securities” issued by a third party “when it solicited offers to buy the securities ‘for value’”).

IV. Conclusion

Based on the information provided to the Firm by BotGaming, BotCoin tokens are not securities as defined by the U.S. Securities and Exchange Act because, at least, token purchasers do not have a reasonable expectation of profit from acquiring the BotCoin tokens.

The BotCoin tokens do not represent a reasonably interesting investment at least because:

- a. the BotCoin tokens may be used solely on the BotGaming Platform for gambling via the BotGaming bots on instant messengers, and
- b. because a Use Restriction forbids token holders to sell BotCoin tokens on secondary markets until the restriction is lifted, which many happen at sole discretion of BotGaming management.

Therefore, BotGaming is not required to register the sale of BotCoin tokens with the Commission.

Additionally, all platforms and systems that meet the definitions of an exchange are not required to register a national exchange or a national securities exchange or operate pursuant to an exemption from such registration¹¹ as the BotCoin tokens are not securities and are digital assets. The Section 5 of the

¹¹ See 15 U.S.C. § 78e. Section 3(a)(1) of the Exchange Act defines an “exchange” as “any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood” 15 U.S.C. § 78c(a)(1). Exchange Act Rule 3b-16(a) provides a functional test to assess whether a trading system meets the definition of exchange under Section 3(a)(1). Under Exchange Act Rule 3b-16(a), an organization, association, or group of persons shall be considered to constitute, maintain, or provide “a marketplace or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange,” if such organization, association, or group of persons: (1) brings together the orders for securities of multiple buyers and sellers; and (2) uses established, non-discretionary methods (whether by providing a trading facility or by setting rules) under which such orders interact with each other, and the buyers and sellers entering such orders agree to the terms of the trade. See 17 C.F.R. § 240.3b-16(a). The Commission adopted Rule 3b-16(b) to exclude explicitly certain systems that the Commission believed did not meet the exchange definition. These systems include systems that merely route orders to other execution facilities and systems that allow persons to enter orders for execution against the bids and offers of a single dealer system. See Securities Exchange Act Rel. No. 40760 (Dec. 8, 1998), 63 FR 70844 (Dec. 22, 1998) (Regulation of Exchanges and Alternative Trading Systems) (“Regulation ATS”), 70852. A system that meets the criteria of Rule 3b-16(a), and is not excluded under Rule 3b-16(b), must register as a national securities exchange pursuant to Sections 5 and 6 of the Exchange Act⁴¹ or operate pursuant to an appropriate exemption. One frequently used exemption is for alternative trading systems (“ATS”).⁴² Rule 3a1-1(a)(2) exempts from the⁴³ definition of “exchange” under Section 3(a)(1) an ATS that complies with Regulation ATS, which includes, among other things, the requirement to register as a broker-dealer and file a Form ATS with the Commission to provide notice of the ATS’s operations. Therefore, an ATS that operates pursuant to the Rule 3a1-1(a)(2) exemption and complies with Regulation ATS would not be subject to the registration requirement of Section 5 of the Exchange Act.

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U.S. Exchange Act that makes it unlawful for any broker, dealer, or exchange, directly or indirectly, to effect any transaction in a security, or to report any such transaction, in interstate commerce, unless the exchange is registered as a national securities exchange under Section 6 of the Exchange Act, or is exempted from such registration does not apply to any platform or system selling BotCoin tokens.

V. Additional information

The Commission recommends the following:

“Whether or not a particular transaction involves the offer and sale of a security— regardless of the terminology used—will depend on the facts and circumstances, including the economic realities of the transaction. Those who offer and sell securities in the United States must comply with the federal securities laws, including the requirement to register with the Commission or to qualify for an exemption from the registration requirements of the federal securities laws. The registration requirements are designed to provide investors with procedural protections and material information necessary to make informed investment decisions. These requirements apply to those who offer and sell securities in the United States, regardless whether the issuing entity is a traditional company or a decentralized autonomous organization, regardless whether those securities are purchased using U.S. dollars or virtual currencies, and regardless whether they are distributed in certificated form or through distributed ledger technology. In addition, any entity or person engaging in the activities of an exchange, such as bringing together the orders for securities of multiple buyers and sellers using established non- discretionary methods under which such orders interact with each other and buyers and sellers entering such orders agree upon the terms of the trade, must register as a national securities exchange or operate pursuant to an exemption from such registration.

To learn more about registration requirements under the Securities Act, please visit the Commission’s website [here](#). To learn more about the Commission’s registration requirements for investment companies, please visit the Commission’s website [here](#). To learn more about the Commission’s registration requirements for national securities exchanges, please visit the Commission’s website [here](#). To learn more about alternative trading systems, please see the Regulation ATS adopting release [here](#).

For additional guidance, please see the following Commission enforcement actions involving virtual currencies:

- *SEC v. Trendon T. Shavers and Bitcoin Savings and Trust*, Civil Action No. 4:13- CV-416 (E.D. Tex., complaint filed July 23, 2013)
- *In re Erik T. Voorhees*, Rel. No. 33-9592 (June 3, 2014)
- *In re BTC Trading, Corp. and Ethan Burnside*, Rel. No. 33-9685 (Dec. 8, 2014)

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- *SEC v. Homero Joshua Garza, Gaw Miners, LLC, and ZenMiner, LLC (d/b/a Zen Cloud)*, Civil Action No. 3:15-CV-01760 (D. Conn., complaint filed Dec. 1, 2015)
- *In re Bitcoin Investment Trust and SecondMarket, Inc.*, Rel. No. 34-78282 (July 11, 2016)
- *In re Sunshine Capital, Inc.*, File No. 500-1 (Apr. 11, 2017) And please see the following investor alerts:
- *Bitcoin and Other Virtual Currency-Related Investments* (May 7, 2014)
- *Ponzi Schemes Using Virtual Currencies* (July 2013) By the Commission.

VI. Four-prong test in Canada

Please consider some similarity between the U.S. Howey test and the Canadian “four-prong” test to determine whether an offer of sale constitutes an offer of sale of a security, namely:

- An investment of money;
- In a common enterprise;
- With the expectation of profit; and
- To come significantly from the efforts of others.

As such and without any discussion or any analysis of the foregoing, it may be contemplated that the offer to sell BotCoin tokens does not constitute an offer of sale of securities in Canada. However, we for any further details or analysis we advise to contact the responsible provincial government representatives¹².

VII. Disclaimers

LEGAL SEARCH AND ANALYSIS

THIS ANALYSIS COVERS LEGISLATION, REGULATIONS AND OPINIONS (HEREINAFTER TOGETHER “RULES”) THAT WERE IDENTIFIED BY OUR EXPERIENCED LEGAL INVESTIGATOR. EVEN EXPERIENCED SEARCH PROFESSIONALS CANNOT GUARANTEE COMPLETENESS AND RIGHTNESS OF THE ANALYSIS. AN OPINION AND SUBSEQUENT USE THEREOF MAY REDUCE THE RISK OF ENCOUNTERING LEGAL PROBLEMS WITH REGULATING BODIES AND THIRD PARTIES. HOWEVER, NEITHER THE OPINION NOR THE LEGAL EVALUATION OF THE RESULTS MAY BE USED FOR ANY OTHER PURPOSE THAN AS A PERSONAL OPINION OF INDIVIDUALS HAVING SOME LEGAL EDUCATION AND SOME LEGAL EXPERIENCE THAT MAY BE RELEVANT OR MAY NOT BE RELEVANT TO THE SUBJECT MATTER OF THE OPINION. FOR EXAMPLE, IT CANNOT BE EXCLUDED THAT A LEGAL ANALYSIS HAS CERTAIN DEFICIENCIES, THAT RULES HAVE BEEN

¹² CSA Staff Notice 46-307, http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20170824_cryptocurrency-offerings.htm

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INCORRECTLY INTERPRETED, UNUSUAL TERMS HAVE BEEN USED, OR THAT THE ANALYSIS STRATEGY – EVEN THOUGH PERFORMED WITH REASONABLE DILIGENCE AND EXPERIENCE - FAILED TO IDENTIFY CERTAIN CRITICAL RULES, OR CERTAIN RULES THAT HAVE NOT BEEN REASONABLY AVAILABLE AT THE DATE OF THE ANALYSIS THAT MAY NEVERTHELESS BE CRITICAL. IN ADDITION, MISINTERPRETATION OF THE RULES CAN NEVER BE FULLY EXCLUDED WHEN ANALYZING A MULTITUDE OF DOCUMENTS FOR THEIR RELEVANCE AND APPLICABILITY. PLEASE ALSO TAKE SPECIAL NOTICE OF THE SPECIFIC LIMITATIONS OF THE PRESENT OPINION AND THE EVALUATION THAT WE HAVE IDENTIFIED ABOVE.

LEGAL LIMITATIONS

THE OPINION IS LIMITED TO THE QUESTION OF ANALYZING AND OUTLINING SOME POTENTIAL LEGAL RISKS THAT MAY ARISE UNDER A LAW THAT WE ARE AWARE OF IN THE UNITED STATES OF AMERICA. THE OPINION IS LIMITED TO THE INFORMATION PROVIDED TO THE FIRM BY THE CLIENT. NO ADDITIONAL INVESTIGATION HAS BEEN CONDUCTED TO VERIFY THE VERACITY OF SUCH INFORMATION. TO THE EXTENT STATEMENTS ARE MADE REGARDING NATIONAL REGULATIONS, SUCH STATEMENTS ARE EXTRAPOLATIONS BASED ON LIMITED KNOWLEDGE OF UNITED STATES REGULATIONS AND LEGAL PRACTICE AND ON THE PRINCIPLES OF INTERNATIONAL HARMONISATION OF THE LAW AND ON OUR SUBJECTIVE UNDERSTANDING OF PROVISIONS AND LEGAL CASES CITED IN THE PRESENT OPINION. THERE IS A NEED FOR FURTHER VERIFICATION AND CONFIRMATION FROM A UNITED STATES LEGAL PROFESSIONAL AS OUR SUBJECTIVE UNDERSTANDING IS INCOMPLETE AND OUR EXPERIENCE IN INTERNATIONAL LAW AND SUBJECTIVE UNDERSTANDING OF UNITED STATES LAW CAN STRONGLY DEVIATE FROM UNDERSTANDING OF UNITED STATES LEGAL PROFESSIONALS. THE SCOPE AND BASIS OF THIS OPINION HAS BEEN DEFINED TOGETHER WITH CLIENT. ANY LIABILITY TOWARDS THIRD PARTIES OR CLIENT FOR ANY STATEMENT OR CONTENT OF THIS OPINION IS EXPLICITLY EXCLUDED. IT IS UNDERSTOOD AND ACCEPTED THAT THE PRESENT OPINION DOES NOT HAVE LEGAL VALUE IN THE UNITED STATES OF AMERICA OR IN CANADA AND IS INTENDED FOR GENERAL UNDERSTANDING OF CLIENT'S INTENT PURPOSES ONLY. IT IS UNDERSTOOD AND ACCEPTED THAT IPS LEGAL SERVICES TEAM THAT HAS PREPARED THE PRESENT OPINION IS NOT BE LICENSED TO PRACTICE LAW IN THE UNITED STATES OF AMERICA OR IN CANADA AND THAT NO WARRANTIES OR REPRESENTATIONS HAS BEEN MADE TO THIS REGARD. IPS LEGAL SERVICES TEAM MAY CONSIST OF JURISTS THAT MAY BE EDUCATED AND MAY BE TRAINED IN UNITED STATES OF AMERICA LAW, CANADIAN LAW AND INTERNATIONAL LAW, AND MAY CONSIST OF JURISTS THAT MAY BE LICENSED TO PRACTICE LAW IN ANY JURISDICTIONS IN EUROPE OR ASIA. IPS PROFESSIONAL LIABILITY INSURANCE DOES NOT APPLY TO ANY STATEMENT OR CONTENT OF THIS OPINION. PLEASE NOTE THAT WHERE A LEGAL PROVISION OR A

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RULE HAS BEEN AMENDED, EDITED OR REPLACED BY ANOTHER AND THEREFORE THERE SEEMS TO BE A LEGAL FREEDOM TO OPERATE THE BUSINESS ACTIVITIES, THIS DOES NOT EXCLUDE THAT OTHER RULES MAY EXIST PERTAINING TO THE REGULATION OF THE BUSINESS ACTIVITIES.

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REPUBLIC OF CHINA (FOR SUCH PURPOSES, NOT INCLUDING THE HONG KONG AND MACAU SPECIAL ADMINISTRATIVE REGIONS OR TAIWAN), EXCEPT AS PERMITTED BY THE SECURITIES AND OTHER LAWS AND REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA.

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