

LEGAL STATUS OF CURATE TOKENS (CURATE)

Board of Directors
Curate Group Ltd.

March 8, 2021

Re: Legal analysis and opinion as to the CURATE Token (XCUR) as a Security under U.S. Securities laws.

I. LEGAL ISSUES TO BE ANALYZED

This legal analysis sets out the legal analysis as to whether the CURATE tokens (XCUR) as developed for use by CURATE would constitute being securities pursuant to relevant U.S. securities laws for purposes of Section 2(a)(1) of the Securities Act of 1933 ("Securities Act") and Section 3(a)(10) of the Securities Exchange Act of 1934 ("Exchange Act"), including Howey Test, Family Resemblance Test, and Risk Capital Test, which are used in the United States to recognize a particular instrument as a security and other analytical frameworks.

Please consider that each of the tests can be interpreted in different ways, depending on the state, judicial instance, and the particular circumstances of the case. While analyzing, we were moving from the generally accepted criteria for the application of these tests.

II. DEFINITIONS

In order to analyze the CURATE Token (XCUR) under the federal securities laws, we start with the broad definition of "security" contained in Section 2(a)(1) of the Securities Act: *"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, collateral-trust certificate ... transferable share, investment contract . . . or, in general, any interest or instrument is commonly known as a 'security', or any certificate of interest or participation in, temporary or interim certificate for, receipt for, a guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing".*¹

¹ The United States Supreme Court has stated that the definitions of "security" under the Securities Act and the Exchange Act are treated as being the same, despite some technical differences. SEC v. Edwards, 540 U. S. 398 (2004) (citing Reves v. Ernst & Young, 494 U.S. 56, 61 n.1(1990)). See Edwards, 540 U.S. at 390.

In order to inform and to give the client the general approach to such matters, there is the following list of rights normally granted to the holder and typically associated with a blockchain token that likely does not meet the definition of "security."

As outlined by in a number of legal analysis, such utility may include:

- Rights to program, develop or create features for the system or to “mine” things that are embedded in the system
- Rights to access or license the system
- Rights to charge a toll for such access or license
- Rights to contribute labor or effort to the system
- Rights to use the system and its outputs
- Rights to sell the products of the system or offered thereon
- Rights to purchase products of the system or offered thereon
- Rights to vote on additions to or deletions from the system in terms of features and functionality

Note that this is not an exhaustive list of rights that reduce the risk of a token to be determined as a "security."

For the same purpose, we also introduce a list of investment interests of the holder typically associated with a blockchain token, that would, in our view, constitute a security:

1. Status as a creditor or lender;
2. Equity interest;
3. Ownership interest in a legal entity or partnership;
4. Share of profit and/or losses, or assets and/or liability;
5. Claim in bankruptcy as equity interest holder or creditor;
6. Holder of a repayment obligation from the platform or network or the legal entity issuer of the blockchain token and
7. A convertible future allowing the holder to convert a token into instrument with one or more investment interests.

Please note that this is not an exhaustive list of investment interests that increase the risk of a token to be classified as "security".

Based on the above-mentioned definitions we have analyzed the facts involved with the CURATE Tokens, the White Paper, the Curate Web and App as well as the relevant case law. We have found that the CURATE token structure makes it highly unlikely that the CURATE Token would be deemed to represent a security. This opinion is subject to specific facts, circumstances, and characteristics of the CURATE Token as it was designed, presented and is used, based upon the matters presented to counsel and as available from open and company sources.

Overview of Curate

Curate is a peer to peer marketplace centered around content discovery between merchants and consumers. It can be likened to a social media network focused on clothing/fashion, gaming/tech, crypto assets and health/beauty and more, but in this case also utilizes the decentralized blockchain network as a payment infrastructure means of providing royalties and rewarding engagement i.e buying, selling or based on their engagement algorithm.

Curate implements a way to reward users for spending their time to contribute to the marketplace and encourage activity and transactions using their rewards algorithm which prevents spam and abuse.

With the Curate app, it becomes easier for consumers and merchants to connect all over the world. The curate marketplace unique value proposition and Unique Selling Point(USP) are its ability to provide a robust decentralized network that connects people all over the world, and rewards each person based on the contribution made to grow the marketplace as well as it's native ERC-20 token XCUR which provides discounts on gas fees, listing fees and more when used as a form of payment.

Curate aims to attract merchants and retailers to list their content, raise brand awareness and increase their online sales. In return, Curate provides a trustless platform allowing users to feedback a curated collection of trending content within our key categories (clothing/fashion, gaming/tech, crypto assets, health/beauty) for the community to discover. Curate was built to decentralised, web 3.0 and open source. Content creator/merchant uploads occur for products, which can then be sold, purchased and advertised by the users.

III. RISKS ASSESSMENT AND ANALYSIS

1. *Application of the Howey Test*

The Howey Test is one of the most important tests that is widely used to determine whether a contract qualifies as a security. It was introduced in 1946 in the U.S. Supreme Court case of *SEC v. Howey*, 328 U.S. 293 (1946). The test for a security applies under Howey "*regardless of whether the shares in the enterprise are evidenced by formal certificates or by nominal interest in the physical assets used by the enterprise.*" *Howey*, 328 U.S. at 298-99.

The standards of the *Howey* analysis were again confirmed as being the test of a contract when it was reaffirmed by the Court in 2004 in *SEC v. Edwards*, 540 U.S. 398 (2004).

The U.S. Supreme Court in *Howey* developed a four-part test to determine whether an agreement constitutes an investment contract and, therefore, a security. According to The Court ruling, a contract constitutes an investment contract that meets the definition of security if there is:

- (i) an investment of money;
- (ii) in a common enterprise;
- (iii) with an expectation of profits; and
- (iv) solely from the efforts of others (e.g. a promoter or third party),

In order to be considered a security, all four factors must be met.

It should be noted that Howey test is the only securities test which is adapted for the distinctive features of Token when they are offered for Sale. When used in many ways such as the Covate app, they are transactional objects

Element 1: Is there an investment of money?

Tokens that are not sold for value, do not involve an investment of money. For example, if all tokens are distributed for free, or are only produced through mining, then there is no sale for value. Tokens which are sold in a crowd-sale at any time, regardless of whether sold for fiat or cryptocurrency or anything else of value involve an investment of money. Also, an investment of money may include not only the provision of capital, assets, and cash, but also goods, services, or a promissory note.²

Given the broad definition of a money investment and the fact that Curate Tokens will be distributed through a sale by Curate to the users of their app, to buy and sell products, which are listed and offered by users on the Curate App, with a corresponding value to each Curate token into a fiat currency, with the price set per token as part of a membership and rights to use the Curate system, **this element of the test will, most likely, not be viewed as satisfied.** We reach this conclusion based on the fact that the CURATE Token is not being offered as a sale of the token itself merely for the raising of capital, but the fact that it is part of an access to the Curate system, not as a stand-alone coin or token for its own value, but its only intrinsic value is inside the Curate App for the purchase and selling of the products offered thereon.

Element 2: Common enterprise

If the sale of tokens is made before any code has been deployed on a blockchain, it is more likely to result in a common enterprise where the profits arise from the efforts of others. This is because the buyers are completely dependent on the actions of the developers, and the buyers cannot actually participate in the network until a later time. And vice versa, if there is a functioning network, there is less likely, but still, it may have some similarities to a common enterprise where the profits arise from the efforts of others. The closer the sale is to launch of the network, the less likely it is to be a common enterprise.

² See, e.g., *Int'l Bhd. Of Teamsters v. Daniel*, 439 U.S. 551, 560 n. 12 (1979); *Hector v. Wiens*, 533 F.2d 429, 432-33 (9th Cir. 1976); *Sandusky Land, Ltd. v. Uniplan Groups Inc.*, 400 F. Supp. 440, 445 (N.D. Ohio 1975).

The Curate team confirmed that there is a functioning Curate network that ties into the Curate application and was already built and not needing to be launched. According to the company, any incentives are derived through token holders' own efforts, rather than through a passive investment. The Curate Token works in conjunction with the use of the Curate application for its connectivity and marketing technology on the Curate App. The platform participants are, in fact, the main contributors to the platform database and may not be considered passive investors who solely rely on efforts of others. Indeed, the users on Curate are quite similar to users on E-Bay, Mercari, and dozens of other such applications and sites for the buying and selling of products by the individuals involved. Without using the Curate application, the CURATE Token itself has defined user value. The fact that it has a secondary market has no effect on the actual use of the CURATE, which is only additional access to the Curate system for additional use and benefits.

The circuit courts of appeal are divided in their interpretation of the common enterprise clause of the Howey Test. The term "common enterprise" isn't precisely defined, and courts have used different interpretations. Most federal courts define a common enterprise as one that is horizontal, meaning that investors pool their money or assets together to invest in a project, however, other courts use different definitions. The interpretations of this clause exist primarily in these three categories, although circuit courts sometimes use multiple categories:

- (a) Horizontal Commonality. Horizontal commonality exists with the pooling of investor contributions, whereby the success of the individual investor depends on the success of the overall ventures. Pooling can sometimes - but does not always - include a pro-rata sharing of profits.³ Horizontal commonality may be absent when the users obtain unique assets (e . g ., a condo) by which the profit they obtain is dependent on the success of their individual asset rather than the common good. Whether funds are pooled appears to be the key question, and, thus, in cases where there is no sharing of profits or pooling of funds, a common enterprise may not be deemed to exist.⁴
- (b) Broad Vertical Commonality. The broad vertical approach considers whether the success of the token holders depends on the promoter's expertise. If there is such reliance, then a common enterprise will be deemed to exist.⁵

³ See e.g., *Curran v. Merrill Lynch*, 622 F.2d 216 (6th Cir. 1980).

⁴ See e.g., *Hirk v. Agri-Research Council, Inc.*, 561 F.2d 96, 101 (*finding discretionary future trading account was not investment contract because there was no pooling of funds*); *Wais v. Fox Hills Dev. Corp.*, 24 F.3d 1016 (7th Cir. 1994) (*promoter of condominium timeshare did not pool profits and thus no common enterprise existed*).

⁵ See e.g., *SEC v. Continental Commodities Corp.*, 497 F.2d 516 (5th Cir. 1974) (*promoter's recommendations regarding certain futures contracts demonstrated investor reliance on promoter's expertise*).

(c) Narrow Vertical Commonality. Narrow vertical commonality exists when investor's profits are tied to the promoters' profits.⁶

Since as represented and studied the Curate universe framework is actually not decentralized, has no centralized administration and Curate Token holders get the ability to use such system as a third-party user there is a high likelihood that Curate's CURATE will not be viewed as having a common enterprise. Although the Curate Token has a value, that value is tied to being able to buy and sell products and or services of many kinds on the Curate common market place on the Curate App. It exists in value only in the form of the products that are offered or sold on the Curate App. So there is no common enterprise among the users and those who would use the Curate Token to buy or sell in such a marketplace. For instance, the sale of a pair of running shoes is made by the seller in a certain amount, that translates to Curate tokens, but is not based on a common enterprise, merely that it exists in a common universe for use, to buy and sell the products and other services on the app.

Element 3: Expectation of profits

That is broadly defined as any form of capital appreciation, cash return on investment or other earnings such as dividends and interests. We have examined the use of the Curate Token to be used on the Curate App. Since the Curate App is the universe where the Curate Token has its use and purchasing power, any growth of value would be existential to the Token and more market drive on the product. Under this element, profit refers to the type of return or income an investor seeks on their investment (rather than the profits that the system or issuer might earn). Thus, for purposes of blockchain tokens, this could refer to any type of return or income earned as a result of being a blockchain token holder, which would be narrowed to the extent it is derived passively, i.e., from the efforts of others. Since courts consider this factor through the lens of the "efforts of others" factor, we analyze this prong along with the fourth factor below. In other words, just because there is a return or profit, does not mean that the investment contract is a security. It is the essentially passive nature of the return, as determined by the "efforts of others" analysis, that results in an "investment contract" and security as opposed to a simple contract instrument.

The answer to the question whether there is an expectation of profit basically lays in the area of what function a particular token has. Tokens which give, or purport to give, traditional equity, debt, or other investor rights are almost certainly securities. A token, which does not have any real function or is used in a network with no real function, is very likely to be bought with an expectation of profit from the efforts of others because no real

⁶ See *SEC v. Eurobond Exchange Ltd.*, 13 F.3d 1334 (9th Cir. 1994) (*imposition of profit limitations on investors through requiring promoter to receive excess return rate tied promoter's fortunes to investors*).

use or participation by token holders is possible. The Curate token only has profit if used in the sale or purchase of the items or services. As a transactional crypto, any rise or fall of such token would be based on the fixed amount of tokens and their value within the Curate App universe. Voting rights alone do not constitute real functionality. A token which has a specific function that is only available to token holders is more likely to be purchased in order to access that function and less likely to be purchased with an expectation of profit. It should be noted that here, the CURATE holders have NO voting rights whatsoever, nor is the CURATE token built with any expectation of profit, since it is a use token only, not being used with any expectation of additional profits to the purchaser. When a purchaser of the CURATE purchases a package, they are doing so with the expectation of use in the Curate system for use of the Curate application as credits for use within that system, and any value is pointed to that system itself and not independent of it.

The main purpose and utility of the Curate token is a membership in and access to Curate App platform with some rights that are unique to those Curate holders which are simply additional usage rights alone. Specifically, **CURATE token holders will have access to the unique database related to the Curate products and services offered by its users for sale in its own e-commerce universe. The Curate token allows the users connections process, and additional ability to participate in the number of databases on the Curate platform. The main utility of the CURATE Token is to get an access and opportunity to participate in Curate app platform that accumulates information on the other users who access Curate, and nothing else beyond.**

This is a strong argument for the Curate token to be viewed as NOT satisfying the third element of the Howey Test.

Element 4: Predominantly from the efforts of others

As viewed herein, the Curate token, the value of which depends on someone taking specific manual action inside the Curate network, means that the token is not functional in and of itself outside that network. Instead, the token relies on a level of trust in a third party taking action off-blockchain. This sort of token is more likely not to be bought for speculation at all. A token which is built with all the necessary technical permissions and works automatically in accordance with a smart contract means that the token holder does not rely on manual actions of any third party. This means that the buyer of the CURATE token are more from purchasing such tokens from Curate, must expect to participate in the Curate platform uses of user connectivity and data supplied to those users. It is the essentially passive nature of the return, not as determined by the "efforts of others" analysis since the "efforts of others" is actually the effort of the token holder as they choose to deal with the connections within the Curate system to buy and sell items and services. That results in a "token sale contract" and security as opposed to a simple contract instrument.

Regarding this issue, we are citing findings by the Eleventh Circuit Court of Appeals, in

In *SEC v ETS Payphones*, 408 F.3d 727 (11th Cir. 2005) the court held that there was an investment for profit under the Howey test does not exist through the efforts of others where the “investors who contracted with ETS expected profits to be derived solely through the efforts of others.” The ETS court held that the SEC’s argument that “profits” did not exist, since under the decision of *United Housing Found. v. Forman*, 421 U.S. 837 (1975), the Court stated that an investor is “‘attracted solely by the prospects of a return’ on his investment.” *Id.* at 852 (quoting *Howey*, 328 U.S. at 300). The ETS court determined in that case, as with Mobocoin CURATE tokens that investors in the technology (i.e. Mobocoin blockchain access through the CURATE tokens) does not result in profits as that definition exists under federal securities law. Profits, in that context, require either a participation in earnings by the investor or capital appreciation. *See id.* at 852 (“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 this case, there is no dispute that capital appreciation is not an issue as to the Curate tokens. Such tokens are merely keys to use the Curate app for purchases and buying and selling of those items thereon.

The Curate Token that exists in the blockchain for the CURATE application is but a tool to purchase and sell items just as on E-Bay, Mercari and numerous other sites.

Therefore, in order to avoid giving an expectation of profit solely from the effort of promoters or third parties to the token purchaser, the token shall not offer any form of dividends, interest, or any other passive income. The best way is to involve token holders in platform/network activity, make the token useful, and structure it as, for example, membership in or access to a network.

The main goal in structuring the product token is to provide a beneficial or consumptive use of it to the token holders as opposed to the expectation of profit/dividends.

With regard to CURATE token, according to Curate team, all functionality is inherent in the token and occurs programmatically, meaning, that a token is built with all the necessary technical permissions and the token holder does not rely on manual actions of any third party. If the main incentive to buy a token is an opportunity to get the access to and the utility of a specific blockchain platform and its utility benefits, such a token may not be deemed a passive investment relying on the efforts of others. The Curate Token holders will participate in the development and utility of the items offered for sale or purchase on the Curate-App database, which means that the main incentive to buy Curate token is derived through token holders' own efforts, rather than through a passive investment.

Additionally, if the sale of tokens is made before any code has been deployed on a blockchain, it is more likely to result in a common enterprise, where the profits arise from the efforts of others. This is because the buyers are completely dependent on the actions of

the developers, rely on their efforts to develop the platform, and cannot actually participate in the network until a later time. And vice versa, if there is an existing functioning network, and the buyers step in as members of the network who have specific rights and opportunity to influence the outcome, such system should not be viewed as a common enterprise where the profits arising from the efforts of others. The closer the sale is to launch the network, the less likely there is to be a common enterprise. In the Curate platform and app, as noted above, there is a functioning platform, where the project team has already developed the network and there is no future launching. Any incentives are derived through token holders' own efforts, rather than through a passive investment.

Finally, it is material how the token sale is marketed. Using investment-related language like 'returns' and 'profits' encourages buyers to buy a token for speculation, rather than use. Marketed as a sale of tokens which give the right to access and use the network, tokens are likely to be bought for utility purpose. CURATE Tokens sale is marked as Token Sale and does not operate with words like "investment," "returns" or "profits". The main incentive for the token holders is to sell the items or services for their own profit, not the subjective value of the token itself.

Given the analysis above, provided that the company will comply with all the recommendations prior to the White Paper, the CURATE Token should not be viewed as an investment with an expectation of profits derived solely from efforts of others.

RESULTS OF THE HOWEY TEST: Curate Tokens as sold in the US does not look like the activity related to the money investments in a project, which means that Element one of the test is very likely to not be satisfied. As well, the remaining three elements appear to be not satisfied to cause the Curate token to be considered a security. According to the information provided by the company, the Curate token and app is already developed as a platform that is already in use. Thus, Curate tokens, as sold in any marketing campaign, does not meet the second "common enterprise" element. What is even more important, the Curate token has a specific functionality that is only available to token holders and is more likely to be purchased in order to access that function and less likely to be purchased with an expectation of profit. Therefore, it is highly unlikely that it can be deemed satisfying the third, the "expectation of profit" element. It is also highly unlikely that CURATE Token meets the "solely from efforts of others" element since CURATE Token holders are active contributors to the platform functioning influencing the outcome of the process which is the inclusion and addition of other users. Since in order to be classified as a security, a token must satisfy all four elements and, based on our analysis, the CURATE Token meets none of these elements of the Howey Test, provided the company complies with their current use.

2. FAMILY RESEMBLANCE TEST

A separate securities test is the Reves "Family Resemblance" test from the U. S. Supreme Court decision in *Reves v. Ernst and Young* (1990) aimed at determining whether a bill should be classified as a security. The test starts with the default presumption, that a bill is

a security, but this presumption may be rebutted if it bears a "family resemblance" to one of the enumerated categories on a judicially developed list of exceptions.

The Family Resemblance test considers the following elements: (i) the parties' motivation; (ii) the plan of instrument distribution; (iii) the expectation of the investing public; and (iv) the presence of alternative regulatory regime.

It should be noted that, unlike the Howey Test, there is no rule for all the factors to be met, but the "strong resemblance" should be proved in this case.

Element 1: Parties Motivation

The first factor is described as the motivation that prompts "a reasonable seller and buyer to enter into" the transaction. If the seller's motivation is to raise money for his/her business and the buyer's motivation is to earn profits, then the instrument is likely to be deemed a security. This may also apply when the instrument has not necessarily characteristic of a security, but the investors reasonably expected that they were buying a security, and would be protected by the accompanying securities laws.

In the Curate Token case, the Buyer should be motivated to use the functionality of the Curate platform, e. g . have access to the worldwide base of the users on the app being the buyers and sellers there. Therefore, it is unlikely, while still possible, for the Curate App purchasers to be motivated by raising money, but a normal product profit motive.

Element 2: The Plan of Instrument Distribution

The second factor of the Family Resemblance test determines whether the instrument is being distributed for investment or speculation. If the instrument is being offered and sold to a broad segment or the general public for investment purposes, it is a security. According to the White Paper and Curate, although the issuance and sale of Curate Tokens are publicly accessible, they are mostly oriented on the specific audience involved in blockchain technological development and interested particularly in a global secondary market. At the same time, blockchain community that is interested particularly in the secondary business market where such tokens may be available may still represent a broad segment of potential participants, therefore, it is possible, while, we believe, unlikely, for the Curate token to be viewed as an investment instrument rather than a simple purchase contract of information access in the Curate system.

Element 3: The Expectation of The Investing Public

An instrument will be deemed a security where the reasonable expectation of the investing public is that the securities laws (and accompanying anti-fraud provisions) apply

to the investment. Generally, Curate's information, app, site, and offering matters for access to purchase, and other marketing information do not constitute an offer or solicitation to sell shares or securities. Moreover, all of these documents and matters emphasize that the Curate token should not be viewed as a security. Consequently, it would be unreasonable for participating public and is highly unlikely that the Curate token purchasers would expect for the securities laws to apply to this case.

Element 4: The Presence of Alternative Regulatory Regime

The fourth, and final, the factor is a determination whether another regulatory scheme "significantly reduces the risk of the instrument, thereby rendering the application of the Securities Act unnecessary". While the Securities Act and the Securities Exchange Act seem to apply to Token Sales in the United States should the Curate be viewed as a security, an alternative regulatory regime in Curate Token's case may be the laws governing commercial enterprises of utilities for access to business databases through the many states of the United States. The very action and offering of such access are really within the realm of action for state control, or other actions controlled by commercial law, no different than any other user token or coupon on commerce. In essence, the Curate Token is no different than a token or discount or points on numerous other purchasing sites..

RESULTS OF FAMILY RESEMBLANCE TEST: According to the analysis of the above-described elements of Family Resemblance test, based on the information provided by the company and our analysis of all materials, it appears that the Curate token buyers are (1) motivated to use the functionality of the platform rather than to raise money, in particular, to have an access to and participate in the Curate network being the app, (2) that they understand the possible risk, and (3) there is an alternative regulatory regime available. At the same time, there is still a slight possibility that the CURATE may be viewed as an investment instrument if its narrow, specific buying audience is found to represent a large segment of the general public, which will be limited to the App users.

3. RISK CAPITAL TEST

In 1959 in *Silver Hills v. Sobieski*, the California Supreme Court has adopted an additional securities test, which is applied in 16 states. States may use different frameworks to judge what constitutes a security. The Risk Capital Test considers whether there is an attempt by an issuer to:

- (i) raise funds for a business venture or enterprise;
- (ii) through an indiscriminate offering to the public at large;
- (iii) where the investor is in a passive position to affect the success of the enterprise; and
- (iv) the investor's money is substantially at risk because it is inadequately secured.

This test is different, and arguably more expansive, than the *Howey Test* used by the SEC in its analysis in "The DAO case". Further, each of the approximately 16 states that apply the Risk Capital analysis characterizes it a bit differently, but there are common elements among them. Therefore, the offering of securities made to residents of a particular state shall comply not only with U. S. security law but also with specific laws and regulations adopted in that state.

It is important to remember that for as long as the token purchasers don't have a use of the tokens while waiting until the development of the product, the tokens can be deemed securities under the Risk Capital Test.

The above-referenced analysis is referring to the U. S. law only. The United States has the most complex securities law, with includes statutory Federal law and State law as well as a very extensive (sometimes not very cohesive) case law.

Thus, in our view, there will be relatively very little chances that the Curate token would be deemed a security since the universe of use exists, and the token has value on the app for purchase from the outset.

Element 1: Funds For a Business Venture or Enterprise

Are funds being raised for a business venture or enterprise? Obviously, the funds are collected for the purposes of Curate App network maintenance and development. Curate will charge nominal transaction fees as any other sale or marketing website or app.

Element 2: Public Offering

The issuance and sale of Curate tokens are publicly accessible for capable users around the world and to US citizens on the equal rights just as any product sale sites exist.

Element 3: Position of The Investor

While the first two factors of the test are possibly not avoided, the third factor is eliminated when token holders are not just passive members of the platform, but get to participate in business process by having specific rights to contribute to the process, such as the right to provide products and services, right to choose information providers, and right to select what specific information should be available through Curate app network. Thus, this element of the Risk Capital test is not satisfied as the Curate token holders do have control over the business process.

Element 4: Risk For Investor's Money

It is important to remember that only if the token purchasers don't have a use of the tokens while waiting until the development of the product, the tokens can be deemed

securities under the Risk Capital test. If the product is already and is launched, then there is no risk to the investor since the funds invested for purchase are already and the funds are not being used for the initial product development and launch, it is clear that the Risk Capital Test does not even come into play for recognition of Curate Token as a security.

RESULTS OF RISK CAPITAL TEST: As noted above, while it is possibly not to avoid the first two elements of the test, the last two prongs are, most likely, not met since (1) the CURATE token holders get to participate in the business process immediately with access to Curate and therefore, are unlikely to be considered passive investors, and (2) the CURATE Token holders' contributions seem to be adequately secured by the product access they receive, the CURATE platform, that has been already developed and ready for use upon the CURATE Tokens distribution.

4. ADDITIONAL RISKS

Due to the lack of regulations that would be specific particularly to the token availability procedure as well as because of the uncertain regulatory status of cryptographic tokens, digital assets, and blockchain technology, it is impossible to predict when, how, or whether at all governmental authorities will regulate such technologies. It is, likewise, impossible to predict when, how, or whether at all any governmental authority may make changes to existing laws, regulations, and/or rules that will affect cryptographic tokens, digital assets, blockchain technology, and its applications. Such changes could negatively impact the status of Curate Tokens in various ways, including, for example, through a retroactive determination that Curate Tokens are regulated financial instruments that require registration.

We believe, however, that, based on the current regulatory and case law, the Curate Token represents a simple contract, and permissive token to be used in such system.

IV. CONCLUSION

Based on the current regulatory and case law and our analysis above, we believe that it is unlikely that the Curate Tokens will be deemed to represent a security, subject to the specific facts, circumstances, and characteristics of the Curate Token itself. Rather, given our thorough analysis above, it should be characterized as a simple contract not subject to the U.S. Securities regulations.

The below counsel is authorized to appear before the United States Securities and Exchange Commission, as well as being a Florida Bar Member, and Member of the Middle and Southern District Courts for Florida.

You may contact the undersigned for any questions as to this opinion.

Sincerely,

Craig Huffman

Craig A. Huffman, Esquire

03 / 25 / 2021