

## **LEGAL OPINION REGARDING DYNAMITE TOKEN**

### **Introduction and Background**

To proceed with the legal analysis, it is important to first lay the grounds by way of introducing the different cryptocurrencies that exist and how the cryptocurrency industry has evolved over time. Classic cryptocurrency, that is Bitcoin, is a cryptocurrency in its traditional sense, since it has characteristics customary to usual currencies because Bitcoin acts as an account within the system, a store of value and a medium of exchange. It is, however, digital and virtual in nature by being encrypted. The key innovative feature is that it is the first decentralized currency powered by an open public ledger technology that records and validates all transactions, called the Blockchain. Over time, other categories of cryptocurrencies came into existence and those include tokens and so-called alternative cryptocurrency coins (“altcoins”), the latter is a cryptocurrency that aims to be an alternative to Bitcoin, usually built on its open-sourced original protocol but differ in underlying codes and, thus, in key features. Token is often a representation of a particular asset, which is fungible and tradeable, hence why it can be anything from commodities to loyalty points, or representation of a utility, that usually resides on top of the blockchain. The key difference between cryptocurrencies and tokens is that with the latter there is no need to create or modify any underlying code, since tokens can be created on top of the platform (e.g. Ethereum) powered by smart contracts. The main differentiating factor between cryptocurrency and token can, thus, be narrowed down to an answer to the following question: “was a coin intended to act as a separate currency with its own separate blockchain or was created on top of the already existing platform.” Another crucial differentiating factor between tokens and cryptocurrencies that is worth noting at the outset, is that tokens emission is centralized whilst cryptocurrencies are decentralized in nature and are the consequence of mining, hence, they cannot be influenced in any way and are only subject to market forces.

### **Is Dynamite a Security?**

In the context of coins and ICO, the relevant test applied by the U.S. Courts is the *Howey* Test. It is used to determine whether an instrument qualifies as an ‘investment contract’ as defined by federal and state securities laws.

The seminal Supreme Court case for determining whether an instrument meets the definition of security is *SEC v. Howey*, 328 U.S. 293 (1946). The Supreme Court has reaffirmed the *Howey* analysis as recently as 2004. *Howey* focuses specifically on the term “investment contract” within the definition of security, noting that it has been used to classify those instruments that are of a “more variable character” that may be considered 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.” Not every contract or agreement is an “investment contract” and the Supreme Court developed a four-

part test to determine whether an agreement constitutes an investment contract and therefore a security.

In the case of *United Housing Foundation, Inc. v Forman (1975)*, The U.S. Supreme court summarized the test the following way:

*“the basic test for distinguishing the transaction from other commercial dealings is whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others. . . This test, in shorthand form, embodies the essential attributes that run through all of the Court's decisions defining a security. 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. By profits, the Court has meant either capital appreciation resulting from the development of the initial investment, . . . or a participation in earnings resulting from the use of investors' funds, . . .*

*In such cases, the investor is "attracted solely by the prospects of a return" on his investment. . . . By contrast, when a purchaser is motivated by a desire to use or consume the item purchased. . . - the securities laws do not apply.”*

Based on the above and later cases, that have expanded the term “money” to include investments of assets other than money, we can deduce the following key parts to the *Howey* test:

1. It is an investment of money or other tangible or definable consideration
2. The investment of money is in a common enterprise
3. There is an expectation of profits from the investment, which comes solely from the efforts of others.

### **Summary**

As we see in our case the only one factor of the *Howey* test that is partly satisfied, in our opinion, is “the investment of money or other tangible or definable consideration”. Other two factors we consider not to be satisfied. For token to be considered a security all three elements have to be present, thus, there is a low risk that the Dynamite Token will fall under the definition of securities according to the U.S. federal and state laws. We find that Dynamite Token is not securities since it will be used to fuel future decentralized apps making it different from other forms.

### **Final Conclusion**

Based on the above analysis we find that Dynamite Token, akin to Bitcoin, has very low legal risks due to its nature and it will be used to fuel future decentralized apps, hence, does not fall under the category of Security.

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