

## **ERA SWAP LEGAL OPINION LETTER**

**TO:** CEO, Era Swap Project (www.eraswaptoken.io)

**FROM:** Sasha A. Hodder, Esq. Partner at DLT Law Group, P.A.

**DATE:** August 7, 2018

**RE:** Analysis as to whether Era Swap Tokens should be classified as Utility Tokens.

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### **Question Presented:**

Are the Era Swap Tokens (“Era Swap”) Tokens considered Securities?

### **Short Answer:**

No, Era Swap Tokens are not likely to be considered Securities in any jurisdiction. They should not be classified as Securities based on the American definition because: (1) they only satisfy two of the four prongs of the Howey Test; and (2) they are sufficiently decentralized to be outside the SECs jurisdiction. Under FINMA’s Guidelines, Era Swap is providing service and the utility can actually be used at the point of issue, therefore it should not be considered a Security.

### **INTRODUCTION:**

Given the emerging and global nature of convertible virtual currency, a variety of legal definitions for these Tokens have been drafted by an array of jurisdictions. The two overarching jurisdictions that Era Swap has relied on in drafting this opinion letter include: (1) the Securities and Exchange Commission, which governs the United States Securities offerings; and (2) the Swiss Financial Market Supervisory Authority (“FINMA”), which is thought to be one of the leading experts on Blockchain and Cryptocurrency policy.

### **FACTUAL BACKGROUND:**

The 2009 invention of Bitcoin has forever changed financial technology. Through the rise of economic innovation, Cryptocurrency makes it possible for any person or company to create a coin or token linked to their brand—and the ability to give it unique and specific functionality. Some cryptocurrencies, like Monero and Pivx, offer its users enhanced privacy for their financial transactions. Others, like Rare Pepe and Choon, allow its users to create and trade art and music on the blockchain. Some of these cryptocurrencies function as tokens to play an online game, such as Bitcorns.com. Some countries, such as Moldova, have issued their own government-backed Coins. Venezuela has transferred its petrol market onto the blockchain, while Factom has begun migrating real estate and other data records onto a decentralized ledger. There are 1,604 different

cryptocurrencies listed on coinmarketcap.com at the time this opinion letter is being drafted, and that number is growing rapidly. While the uses for these cryptocurrencies are extremely diverse, they all have one thing in common: their price can fluctuate, and is determined by supply and demand.

This inherent ability for the price to fluctuate created a challenge for regulators around the world to classify these new technological innovations into an existing category. As these innovative financial technologies have evolved, so too have their sources of funding. Rather than seek venture capitalists that may not understand the technology, or may insist on asserting control over the company's vision, the Cryptocurrency community invented an alternative way to raise capital. By allowing community members to participate in the crowdfunding of interesting projects through the sale of tokens known as Initial Coin Offerings (ICOs), the Cryptocurrency market was able to raise more money in 2017 than the entire venture capital sector combined. During an ICO, the company typically sells a certain number of tokens to willing Cryptocurrency market participants, and those individuals can then access the company's goods and services. The purchaser can also often sell their ICO coins to a secondary buyer on a number of Cryptocurrency exchanges.

While Cryptocurrency only comprises less than 1% of the global stock market's asset capitalization, (Crypto is approximately \$423 Billion<sup>1</sup> and the overall stock market is over \$80 Trillion<sup>2</sup>), the United States Securities and Exchange Commission has begun to assert jurisdictional and prosecutorial power over any ICO projects that may be considered the sale of an unregistered "security" by using the—now infamous—Howey Test. In 2017, there were 210 global ICOs that raised a total of \$4 Billion,<sup>3</sup> and America was home to 18 of the top 50.<sup>4</sup>

## **I. WHETHER ERA SWAP IS A SECURITY UNDER THE SEC'S DEFINITION:**

**The American definition of a Security is very broad.** The SEC has stated that often when purchasers buy ICOs directly from the issuer, it creates an Investment Contract that would be classified as a Security. The Case Law surrounding the definition of a "security" developed based on the Howey Test. Recently, the crypto community got new information that even if an ICO creates an Investment Contract (security), the Token can become a non-security over time and sufficient decentralization.

### **The 1933 Act Definition:**

The Securities Act of 1933 defines a Security in Section 2 77b(a) as follows:

The term "security" means 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, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security,

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<sup>1</sup> [www.coinmarketcap.com](http://www.coinmarketcap.com)

<sup>2</sup> <http://www.businessinsider.com/global-market-cap-is-about-to-hit-100-trillion-2017-12>

<sup>3</sup> <https://www.coinschedule.com/stats.html>

<sup>4</sup> <https://medium.com/tokenreport/top-ico-cities-and-countries-e6f867bf77f6>

fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a “security”, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

## The Howey Test

In 1946, the Supreme Court developed a framework to assess whether a business is selling an investment-contract (“security”) or not. *See S.E.C. v. W.J. Howey Co.*, 328 U.S. 293, 299 (1946) (“An investment contract for purposes of the Securities Act means a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party . . .”). When the four elements of the Howey Test are satisfied, meaning (1) an investment of money, (2) into a common enterprise, (3) with an expectation of profits, and (4) derived solely from someone else’s work—an ICO’s token sale creates an investment contract between the ICO Company and the Cryptocurrency market participant and the SEC’s regulations must be observed.

The SEC has stated, “Whether a particular investment transaction involves the offer or sale of a security – regardless of the terminology or technology used – will depend on the facts and circumstances, including the economic realities of the transaction.” *See Statement on Cryptocurrencies and Initial Coin Offerings*, SEC Chairman Jay Clayton, December 11, 2017.<sup>5</sup> In particular, the SEC has quantified a primary concern with the marketing efforts that emphasize potential returns to investors based on the managerial efforts put forth by the company issuing the tokens. *Id.*

Mr. Clayton elaborated as follows:

A key question for all ICO market participants: “Is the coin or token a security?” As securities law practitioners know well, the answer depends on the facts. For example, a token that represents a participation interest in a book-of-the-month club may not implicate our securities laws, and may well be an efficient way for the club’s operators to fund the future acquisition of books and facilitate the distribution of those books to token holders. In contrast, many token offerings appear to have gone beyond this construct and are more analogous to interests in a yet-to-be-built publishing house with the authors, books and distribution networks all to come. It is especially troubling when the promoters of these offerings emphasize the secondary market trading potential of these tokens. Prospective purchasers are being sold on the potential for tokens to increase in value – with the ability to lock in those increases by reselling the tokens on a secondary market – or to otherwise profit from the tokens based on the efforts of others. These are key hallmarks of a security and a securities offering.

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<sup>5</sup>[https://www.sec.gov/news/public-statement/statement-clayton-2017-12-11#\\_ftn3](https://www.sec.gov/news/public-statement/statement-clayton-2017-12-11#_ftn3).

*Id.*

In order to be deemed a Security, and therefore within the SEC's jurisdiction, Era Swap would have to satisfy all four prongs of the Howey Test. Era Swap only satisfies two of these prongs; the second and third, the "common enterprise" and "expectation of profit" prongs, are not totally satisfied. Therefore, Era Swap is not a security.

#### PRONG 1: INVESTMENT OF MONEY

Era Swap does, in fact, satisfy the established criteria for the first prong of the Howey Test: investment of money. Through its implementation of an Initial Token Offering crowd sale technique, whether for fiat or digital currency, involves an investment of money. It should be noted, however, that most other utility coins functioning in the crypto currency and digital currency realm satisfy this initial prong, so it's not unexpected or out-of-the-ordinary for Era Swap.

#### PRONG 2: IN A COMMON ENTERPRISE

Era Swap is, under most auspices, not a common enterprise; they currently have an operational network established prior to any investment of money from a crowd sale, and Era Swap allows token holders options to achieve varying returns based on their activity on the Era Swap network. As of June 2018, Era Swap has developed the code for the Era Swap Tokens. This effectively establishes and deploys a test network on blockchain for the Era Swap utility tokens. Buyers are less likely to purchase tokens and be dependent entirely upon developers with the presence of a test protocol, as opposed to other digital currencies that initiate ITO crowd sales without establishing a blockchain network first.

Furthermore, thanks to the implementation of Era Swap's specific "TimeAlly" smart contract process, buyers and users of the Era Swap network have an option to realize varying returns on their tokens. TimeAlly allows users the option to store their Era Swap tokens off the market (decreasing token circulation in trading) and store them long-term; as a benefit to engaging with TimeAlly contracts, users are rewarded with further Era Swap tokens. TimeAlly executes this process by adding Era Swap tokens to the users locked tokens at time intervals preordained through computerized cues. So, TimeAlly smart contracts incentivize token holders to store their tokens long term, but don't force the decision upon holders, allowing individual Era Swap users to determine their participation and their return on tokens. This difference on return refutes the idea that Era Swap tokens are investments "in a common enterprise."

#### PRONG 3: WITH EXPECTATION OF PROFIT

Era Swap has not offered its members any expectation of profits based solely on the possession of the Era Swap tokens. Era Swap *does* allow for an increase in Tokens based on a user's decision to use the TimeAlly feature, but does not force this feature upon holders. Era Swap does offer utility on its network for the tokens themselves: the tokens are exchanged on a network marketplace between buyer and seller for services rather than for speculative means. The tokens can also be used to realize the benefits of an educational program built into the Era Swap network and site; this educational program, in exchange for Era Swap tokens, allows users to take classes on blockchain programming. Furthermore, since the blockchain is operational and plans are underway to develop the TimeAlly functionality and digital currency wallet on their network, prior to any Token Sale,

investors aren't solely motivated by the expectation of profit after selling Era Swap for speculator purposes. Therefore, Era Swap tokens are not marketed to buyers for the "expectation of profit," but rather for the realization of their utility on the Era Swap network.

#### PRONG 4: BASED ON EFFORTS OF A THIRD PARTY

The entrepreneurial endeavors of Era Swap are partially completed by the time the Token Sale will take place, with Era Swap having established a blockchain network with functionality. Despite this, Era Swap token holders do in fact rely, at least in part, on third-party, manual, off-blockchain action to realize the benefit of Era Swap tokens. Since Era Swap tokens commoditize "time" for independent contractors and other users that seek to keep ledger record of time, and the users must exchange outside fiat currency, securities, or other forms of payment in order to effect the transaction of "time for payment," the Era Swap relies on manual, off-blockchain means for the completion of and realization of its value. Furthermore, Era Swap tokens commoditize time, but still require the off-blockchain execution of employment or independent contractual legal agreements between users in off-network industries before they can realize the value of their token transactions. For this reason, Era Swap token valuation is in fact based on the effort of third parties.

*In conclusion, only two prongs of the Howey Test are satisfied*—that Era Swap is an investment of money and based on efforts of a third party. However, the other requirements for classification as a security are not fulfilled entirely or at all: it is not concretely a common enterprise, and is firmly not marketed or purchased with the inherent expectation of profit. The SEC should not regulate or interfere with Era Swap. The Era Swap community is comprised of individuals who seek to exchange their time with others as a commodity, and Era Swap anticipates those individuals and Companies to use the Era Swap ecosystem to explore the technology, not to speculate for profit. Era Swap is not a Security based on the Howey Test.

#### THE JUNE 14, 2018 DECENTRALIZATION COMMENTS:

On June 14, 2018, the Director of Corporate Finance for the SEC, William Hinman's, gave the market some insight around Ethereum, and this reasoning can be applied to all convertible virtual currencies. At the Yahoo! All Markets Summit: Crypto, Mr. Hinman said:

And putting aside the fundraising that accompanied the creation of Ether, based on my understanding of the present state of Ether, the Ethereum network and its decentralized structure, current offers and sales of Ether are not securities transactions. And, as with Bitcoin, applying the disclosure regime of the federal securities laws to current transactions in Ether would seem to add little value. Over time, there may be other sufficiently decentralized networks and systems where regulating the tokens or coins that function on them as securities may not be required. And of course there will continue to be systems that rely on central actors whose efforts are a key to the success of the enterprise. In those cases, application of the securities laws protects the investors who purchase the tokens or coins.

See <https://www.sec.gov/news/speech/speech-hinman-061418>

Era Swap, which is built on Ethereum, by nature of being an ERC 20 Token, is also sufficiently decentralized to a point where current offers and sales of Era Swap are not securities

transactions. As described in the Fourth Prong of the Howey Test, the Era Swap system does not rely on a central actor whose efforts are key to the success of the enterprise.

### **THE MUNCHEE, INC. ANALYSIS**

In December, 2017, the SEC ordered the ICO to cease and desist its ICO mid-sale, and forced Munchee, Inc. (“Munchee”) to return the \$60,000 it had raised from 40 community members. *See In re Munchee, Inc.* File No. 3-18304, 8 (Dec 11, 2017). Some of the primary concerns offered by the SEC included that the company had stated in its whitepaper that it was not a security offering because it did not meet the Howey Test, yet failed to offer any reason why. Munchee had been rather aggressive in the promotion of their ICO, creating posts that unequivocally stated the ICO purchasers could expect the MUN tokens to increase in value. *Id.* at 5. “Purchasers would reasonably believe they could profit by holding or trading MUN tokens, whether or not they ever used the Munchee App or otherwise participated in the MUN ‘ecosystem.’” *Id.* Some posts told users they could expect 199% gains. *Id.* at 6. Ultimately, the SEC decided to shut them down with a cease and desist letter, to which Munchee fully complied. *Id.* at 8.

The primary concerns included:

1. Munchee stated in its whitepaper that it was not a security offering because it did not meet the Howey Test, yet failed to evidence why it did not meet the test.
2. Munchee promoters used false and misleading marketing statements that promised unrealistic return expectations
3. Munchee did not have anything established as a company other than a than a whitepaper
4. Munchee targeted their marketing to individuals’ known to buy ICO’s for speculative purposes rather than for an interest in the token’s utility.
5. Munchee promised investors a liquid secondary market for the purpose of trading.

### **ERA SWAP’S DISTINCTION FROM THE MUNCHEE CASE:**

Era Swap has not acted like the Munchee ICO in any way, and therefore should not be subject to a similar fate. Era Swap has done a thorough analysis of the Howey Test, has not been aggressive in its promotion, and has not stated that anyone should expect a profit. This project is about the long-term deployment of superior technology to companies and people around the world, and is not focused on the token price. Era Swap has taken no actions to increase the token price at any time.

## **II. WHETHER ERA SWAP IS A SECURITY UNDER FINMA’S DEFINITION**

FINMA published cryptocurrency guidelines on February 16, 2018, which gives Tokens a number of categories based on the Token’s function.

Payment Tokens: Payment tokens (synonymous with cryptocurrencies) are tokens, which are intended to be used, now or in the future, as a means of payment for acquiring goods or services or as a means of money or value transfer. Cryptocurrencies are not considered securities.

Utility Tokens: Utility tokens which are intended to provide access digitally to an application or service by means of a blockchain-based infrastructure. Utility Tokens are not considered securities.

Asset Tokens: Asset tokens represent assets such as a debt or equity claim on the issuer. Asset tokens promise, for example, a share in future company earnings or future capital flows. In terms of their economic function, therefore, these tokens are analogous to equities, bonds or derivatives. Tokens that enable physical assets to be traded on the blockchain also fall into this category. *See* The Swiss Financial Market Supervisory Authority FINMA ICO guidelines published on February 16, 2018, stating: “There is no generally recognized classification of ICOs and the tokens that result from them, either in Switzerland or internationally.”

Era Swap is a Utility Token. Utility tokens will not be treated as securities if their sole purpose is to confer digital access rights to an application or service and if the utility token can actually be used in this way at the point of issue. In these cases, the underlying function is to grant the access rights and the connection with capital markets, which is a typical feature of securities, is missing. If a utility token additionally or only has an investment purpose at the point of issue, FINMA will treat such tokens as securities (i.e., in the same way as asset tokens). *See* FINMA Guidelines for enquiries regarding the regulatory framework for initial coin offerings (ICOs) Published 16 February 2018.

The Era Swap Tokens are not Securities under this definition, because their sole purpose is to confer digital access rights to a database focused on keeping track of time and allowing users to exchange their time for Era Swap tokens in network. The underlying function of the token grants the access to the services, and there are no features of a typical security.

### CONCLUSION

Era Swap Tokens are not Securities in any jurisdiction. They are not Securities based on the American definition because: (1) they only partially satisfy the four requirements of the Howey Test, and (2) they are sufficiently decentralized to be outside the SECs jurisdiction. Under FINMA’s Guidelines, Era Swap is providing service and the utility can actually be used at the point of issue, therefore it should not be considered a Security.

## **A Securities Law Framework for Blockchain Tokens**

To estimate how likely a particular blockchain token is to be a security under US federal securities law

### **Element 1: Investment of Money**

Is there an investment of money?

Characteristic	Points	Explanation	Examples	Y or N
				Y or N

There is no crowdsale. New tokens are given away for free, or are earned through mining	<b>0</b>	<p>Tokens which are not sold for value do not involve an investment of money.</p> <p>For example, if all tokens are distributed for free, or are only produced through mining, then there is no sale for value.</p>	<p>There was never any token sale for Bitcoin. The only way to acquire new bitcoin is via mining.</p> <p>A token which is randomly distributed for free</p>	
Tokens are sold for value (crowdsale)	<b>100</b>	<p>Tokens which are sold in a crowdsale, at any time, regardless of whether sold for fiat or digital currency (or anything else of value) involve an investment of money</p>	<p>A token which is sold for bitcoin in a crowdsale.</p> <p>A token which is sold for ether in a crowdsale.</p>	<b>Y</b>

**Total for Element 1 100**

**Element 2: Common Enterprise**

What is the timing of the sale?				<b>Y or N</b>
<b>Characteristic</b>	<b>Poi nts</b>	<b>Explanation</b>	<b>Examples</b>	
Pre-deployment	<b>70</b>	A sale of tokens before any code has been deployed on a blockchain 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.	A developer has an idea for a new protocol, writes a white paper and does a crowdsale.	
The protocol is operational on a test network	<b>60</b>	If there is a functioning network there is less likely there is to be 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 there is to be a common enterprise.	A developer has an idea for a new protocol, writes a white paper and deploys a working test network before doing a crowdsale.	<b>Y</b>
Live network is operational	<b>50</b>	If the token is sold once there is an operational network using the token, or sold immediately before the network goes live, it is again less likely to result in a common enterprise	The crowdsale is done at the same time the network is launched.	

What do token holders have to do in order to get economic benefits from the network?				
Characteristic	Poi nts	Explanation	Examples	Y or N
All token holders will always receive the same returns	25	If returns are paid to all token holders equally (or in proportion to their token holdings) regardless of any action on the part of the token holder, then their interests are more likely aligned in a common enterprise	<p>'HodlToken' holders are automatically paid an amount of ETH each week, based on fees generated by other users of the network</p> <p>'FoldToken' does not pay any return, and there is no way to earn more tokens within the network (but they can be bought, sold or traded)</p>	
There is a possibility of varying returns between token holders, based on their participation or use of the network	-20	If token holders' returns depend on their own efforts, and can vary depending on the amount of effort they each put in, then there is less likely to be a common enterprise	'CloudToken' holders can earn more tokens by providing data storage on the network, or can spend tokens to access data storage. Holders who do not provide data storage do not earn any more tokens.	Y

Total for Element 2 **40**

### Element 3: Expectation of Profit

What function does the token have?				
Characteristic	Poi nts	Explanation	Examples	Y or N
Ownership or equity interest in a legal entity, including a general partnership	100	Tokens which give, or purport to give, traditional equity, debt or other investor rights are almost certainly securities.	A developer releases and sells 100 'BakerShares' tokens. Each token entitles the holder to 1 share in Baker, Inc.	
Entitlement to a share of profits and/or losses, or assets and/or liabilities	100	<i>If one or more of these characteristics apply, the token is almost certainly a security,</i>	A developer releases and sells 100	

Gives holder status as a creditor or lender	100	<b>notwithstanding the results of the other elements</b>	'BakerProfit' tokens. Each token entitles the holder to 1% of the profits of Baker, Inc. for the next year.	
A claim in bankruptcy as equity interest holder or creditor	100			
A right to repayment of purchase price and/or payment of interest	100			A developer releases and sells 100 'BakerDebt' tokens. Each token entitles the holder to principal and interest repayments based on the initial token sale price.
No function other than mere existence	100	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 use or participation by token holders is possible.  Voting rights alone do not constitute real functionality.	A developer releases and sells 100,000 'SocialCoin' tokens to fund the development of a new Social Network. However, SocialCoin is not required to access the network and has no real function after the sale.	
Specific functionality that is only available to token holders	0	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.	'CloudToken' is the only way to access and use a decentralized file storage network.	Y

Does the holder rely on manual, off-blockchain action to realize the benefit of the token?				
Characteristic	Poi nts	Explanation	Examples	Y or N
Manual action is required outside of the network (e.g. off-blockchain) in order for the holder to get the benefit of the token	80	A token whose value depends on someone taking specific manual action outside of the network means that the token is not functional in and of itself. Instead, the token relies on a level of trust in a third party taking action off-blockchain. This sort of token is more likely to be bought for speculation - i.e. the expectation of profits.	A developer releases and sells 'FreightCoin', which will allow the holder to pay FreightCoin to access capacity on a new real-world freight network. The network relies on legal contractual relationships and manual actions.	Y

			(This alone does not make FreightCoin a security)	
All functionality is inherent in the token and occurs programmatically	<b>0</b>	A token which is built with all the necessary technical permissions means that the token holder does not rely on manual actions of any third party. This means that the buyers are more likely to purchase the token for use rather than with the expectation of profit from the efforts of others.	Holders of 'SongVoteToken' can sign transactions on the network as votes for their favorite new songs and earn rewards for doing so.	

What is the timing of the sale?				
Characteristic	Poi nts	Explanation	Examples	Y or N
Pre-deployment	<b>20</b>	A sale of tokens before any code has been deployed on a blockchain is more likely to result in buyers purchasing for speculative reasons with the expectation of profit, rather than practical use cases.	A developer has an idea for a new protocol, writes a white paper and does a crowdsale.	
The protocol is operational on a test network	<b>10</b>	If the sale occurs after code has been deployed and tested, the token is closer to being able to be used	A developer has an idea for a new protocol, writes a white paper and develops a working test network before doing a crowdsale.	<b>Y</b>
Live network is operational	<b>0</b>	If the token is sold once there is an operational network using the token, or immediately before the network goes live, it is more likely to be purchased with the intention of use rather than profit.	The live network is launched before the crowdsale.	

Can the token holders exercise real and significant control via voting?				
Characteristic	Poi nts	Explanation	Examples	Y or N

Token holders as a whole are able to control the development team's access to funds	<b>-20</b>	If the collective approval of token holders is required in order for the development team to access the funds raised in the crowdsale, then any value realized by the token holders is more closely tied to their own decisions, and less reliant on the efforts of others.	A development team sells 100,000 Tokens for a total of 100,000 ETH.  50,000 ETH will be released from the token contract to the development team immediately, but the remainder is only released once milestones are met, which requires approval of a majority of the token holders each time. If the milestones are never met, the remaining ETH will be returned to the token holders.	
Token holders as a whole are able to vote on significant decisions for the protocol	<b>-10</b>	If the collective approval of token holders is required in order to make significant changes to the protocol, then any value realized by the token holders is more closely tied to their own decisions, and less reliant on the efforts of others.	Changes to the protocol require a vote by token holders.	

**Note: Voting rights must be in addition to functionality. A token with voting rights alone and no other real functionality is very likely to satisfy element 3**

How is the token sale marketed?				Y or N
Characteristic	Poi nts	Explanation	Examples	
Marketed as an 'Initial Coin Offering' or similar	<b>50</b>	It is not possible to prevent some buyers from buying a token purely for speculation. However, marketing the token as an investment leads buyers to believe they can profit from holding or trading the token, rather than from using the token in the network.  Using terms like 'Initial Coin Offering' or 'ICO', and investment-related language like 'returns' and 'profits' encourages buyers to buy a token for speculation, rather than use.	'ProfitCoin' includes potential of 'high ROI' and 'investor profits' in its marketing material.	<b>N</b>

Marketed as a Token Sale	<b>0</b>	Marketed as a sale of tokens which give the right to access and use the network		<b>Y</b>
There is no economic return possible from using the network	<b>- 100</b>	If there is genuinely no economic return possible for the token holders, then there is unlikely to be a common enterprise. This will be rare.	Backers contribute to a cause and receive a 'thank you' token which has no economic value.	

<b>Results</b>			
<b>Guide</b>		<b>Your results</b>	
<b>Total Points</b>	<b>How likely is the element to be satisfied?</b>		
0 or less	Very unlikely	Total for Element 1	<b>100</b>
1 - 33	Unlikely	Total for Element 2	<b>40</b>
34 - 66	Equally likely and unlikely	Total for Element 3	<b>90</b>
67 - 99	Likely		
100 or more	Very likely	<b>Overall Risk Score</b>	<b>40</b>

A token will only be a security if it satisfies all three elements. The higher the point score for each element, the more likely the element is to be satisfied.

For many blockchain tokens, the first two elements of the Howey test are likely to be met. The third element has the most variables and the most different outcomes depending on the characteristics of the particular token.