

March 22, 2018

To whom it may concern

Re: The CRPT Token

Dear Sir/Madam:

Please accept this letter ("Legal Opinion Letter") as our legal opinion in regards to the CRPT token(s) ("CRPT Token(s)") sold by Crypterium OU ("Company") from October 31, 2017 until January 6, 2018.

This Legal Opinion Letter analyses a CRPT Token sale under the U.S. securities law based on the materials and information provided by the Company. The review of the Company's business model, regulation of its business activities, and application of the securities laws of other countries were beyond the scope of legal representation and this Legal Opinion Letter. The Company was advised to obtain a legal advice from the relevant professionals in regards to these matters.

STATEMENT OF FACTS

Based on the materials and information provided by the Company:

1. The development of the project and CRPT Token began around May 2017 and the preparation for the token sale began in August 2017.
2. Prior to that, the development team lead by Gleb Markov has been successfully building award-winning companies in the FinTech industry for over 5 years.
3. The Company was registered on October 16, 2017 under the laws of Estonia.
4. The Company obtained two licenses for: (1) "Virtual currency exchange service" and (2) "Virtual currency wallet service," which could be viewed at https://mtr.mkm.ee/juriidiline_isik/220559. The company is currently in a process of obtaining two more licenses: (1) to operate as a financial institution (issued by Estonia) and (2) to work with the E-money (issued by the European Union).
5. The Company's shareholders provided capital to finance its business development.
6. The Company had been offering services to its customers through its platform ("Platform") available via a mobile application.
7. The mobile application was released on January 21, 2018.
8. The Platform allows performance of multiple actions, including:
 - a) Receipt, storage and transfer of certain cryptocurrencies and CRPT tokens,
 - b) Processing of payments via QR-codes,

- c) Accessing history of all transactions,
 - d) Review of the current and historical cryptocurrencies exchange rates,
 - e) Cryptocurrency exchange through partners,
 - f) Purchase and sale of cryptocurrencies from the bankcards through partners,
 - g) Payments in cryptocurrencies to merchants (on selected territories where merchants and partners are present), and
 - h) Payments in cryptocurrencies for the products/services offered in the catalog (based on the availability at the users' locations).
9. The CRPT Tokens were created in connection with a Smart Contract ("Smart Contract") located at <https://etherscan.io/address/0x80a7e048f37a50500351c204cb407766fa3bae7f#code>.
 10. The Smart Contract successfully passed the audit performed by Ambisafe (http://media.ambisafe.co/Crypterium_Token_Sale_Audit_v2.pdf).
 11. The CRPT Tokens are required to pay a services fee ("transaction gas") for commencement of the cryptocurrencies transactions with merchants through the Platform.
 12. On October 31, 2017, the Company began a CRPT Token sale, which ended on January 6, 2018.
 13. The Company completed a release of all tokens by January 20, 2018.
 14. The CRPT Tokens were fully functional and could be used without limitations on the operational Platform available through the mobile app starting on January 21, 2018.

Prior to the commencement of the token sale, the Company retained Blockchain Law Group to review its White Paper and website for legal compliance with the U.S. securities law. The Company was provided with the overview of the U.S. securities law, including but not limited to the case law establishing various securities tests such as the Howey Test, Family Resemblance Test, and Risk Capital Test among the others, overview of the existed at that time SEC practice, and recommendations on compliance with the U.S. securities law. According to the Company, it followed the provided recommendations in structuring the CRPT Token and conducting its sale.

In connection with the representation, the use of Blockchain Law Group's Trust Account was also extended to the Company to escrow fiat funds received from the CRPT Token buyers. Katrina Arden also acted as one of the signors on the multi-signature digital wallet provided by the Company. As of the date of this letter, the funds received in escrow were not disbursed to the Company yet.

LEGAL ANALYSIS

Regulation of Tokens under the U.S. Federal Law

Currently, the most notable U.S. federal law that regulates a sale of securities, offers protection to investors, and introduces punishment for violations is:

- Securities Act of 1933, as amended;
- Securities Exchange Act of 1934, as amended;
- Sorbanes-Oxley Act of 2002, as amended.

In general, securities represent an interest or right in something. Securities include shares, stocks, notes, bonds, debentures, certificates of interest or participation in profit-sharing agreements, preorganization certificates or subscriptions, investment contracts, and others.

United States also have an extensive case law, which further defines securities.

Howey Test

Howey Test is one of the most important tests that is widely used to determine whether tokens qualify as securities. It was introduced in 1946 in the U.S. Supreme Court case of *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) as “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.” The form of contract was found to be immaterial so long as the investment met the test criteria. Over the years, various courts broadened application of the test interpreting it wider and wider. Today, the Howey Test includes the following definitive prongs, all of which have to be present to satisfy the test for securities:

- An investment of money, which is broadly defined and includes any consideration with value,
- Into the common enterprise, which is further defined by different courts as a vertical and/or horizontal commonality of risks and profits among investors in some proportion,
- With the expectation of profits, which is also broadly defined as any form of capital appreciation, cash return on investment or other earnings such as dividends and interest, and
- Solely from the efforts of the promoter or a third party, whose actions must play a significant role in the success of the business.

There had been no case law specifically pertaining to the ICO or tokens, which would provide a guidance on the application of the Howey Test. However, the SEC published a few documents relating to its investigations of the Initial Coin Offerings (ICOs), where the tokens were found to be securities under the Howey Test as applied by the SEC.

On July 25, 2017, the DAO tokens were found to be securities because the issuer offered a direct profit to the DAO token holders (<https://www.sec.gov/litigation/investreport/34-81207.pdf>). On December 11, 2017, the SEC found MUN tokens to be securities because, during the sale, the issuing company Munchee created a reasonable expectation of profit from an appreciation of the token value in the future (<https://www.sec.gov/litigation/admin/2017/33-10445.pdf>).

According to the Company, during the CRPT Token sale, it clearly stated the functional benefit of its product and advertised it only in a manner to promote the use of CRPT Tokens as a transaction gas; the Company did not advertise CRPT Tokens as a speculative instrument or investment mechanism.

However, the Company’s model includes a rewarding element, called a “cashback” by the Company, which allows users to receive a portion of the Company’s income allocated to a specific loyalty fund based on the total amount of all transactions performed with the use of CRPT Tokens through the Platform in relation to the user’s individual activity and a number of tokens owned.

The Company provided the following description:

“As Crypterium was aiming to provide the most convenient payment and banking services, there was a need to provide its customers with the products and features, which are similar to the usual banking ones. Usually, the banks provide different cards according to the clients’ balances or deposits and to the clients’ spending activities. If a person spends significantly more than the average person, the bank gets an extra income and offers to such client some “special” card programs to increase the client’s loyalty. Crypterium plans to introduce a similar product model. Because the CRPT Tokens are used as a fee in the transactions, it is logical to assume that a person, who owns more CRPT Tokens is willing to spend more via the Crypterium payments solutions. So, it was decided to introduce different virtual cards, according to a

number of the CRPT Tokens in a client's possession. There are four different cards from Bronze to Platinum with the different loyalty and rewarding elements. Basically, these cards represent completely different card products. Each card level intends to provide different discounts in the partner stores, different commissions on the additional services, and more.

Another standard banking feature is a cashback model on the debit or credit card products. Crypterium also plans to provide cashback to its customers. Merchants pay a fee to the card issuer when a payment occurs (interchange fee); Crypterium plans to transfer a fix part of this fee to form a loyalty fund, which is then paid to all members of the each card level based proportionally on the number and the total amount of their individual transactions. Only users who made payments during the calculation period are entitled to receive a cashback. Also, it should be mentioned, that the cashback cannot exceed a total purchase amount. The cashback reward is paid in the CRPT."

The Company was advised that such element could be viewed by the authorities as an offer of profit, which was generated by the efforts of the Company. There have been no public SEC position on any token case of a similar matter, therefore, there could be a risk that such practice would be determined to be an offer of profit and, as a result, would make the CRPT token sale subject to the securities law and regulations. The Company was advised about such risks but decided to keep this function of the token and take the risk because such function was essential to their business model as a payment processor.

The remaining elements of the CRPT token do not fall under the U.S. securities law.

Family Resemblance Test

Another case heard by the Supreme Court that tests securities is the case of *Reves v. Ernst & Young*, 494 U.S. 56 (1990). This case specifically discusses the notes; however, considering the fact that there is no legal definition of the tokens that was provided in any regulations or court decisions, there may be a chance that some tokens may be viewed by the courts as the notes depending on their nature.

In order to determine whether the note may be a security, the following matters are taken into an account:

- The motivation of the purchaser. If the company is raising funds for the general use or to finance substantial investments and the purchaser's motivation in buying a note is to receive profit this note will generate, then the note is more likely to be considered securities. If the note is used to facilitate a useful product or for other commercial or consumer purpose, then the note is less likely to be viewed as a security;
- The distribution plan. The notes are distributed by the company for trading or investment purposes or there is a "common trading for speculation or investment" available, then the note will be likely considered a security;
- Expectation. If the public purchasing the notes is reasonably expecting it to be treated as securities, even when it is not from the economic stand point, then the note also will be considered a security;
- However, if there is a regulatory scheme that treats a note differently, then the application of the securities law to it will be unnecessary.

The Howey Test and the Family Resemblance Test are not mutually excluding, meaning that if the token does not qualify as a security under one test, it can still be considered a security under another one.

CRPT Token shall not be considered a security under the Family Resemblance Test. The Company was not raising funds for the general use or to finance its business in exchange for the profit. The Company raised capital from shareholders and built its Platform prior to the receipt of the escrowed token sale proceeds.

The CRPT Token has a consumer purpose to be used within the Platform as a transaction gas rather than to be used as a speculative instrument. The White Paper and legal documents pertaining to the sale of tokens specifically indicate that CRPT Tokens shall “not be purchased for any uses or purposes other than to use CRPT Tokens as provided in the White Paper, including, but not limited to, any investment, speculative or other financial purposes.”

According to the Company, it has not listed its CRPT Token on any exchange nor did it promise any specific exchange listing during the token sale.

Regulation of Tokens Under the U.S. State Law

The U.S. provides its States with the power to regulate offering and sale of securities on the state level as well, which is called the Blue Sky Law after the case *Hall v. Geiger-Jones Co.*, 242 U.S. 539 (1917) heard in Kansas in 1917. Many states enacted securities law between 1911 and 1916 often very similar to each other, requiring registration of the offerings and sale of securities with the state authorities. Most of those statutes define securities vary similar to the federal definition; however, there are a few states that have very distinctive rules and regulations such as the Risk Capital Test.

Risk Capital Test

Risk Capital Test was first introduced in 1959 in the *Silver Hills Country Club v. Sobieski*, 55 Cal.2d 811, heard by the California Supreme Court. Under this test, the court required securities to meet the following criteria:

- Funds are being raised for a business venture or enterprise;
- The transaction is offered indiscriminately to the public at large;
- The investors are substantially powerless to affect the success of the enterprise; and
- The investors’ money is substantially at risk because it is inadequately secured.

However, when funds received by the company from the sale of its product (even when such product cannot be used at the time of sale) are placed in the third-party independent escrow, the money are no longer considered to be inadequately secured as indicated in the *WA Golf Company, LLC, Liberty National Golf Club (“Liberty”): No Action, Interpretive and/or Exeptive Letter* as of March 29, 2004.

The Company built its Platform prior to the sale of tokens and provided the CRPT Token holders with an ability to use it following the distribution of tokens. During the token sale, the funds received from the sale of tokens were placed in escrow and remain in escrow to this date. Therefore, the CRPT Tokens shall not be viewed as securities under the Risk Capital Test either.

KYC procedure

The sale of securities in the U.S. requires a KYC procedure. However, if company sells a digital asset, which

is not a security, and such company is not located in the U.S. (all U.S.-based companies are subject to the OFAC regulations), the KYC process shall not be required. However, the laws of other countries, including the country of the Company's registration may require specific procedures to identify the buyers under the local regulations. Also, identifying token owners as users of the Platform may be required under the applicable laws. The Company was advised to consult with the relevant professionals in regards to these matters.

Licensing and Permitting

According to the Company, it has two above-referenced licenses obtained in Estonia. The Company is also in the process of obtaining two more licenses from Estonia and the European Union.

In the U.S., certain business activities also require licensing and/or permitting. The Company was informed that its business may require U.S. license(s) and/or permit(s) to provide services to the U.S. residents. However, the Company's business model and operations were beyond the scope of the representation and this letter. The Company was advised to consult with the relevant professionals in regards to these matters.

CONCLUSION

Based on the analysis of the materials and information provided by the Company, we believe that the CRPT Token could be viewed as a utility token, with the reservation concerning its cashback program, and unless the SEC or authorities of other jurisdictions determine that the CRPT Token a security.

If you have any question or require additional information, please do not hesitate to reach me directly at (310) 800-7404 or katrina@blockchainlawgroup.com.



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