

EXCHANGE LISTING DISCLOSURE - MARQUISE MUSEUM

Preface

After having read and analysed the documentation of the Marquise Museum ICO campaign I have the following remarks regarding its nature and classification either as a security token or a utility token. When assessing such characteristics of a token one has to take multiple factors into account.

The U.S. Securities and Exchange Commission (hereinafter referred to as SEC) uses the so called *Howey Test*¹ which helps in the determination of whether something qualifies as a security or not. If a crypto token derives its value from an external, tradable asset, it is classified as a security token and becomes subject to securities regulations. Failure to abide by these regulations could result in costly penalties and could threaten to derail a project or even risk a full scale inspection into the assets of the promoters. However, if a startup meets all its regulatory obligations, the security token classification creates the potential for a wide variety of applications, the most promising of which is the ability to issue tokens that represent shares of company stock. It is my understanding that this is not your goal, what's more it is your expressed will to avoid this situation.

As I mentioned the *Howey Test* above, it would be natural to expand on that idea a little bit further, because I found several wording 'mistakes' and discrepancies that might alert authorities. Under the *Howey Test*, a transaction is an investment contract if:

- It is an investment of money
- There is an expectation of profits from the investment
- The investment of money is in a common enterprise
- Any profit comes from the efforts of a promoter or third party

Questions to be answered

1. Is there an investment of money?

In the case of Marquise Museum, the answer is yes and no. The investment of money pertains to the physical assets and thereby the tokens are 'backed' by those in a certain way, they somewhat represent the ownership of these assets. This however, also means that the tokens do not represent ownership of the company and/or a volatile 'security' type ownership. For the timeframe of the ICO in a strict sense, I would not consider the investment of money a true investment, but rather a participation fee that will represent ownership of physical assets in the future. Therefore, the tokens can be utilised in a certain way that does not necessarily mean an investment in accordance with the Howey test.

2. Does the holder rely on any kind of manual action to realize the benefit of the token?

I believe that there are/will be functions inherent in the token and there are functions outside of the network, which excludes first of all the expectation of profits from the investment and the fact that the ownership pertains to physical assets, which might be exchanged and they do not belong to a common enterprise, suggests that the Howey test is not applicable to this situation. The individual owner has his/her own rights and obligations regarding each individual token with respect to each individual physical asset. Since there is no 100% automation and the profits are not automatically derivable from the investment - as a direct result - the tokens cannot be considered a security.

3. Can the token holders exercise real and significant control via voting?

The token holders are not shareholder and they are not co-owners of the company. They cannot exercise either real or significant control over the company. The company is a platform, a mere 'interface' for the utilisation of these services related to art pieces.

Utility tokens

With respect to the aforementioned, utility tokens represent future access to a company's product or service. The defining characteristic of utility tokens is that they are not designed as investments; if properly structured, this feature exempts utility tokens them from the laws governing securities. Therefore, for the reasons mentioned above, I do not consider the Marquise Tokens to be securities, but rather utilities.

¹ <http://caselaw.findlaw.com/us-supreme-court/328/293.html>