February 25th, 2018

To:

Mr. Ron Ezra Tuval

Dear sir,

Re: Legal Opinion: the Compliance of L-PESA ICO with Securities Laws and Regulations

This legal opinion is meant to serve as our legal analysis of the ICO proposed by you. It serves as an estimate. This opinion and conclusion are limited to the matters expressly stated herein, are fully based on information and material furnished to us by you, and no opinion or conclusion is to be inferred or may be implied beyond the opinions and conclusions expressly set forth herein. This opinion is made for your benefit only, written in good faith, and cannot be deemed as guarantee or obligation to its content, specifically with respect to its consideration by courts, authorities and in litigation proceedings, as they may have different views that those expressed in this opinion. Furthermore, as being Israeli lawyers our interpretation of foreign law must be considered as a guideline only. Subject to the foregoing, we hereby provide you with our opinion concerning the legal compliance of the ICO which is intended to be conducted by L-P Kripton ltd. (hereinafter, "**L-PESA**") to the Securities Laws and Regulations, based on data and material furnished to us by you.

It should be noticed that the legal analysis herein may be updated in the future as the law in this area develops. Furthermore, the below analysis is strictly theoretical, as no cases, that we are aware of, which are relevant to the subject matter, have been tested yet in courts to date.

The Company's Business

You own a several local African companies, under the brand name "L-PESA" (hereunder aggregately referred to as the "**Company**"). The Company L-P Kripton ltd., Gibraltar P.C.N no. 116865 as of now is an active business of micro loans to local residents in Tanzania, Kenya, Uganda and Ruanda. The Company is fully licensed to conduct such business locally. is interests paid on the loans upon repayment.

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The Token "LPK" to be issued by the Company in the ICO.

According to the information you have provided us, the LPK token which is the subject matter of this analysis, will be used by the token holders to receive micro loans from the company without paying interest or loan setup fees. The token holder will activate the tokens he possesses and the tokens will be locked as a collateral, wherein the token holder will receive a loan matching to the market value of his tokens. When the token holder repays the loan, the tokens are then released. Company has discretion whether to bestow the loan to each separate token holder.

In order to raise the necessary equity capital required for the project, the Company will offer the LPK tokens to the public in an ICO.

The Term ICO vs. TGE

The acronym "ICO" stands for Initial Coin Offering. This term is popular amongst the blockchain and cryptographic currency, and its meaning is known to be "new cryptographic token sale". This term's similarity to the term "IPO", to our opinion, is only meant to serve as an easy explanation to this digital event, which is often misunderstood to the common people. It should be noted that in order to avoid confusion, a part of the blockchain community prefers to use the term "TGE", which stands for "Token Generating Event". Nevertheless, to be perfectly understood by the community, to avoid unfamiliar and misunderstood nomenclature, the term ICO shall be used in this analysis and since it has no significant legal meaning it is recommended for you to use it in your promotional materials.

Three Kinds of Tokens

Generally speaking, there are three kinds of tokens that can be issued to the public:

The protocol token. The first kind of token is the classic "cryptographic currency". To put it simply, this token is called protocol token because what makes it special is the new or different protocol it uses. It is generally being used solely as an alternative currency, wholly digital. Its underlying blockchain serves nothing more than keeping a ledger of the transactions between token holders. It is usually mined or given away for free at issuance (either by creation of an

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entirely new network, either via a blockchain split event, a.k.a "airdrop", or via some commercial sites that offer the token in exchange for some commercial participation, a.k.a "faucets"). In its initial digital issuance, this type of token is rarely exchanged for any valuable (sold), since initially it has no underlying or practical value at all.

Utility token. The second kind of token is being deemed by many as a coupon or a pre-paid gift card, or a coupon. This kind of token is basically a contract for provision of goods or services, to be redeemed by the token holder, once or continuously. In contrast with the protocol tokens which do not have any assets of any kind underlying them and their value is being based purely on mass psychology, the utility token has an actual underlying contractual right. Therefore, its value is determined not only by mass psychology but also by the value of the underlying right attached to it.

Security token. The third kind of token is a digital asset, the purchase of which entitled the owner with number of rights which is similar to securities such as stocks or bonds. There are three major characteristics for an instrument to be deemed as a security: Voting rights in a general assembly or pertaining to important decisions of an entity, profit sharing such as distributions, and/or a right to claim against the Company to redeem the instrument in exchange for a value. Therefore, a security token, for example, might offer voting rights in the issuing entity, or rights in the profits of the issuing entity (or both). The issuing entity might also promise to redeem the tokens' value when there will be enough capital do to so. These are but examples of rights attached to such tokens, which can be deemed by many jurisdictions throughout the planet to be as securities *per se*, which therefore require to be compliant with the securities laws and regulations.

Which Kind of Token is the LPK?

The LPK token is an Ethereum blockchain ERC20 smart contract and therefore it is not meant to serve as a protocol token; no new protocol or network are being launched and therefore the LPK token is definitely not a protocol token by definition.

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The LPK token does not grant any voting rights in the Company. Furthermore, the Company does not grant any pecuniary profits to the token holders, nor any rights to claim against the Company to redeem the token for pecuniary value. Therefore, at least at a prelaminar review, the token will not be categorized as a security token. More on that in the next sections.

Any finally, the LPK token provides actual service to token holders, and therefore its nature fits to the definition of a utility token.

The Framework

In this document, we will be focusing on analyzing the LPK token per the U.S Securities laws. In our opinion, the U.S is a substantial market for selling blockchain tokens, and concurrently holds fairly complicated set of laws which govern this area. Furthermore, these laws hold inclusive definitions of securities, but still distinguish tokens from one another by classifying some as securities and others as non-securities. Therefore, we will conduct an in-depth analysis which will also be relevant to defining the token in the subject matter for many other jurisdictions which are not all-permissive or all-forbidding.

U.S Securities Laws

In the U.S, issuing, offering, or selling unregistered securities will be a violation of Section 5 of the Securities Act of 1933, and the issuer can face 5 years of prison. Furthermore, investors may initiate lawsuits under Section 5 and Section 12(a)(1) of the Securities Act of 1933 (or 15 U.S. Code § 77e and § 77l (a)(1)) for damages of selling non-exempted security without registering it. Moreover, the Securities Exchange Act of 1934 gives powers in section 10(b) to federally regulate fraudulent security practices, wherein regulation 17 C.F.R. 240.10b-5 (c) gives investors the right to sue any issuer for fraud or deceit. It should be noted that similar laws apply in many other jurisdictions.

The Securities and Exchange Commission (hereinafter, the "**SEC**"), has issued the "Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO" (**Release No. 81207 / July 25, 2017**) wherein a few fundamentals were promulgated. Firstly,

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SEC has stated that the existing federal securities laws are sufficient to tackle the token issuance. Secondly, and more importantly, the SEC has pointed out that not all tokens are securities, and that such classification shall be determined on a case-by-case basis.

In order to define a token as a security, the SEC has stated that "Howey Test" shall be applied (defined hereinafter), which indeed was applied by the SEC in that particular DAO project token issuance SEC investigation on which its report was written. Finally, the SEC has treated DAO, an unincorporated, non-resident, virtual organization, definitely not situated in the U.S, as an entity for which the Securities laws also apply to, and by reference applying the U.S laws to whomever offers or sells securities to U.S persons, no matter in which jurisdiction the issuing entity is incorporated and/or located.

Form Over Substance

We have preliminary identified the LPK token as a utility token. Nevertheless, this determination is superficial. Firstly, determining whether a transaction involves a security does not turn on labelling; if we say it's a utility token ICO, it does not make the issued token a utility token. Secondly, even if the LPK tokens has a practical utility use, it does not necessarily preclude the token from being a security – but instead requires an assessment of "the economic realities underlying a transaction." (**United Housing Found., Inc. v. Forman, 421 U.S. 837, 849 (1975) (**the **"Forman"** Case**)).**

> The "test . . . is what character the instrument is given in commerce by the terms of the offer, the plan of distribution, and the economic inducements held out to the prospect" (**SEC v. C.M. Joiner Leasing Corp., 320 U.S. 344, 352-53 (1943))**

Analysis: Are LPK Tokens Compliant with Securities Laws and Regulations?

Securities must be registered per Section 5 of the Securities Act of 1933 as stated hereinabove. Of course, that instrument which is not security need not to be registered. Therefore, one must first examine the definition of Security:

> "(a) Definitions - When used in this subchapter, unless the context otherwise requires— (1) The term "security" means any note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness,

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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, 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." **15 U.S. Code § 77b**

Similarly, the Securities Exchange Act of 1934 defines a security, in the following fashion:

"The term ''security'' means any note, stock, treasury stock, security future, security-based swap, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, **investment contract**, voting trust certificate, certificate of deposit for a security, 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 instrument commonly known as a ''security''; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing; but shall not include currency or any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited." **Section 3(a)(10) of the Securities Exchange Act of 1934.**

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The U.S Supreme Court has stated that the term "investment contract" in these two definitions is treated as being the same (**SEC v. Edwards, 540 U.S. 398 (2004)**).

So, we can see that the U.S term "security" includes also an "investment contract". An investment contract is an "investment of money in a common enterprise with a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others." **(see SEC v. Edwards, 540 U.S. 389, 393 (2004); SEC v. W.J. Howey Co., 328 U.S. 293, 301 (1946); see also the Forman case, at 852-853)** (in this work, the "**Howey Test**"). To be accurate, the Howey Test requires that the profits will be made *solely* from the efforts of others:

> "… 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…. Such a definition…permits the fulfillment of the statutory purpose of compelling full and fair disclosure relative to the issuance of the many types of instruments that in our commercial world fall within the ordinary concept of a security…. It embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits." (**SEC v. W.J. Howey Co., 328 U.S. 293 (1946))**

Therefore, according to the Howey Test, four prongs are to be met in order to declare of an investment contract as a security:

a. Investment of Money;
b. [in a] A Common Enterprise;
c. [with a reasonable] Expectation of Profits; *and*
d. [to be derived from the entrepreneurial or managerial] Effort of Others;

Prong 1: Investment of Money

The LPK tokens are being purchased by the public with cryptocurrency such as Bitcoin or Ethereum. These are not money *per se*, but on August 6th 2013, the U.S. District Court for the Eastern District of Texas held that Bitcoin is within the definition of "money" for purposes of

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the rules governing investment contracts – Bitcoin can purchase goods or services, and can be exchanged for conventional government-backed currencies (**SEC v. Shavers, No. 4:13-CV-416, 2013 WL 4028182, (E.D. Tex. 2013), reconsideration aff'd, No. 4:13-CV-416, 2014 WL 12622292 (E.D. Tex. 2014).**

In the LPK ICO, the Company will receive cryptocurrency in exchange for the token. Therefore, this prong is met with the LPK ICO.

Prong 2: A Common Enterprise

There are two sub-tests for the "Common Enterprise" prong – the horizontal commonality test, and the vertical commonality test, which is being divided into the narrow vertical and the broad vertical. The U.S courts have applied these two test alternately. The horizontal commonality test, which is the more common test, requires the pooling of assets from multiple investors so that all will share in the profits and risks of the enterprise. i.e., the profits of each investor are similar to those of the other investors.

Both vertical commonality tests require that the investor's fortunes will be tied to the issuer/promoter's success, rather than to the fortunes of its fellow investors; the broad vertical commonality test requires that the well-being of all investors be dependent upon the issuer/promoter's expertise. On the other hand, the narrow vertical commonality test requires that the investors' fortunes be "interwoven with and dependent upon the efforts and success of those seeking the investment ... of third parties" **(SEC v. SG Ltd., 265 F.3d 42, sec. 31-35 (1st Cir. 2001)).**

As for the horizontal commonality test, the LPK token is sold and the funds raised are being pooled together. Nevertheless, there is also the requirement for a mutual share in the profits and risks of the enterprise. Here, it seems that the company alone bears the risks of the project, and enjoys the potential profits thereof, wherein by purchasing the LPK token, the token owners merely possess the right to receive micro loans from the company without paying interest or loan setup fees. The right to receive loans without interest or setup fees can be deemed as a pecuniary profit. Nevertheless, a token holder need not to be obligated to realize its tokens for such purpose

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if one so desire, and therefore there is no correlation between all token holders' "profits" – the use of the token is discretional. Furthermore, the unused right to receive a loan does not accumulates the "pecuniary profits" in any way. And finally, the L-PESA system is already up and running, and does not involve any risks taken by the token holders; one can register as a user in the L-PESA platform today, without being a token holder, and receive a micro-loan, subject to the Company's approval. By that it seems that the horizontal commonality test's requirements are not met.

By applying the narrow vertical commonality test, we can clearly see that the investors' funds are not connected or dependent upon the success of the token issuer. The right of the token holders to receive micro loans from the company without paying interest or loan setup fees is definitely not subject, dependent or in any way relied upon the financial or other success if the Company.

And finally, as far as the broad vertical commonality test is concerned, it cannot be easily argued that the well-being of all investors is dependent upon the issuer/promoter's expertise, because the L-PESA lending system, mobile application and functionality is already established and currently operating (without the use of the blockchain). Therefore, the token holders' well-being is completely disconnected from the issuer's expertise, wherein the activation of the rights of the digital tokens will be an automated technicality, involving only the digital world. The token holders will be credited with the loan in their digital mobile account. No managerial efforts are involved. Therefore, we see these vertical commonality tests' requirements unmet.

To conclude, there is a possibility that the LPK token meet horizontal commonality test requirements, but there are very strong arguments to the contrary: the token holders' pecuniary rights are not being accumulated, they are discretional, and the system is already up and running. Therefore, it only seems reasonable that this prong is not met.

Prong 3: Expectation of Profits

This prong does not merely require the customer who buys the token to expect profit, because it seems unreasonable that someone will purchase a service or a good without taking into account

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the probability that the purchased will increase in value. The expectation of profits from a purchase of any kind of valuable is almost always present. Therefore, it seems that the prong requires not only that there will be an expectation to profit, which is trivial, but also that the purchase of that valuable will be primarily motivated by making profits (upon resale for example), rather than by consuming or using that which was purchased. The personal consumption is a vital part of considering whether this prong is met or not, wherein it should be examined if the primary motivation of purchasing the token is to profit upon resale, or to use the underlying rights of the token. There are several court cases where this differentiation was stipulated, for example see the Forman Case**.** Per Forman, it "is an investment where one parts with his money in the hope of receiving profits from the efforts of others, and not where he purchases a commodity for personal consumption or living quarters for personal use".

Upon reviewing our matter, the LPK token will be sold to customers who will be able to use the token to receive micro-loans without paying interest and setup fees. Like any kind of valuable, the token owner may hold it to a time where the value of the token in the market will increase, wherein the holder may sell the token with profit. Nevertheless, since the token provides a real consideration and functionality, it only seems reasonable (and the token is designed so) that purchasers will use the token's rights for consumption. Therefore, the for the personal users, this prong's requirement seems not to be met, while for the secondary market investors, this prong can be deemed fulfilled.

Prong 3A: Causal Connection Between the Investors' Expectation of Profits and the Actions of the Issuer

As this prong should be tested only after the offering of an instrument for actions done on the part of the issuer, to create expectation of profits in the potential buyers, i.e. promises or statements from the Company within or prior to the ICO, to spur expectation of profits in the ICO participants, and since the ICO campaign has not officially started to date, the causal connection between the investors' expectation of profits and the actions of the issuer cannot be examined.

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Therefore, you are hereby being instructed not to publicly propagate information regarding the ICO about potential token profits, whether by the potential increase of token value, or by the potential to realize such profit in the secondary market, whether specifically pertaining to the LPK token ICO, or about ICOs in general – to avoid mistakenly considering the ICO as an investment opportunity.

Worldwide Token Sale

You have stated that you wish to make the token available for purchase worldwide. Since the underlying project, local micro-loans provision, and since you have stated before us that you will act to eventually obtain proper licenses and permits in jurisdictions in which the marketing efforts are being focused, we see the token's smart contract relevant to purchasers worldwide and based on that information your marketing targets can spread worldwide without it being an indication of the token to be a security.

Prong 4: From the Efforts of Others

This prong is based on the fulfillment of the requirement of the previous prong – expectation of profits. Assuming that prong 3 is met (whereas to our opinion LPK token does not always meet its requirement for the abovementioned arguments), this prong "from the efforts of others" is examining the source of the profits - "whether the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise." **(**the Forman Case; **SEC v. Glenn W. Turner Enters., 474 F.2d 476, sec. 28 (Feb. 1, 1973)).** Therefore, this prong cannot, on its own, qualify any instrument (or token) as a security.

Why "significant" and not "solely"? Initially, in the Howey case, the phrase is stated "*solely* from the effort of others". Nevertheless, the Forman case has construed the word "solely", in that context, as requiring significant or essential managerial efforts necessary to the success of the investment (instead of being the "sole effort" as this phrasing means literally).

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Token users vs. Buyers for the Sake of Price Appreciation in the Secondary Market

In reality, the general market for the LPK token will be composed of two major kinds of purchasers. There is the purchaser which intends to use the token for its underlying rights for consumption, and there are those who will purchase the tokens for further secondary market appreciation. The latter will sell the tokens in the secondary market for a profit.

Prima facia, the purchasers who only purchase the token in the secondary market, are motivated by "expectation of profit". The purchasers for the sake of future selling in the secondary market might make profit *per se*, and courts in Forman held that "Profits" can also mean "capital appreciation resulting from the development of the initial investment" (the Forman Case).

Nevertheless, this profit will not be generated from "the effort of others". In reality, every valuable can be expected to appreciate due to secondary market factors which are nonrelated to any continuing effort of the issuer. For example, there could be a purchase of a real estate, or gems, that could appreciate later, and be sold in a profit. The purchase agreement of a real estate cannot be considered as an investment contract solely due to the fact that the real estate will almost certainly appreciate. Therefore, mere appreciation in the second market cannot be perceived as made by "the effort of others". To support this argument, it has been held by number of cases that mere secondary market appreciation cannot at all be construed or perceived as derived from "the effort of others", e.g:

> "The mere presence of a speculative motive on the part of the purchaser or seller does not evidence the existence of an "investment contract" within the meaning of the securities acts. In a sense anyone who buys or sells a horse or an automobile hopes to realize a profitable "investment." But the expected return is not contingent upon the continuing efforts of another." **Sinva v. Merrill Lynch, 253 F. Supp. 359, 367 (S.D.N.Y. 1966)**

Therefore, the fact that a person might purchase the token solely in order to sell it in the secondary market for profit, does not constitute on its own the prong 4, the "effort of others".

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The Undeveloped Project, and the Pre-sale

There are two common definitions for a pre-sale. The first is receiving orders of future tokens prior to their issuance. The second definition is selling tokens in a discount, but in a limited quantity, and only in exchange for large orders. These are common acts amongst the blockchain community and it is meant to serve as an incentive to participate in the ICO. As for the differentiation between ICO and their Pre-sales, it goes without saying, that presales to ICOs, like ICOs themselves, should likewise undergo an examination per the Howey Test (or other securities laws in case of other jurisdictions).

The Pre-sale occurs, and often the ICO occurs, prior to the development of the project. Since the development of the project is being made by the issuer, this act might be considered as "essential managerial efforts of others". If this is the case, then the token might be deemed a security.

There are two approaches to address the pre-sale issue, two schools to treat the undeveloped project's token sale, as far as prong 4: "the effort of others" is concerned.

The first approach can be considered, to our opinion, as a "technical approach". This school argues that if the project is undeveloped, then the tokens' value is almost utterly dependent on the managerial efforts of the issuer. Therefore, in case a token is sold when the project is undeveloped, then the tokens meet the requirement of prong 4 and along with the analysis of the previous prongs as well, the tokens might be deemed as a security.

This school has conceived the "SAFT". The acronym stands for "Simple Agreement for Future Tokens". This is a legal document which is based on the SAFE, a "Simple Agreement for Future Equity". The SAFT is an instrument which is meant to serve as a way to bypass the technical issue of undeveloped project being dependent upon the essential managerial efforts of others.

The SAFT is an investment contract, to receive tokens in a future date. The SAFT itself is meant to serve as "investment agreement" in the U.S securities laws federal meaning as previously discussed. Therefore, the SAFT should be sold only under the exemption from registration of rule 506 (C) of Regulation D of the Securities Act, which limits the offer of the SAFT only to 35

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people, and to unlimited "Accredited Investors", one definition of whom is "Any natural person whose individual net worth, or joint net worth with that person's spouse, exceeds $1,000,000" **(Rule 501(a)(5))**. The SAFT project has conducted a thorough analysis, is very interesting and instructive, and on top it may offer some theoretical tax benefits, which we shall not cover in this work.

Nevertheless, so far as the U.S securities laws are concerned, per this technical approach, we see no material difference between selling the SAFT, and selling actual tokens – so long as the project is still undeveloped. In both cases, per the technical approach, the securities laws are to apply, and therefore only 35 people and unlimited "accredited investors" may enjoy from the benefits of the ICO or its pre-sale, whether by ICO or without it.

The second approach look past the technicalities of whether the project is fully developed or there is still work to be done, utilizing the funds raised or regardless. We may name this approach "the material approach" as it prefers substance over form. Per this approach, a token shall be a security, or non-security, regardless of the fact that the project is not fully developed yet. i.e., the token sale does not change its legal nature or character completely due to the mere fact that the project is completed or nearly complete.

From the two approaches, we favor the second "material approach". We believe that the thought that a token sale is a security merely because the underlying project is not fully deployed or completed, is a legal error as far as cooperative ICOs are concerned. Though by reviewing common policies and considerations regarding investors protection we can clearly understand that a purchaser's risk in buying a token of an undeveloped project is larger than if the project was developed, it is nevertheless limited still, and understood due to the cooperative nature of many of the ICO projects.

The Forman Case turned on a cooperative housing project. The court stated that "people who intend to acquire only a residential apartment in a state-subsidized cooperative, for their personal use, are not likely to believe that, in reality they are purchasing investment securities simply because the transaction is evidenced by something called a share of stock … the inducement to

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purchase was solely to acquire subsidized low-cost living space; it was not to invest for profit …when a purchaser is motivated by a desire to use or consume the item purchased ... the securities laws do not apply". So, we can clearly see that the Forman Case explains that cooperative initiatives, where a purchaser is likely to purchase a share in the project itself (not in the legal entity), will generally not be treated as securities offerings.

As most ICOs hold an underlying cooperative ideal, in case such exists, it must be taken into account in considering whether the "essential effort of others" prong is met or not. Therefore, as far as cooperative ICOs are concerned, we must state our opinion that a token should not be viewed as if it has changed its nature or legal status merely because it is sold prior to the system's launch, the project's completion or the code's development.

Moreover, and to support our view of the second "material approach", we wish to indicate that the first "technical approach" disregard the development stage of the project, and classifies it's token sale as a potential security. For example, we may have a project which is 90% completed, or even 99% completed. It is possible that the very last steps are missing and the ICO is being conducted and completed concurrent or just prior to the completion of the development of the project. Still, this "technical approach" shall deem such a project as utterly dependent on the essential managerial efforts of others, and as such – a security.

Nevertheless, we wish to note that we have not found any conclusive law or case law on the subject to prefer either view on the subject matter.

In the case at bar, the development of the underlying project has been fully completed prior to the beginning of the ICO, and was (and still is independent) of the funds raised by it. The funds will be used to serve as a larger equity capital than the existing possessed by the Company.

Furthermore, the LPK token offers real cooperative usage of the equity capital, indefinitely; so long as the LPK token holder possesses the tokens, he may use the equity capital to receive loans

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(subject to certain criteria and discretion). If he purchases more tokens in the secondary market, he may increase his holdings and therefore the amount of loan he may take.

Therefore, per our view, in case of the LPK token, considering the fact that the system is fully developed by the time of the offering, and considering its cooperative characteristics, this prong cannot be met.

Interim conclusion – the Howey Test

By concluding all the variants on the LPK token, we can safely assume that the LPK token will not be deemed as a security per the Howey Test. Its takes all four prongs to be fulfilled in order to see an instrument as a security. Although "investment of money" is met, the "common enterprise" with the horizontal commonality test might not be, since the unused right to receive the loans at a certain year does not accumulate, and by that creates a spread between holders' rights. Furthermore, the L-PESA system is already up and running, and does not involve any risks taken by the token holders; one can register as a user in the L-PESA platform today, without being a token holder, and receive a micro-loan, subject to the Company's approval. According to our analysis, also the two vertical commonality tests are not met.

Furthermore, the "expectations of profit" prong will not be fulfilled as far as the personal consumers are concerned, but will definitely be fulfilled for the purchasers with the intent to sell the tokens in the secondary market for profits.

And eventually, for the "effort of others" component, the schools are divided between the technical approach and the material approach, wherein per the technical approach the "efforts of others" component is met because the Company's underlying project has not been started yet and the profits of the investors are fully dependent upon the efforts of the issuer, whilst the material approach, which we support, claims that that the "efforts of others" component is not fulfilled because an instrument does not utterly changes its legal status just because the underlying project has not been completed yet. We take a an extraordinary position by mentioning these schools, since the L-PESA project is already fully developed, and therefore the "effort of others" analysis is redundant in our case, and the prong is not met.

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Therefore, per our legal view, the LPK token should not be deemed as a security per the U.S federal securities laws. Nevertheless, it should be noted that the Howey Test has not yet been directly applied by courts to any utility token before.

The Risk Capital Test

The U.S securities laws are both federal and state. State laws are called "blue sky laws". An ICO or any other instrument must comply with both, each time it is offered to the public. It may be possible that under federal laws the instrument will not be considered as a security, but under state law it will. Therefore, it is necessary also to point out that some U.S states use an entirely different test to determine whether an instrument is being a security or not. The test is "the risk capital test".

Generally, courts in states that apply this test will apply it alongside with the Howey Test, alternatively; If either test is met, then the instrument shall be deemed as a security **(State v. Consumer Business Systems, Inc., 5 Or. App. 19, 482 P.2d 549 (1971)).**

As opposed to the Howey Test, the Risk Capital Test ignores the "profit" component of the Howey test, which were a pecuniary benefit, with any kind of valuable benefit one might be induced to purchase (the "act extends even to transactions where capital is placed without expectation of any material benefits" - **Silver Hills Country Club v. Sobieski, 55 Cal. 2d 811 (1961)** (hereinafter, "**Silver Hills**")).

Simply put, the Risk Capital Test, examines whether there was a contributed risk capital, subject to the entrepreneurial or managerial efforts of others **(Amfac Mortgage Corp. v. Arizona Mall of Tempe, Inc., 583 F.2d 426 (9th Cir. 1978)).** If the contribution is secured in some way, it will not be deemed as a risk capital and therefore the instrument will not be deemed as a security.

In the constitutive Silver Hills case, the Risk Capital Test stipulated that an investment contract exists when four prongs are met:

1. funds are being raised for a business venture or enterprise (the risk capital);

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2. an indiscriminate offering to the public at large;
3. a passive position on the part of the investors, i.e. investors do not affect the success of the initiative;
4. the conduct of the enterprise by the issuer with other people's money;

The Risk Capital Test was also applied to cooperative initiatives (Silver Hills**; Jet Set Travels Club v. Corporation Com'r, 21 Or. App. 362 (1975)** (hereinafter, "**Jet Set**")), wherein under the federal courts definition these cooperatives were not to be deemed as securities because the members joined the club to get the benefits of membership, and not for a financial return. Nevertheless, the court in Silver Hills held that the sale of membership to a country club was a security because the initiative utilized risk capital. the investors were risking their capital in expectation or receiving the benefits of membership.

It should be noted that in Silver Hill, the court also addressed the fact that there were no existing facilities for which the right to use could be sold to purchasers. In the subsequent case, Jet Set, the Oregon Court of Appeals limited the risk capital test, applying it only to undeveloped enterprises. Jet Set, too, was about a cooperative initiative - a mutual purchase of jet plane for the use of the members. The membership was nothing more than a sale of right to use the existing facilities.

Therefore, for our purposes, we see that on one hand the Risk Capital Test expands the "benefit" component of investment to non-pecuniary benefits, making also cooperative ICO initiatives exposed to be deemed as securities, and on the other hand, if the ICO's underlying project is already completely developed, the token will unlikely be deemed as such. i.e., the test reviews whether the funds were used to establish the business or the business was already established when the funds were raised.

To the best of our research, The risk-capital test has been adopted in in several jurisdictions, whether by courts or by blue sky laws and regulations:

- Alaska (**Act of July 2, 1975, ch. 217, 1975 Alaska Sess. Laws (codified at ALASKA STAT. §45.55.130(12) (Supp. 1979)))**
- California (the Silver Hills case);

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- Idaho (**State ex rel. Park v. Glenn W. Turner Ents., [1971-1978 Transfer Binder] BLUE SKY L. REP. (CCH) 71,023 (Idaho Dist. Ct. 1972)**);
- Oregon (the Jet Set case)
- Arkansas **(Smith v. State, 266 Ark. 861, 587 S.W.2d 50 (ct. App. 1979))**
- Michigan **(MICH. STAT. ANN. § 19.776(401) (I) (Supp. 1980))**;
- Oklahoma **(OKLA. STAT. tit. 71, § 2(20)(P) (Supp. 1980)**;
- Ohio **(State v. George, 362 N.E.2d 1223 (Ohio Ct. App. 1973))**;
- Hawaii **(State v. Hawaii Market Center, Inc., 52 Hawaii 642, 485 P.2d 105 (1971));**
- Guam (**Securities Admin. v. College Asistance Plan, Inc., 533 F. Si[[. 118 (D. Guam 1981), aff'd, 700 F.2d 548 (9th Circ. 1983);**
- Washington **(WASH. REV. CODE § 21.20.005(17)(a) (1979))**
- North Dakota **(N.D.C.C. 10-04-02 (1951);**
- Wisconsin **(Wisconsin Uniform Securities Law 551.102 (28)(d)2.);**

Therefore, in these jurisdictions, there is some risk that the use of funds raised by tokens to **develop** a project, even if it is a cooperative project, may be deemed as a security.

Per the above analysis, in case the underlying project has already been fully established or developed, and the funds are not being used to develop the project itself but merely to further expand it, then the Risk Capital Test's requirements will unlikely be met.

In the case at bar, the underlying project is fully developed and therefore will unlikely meet the requirements of the Risk Capital test.

Nevertheless, and similar to the Howey Test, it should be noted that the Risk Capital Test has not yet been directly applied to cryptographic tokens in the U.S. As opposed to the Howey Test being applied on the DAO, the Risk Capital Test has not been ever applied to any blockchain instrument.

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Final Conclusion

Based on that definition and our reading of relevant case law, as well as on our understanding of the facts and our review of the materials you provided on the structure of the LPK Tokens, we conclude that the ICO proposed by you, the LPK token should not be deemed as a security by federal securities laws. Accordingly, the federal securities laws would not apply to the initial distribution and subsequent trading of those tokens.

Excluded and Forbidden Jurisdictions

As far as we are aware of, currently you are forbidden from offering the LPK token in the following countries: New Zealand, Russia, China, and South Korea. This is due to government standing against ICOs, statute act against them, the consideration of ICOs as securities offerings, or otherwise.

Further Allowed Jurisdictions

Many jurisdictions share a very similar view of how to define a security. A security is generally being defined as a collection of rights relating to a company. There is a range of types of securities, but they mainly divide into equity securities (shares) or debt securities (bonds, ETNs, ETFs).

In the case of the LPK token, we can clearly see that it holds no “share” right in the Company such as voting, profits, liquidation rights. Furthermore, we see that there is no “debt creditor” right against the company to claim a redemption of a token’s worth. Therefore, as far as we’re aware of, offering the LPK token to the rest of the jurisdictions will not deem as local infringement of securities laws.

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Additional Notes

Financial Crimes Enforcement Network ("FinCEN")

FinCEN is a bureau in the U.S department of Treasury, with a mission to safeguard the U.S financial system from illicit use, combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities.

FinCEN regulates money transmitting businesses. The U.S code stipulates that anyone who knowingly conducts, controls, manages, supervises, directs, or owns all or part of an unlicensed money transmitting business, shall be fined or imprisoned not more than 5 years, or both **(18 U.S. Code § 1960).** Per the regulations, a "money transmitter" is either a person that provides money transmission services, or any other person engaged in the transfer of funds.

FinCEN has treated cryptocurrency (convertible virtual currency) as money for the purpose of the law (**FIN-2013-G001**) and therefore anyone who "(1) accepts and transmits a convertible virtual currency or (2) buys or sells convertible virtual currency for any reason ***is*** a money transmitter under FinCEN's regulations, unless a limitation to or exemption from the definition applies to the person".

In a later guidance, FinCEN stipulates that:

> "How a user obtains a virtual currency may be described using any number of other terms, such as "earning," "harvesting," "mining," "creating," "auto-generating," "manufacturing," or "purchasing," depending on the details of the specific virtual currency model involved … What is material to the conclusion that a person is not an MSB [Money Services Business] is not the mechanism by which a person obtains the convertible virtual currency, but what the person uses the convertible virtual currency for, and for whose benefit." **(FIN-2014-R001).**

In our view, since the ICO is being used not for the narrow purpose of converting cryptocurrency into fiat or other cryptocurrency, but rather to raise funds for a cooperative initiative, the issuer

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cannot and should not be deemed as a money transmitter and therefore is not a money services business.

Moreover, per the above excerpt, the ICO is indeed a "creation" or "manufacturing" of convertible virtual currency, in a very similar way to mining, and so its issuance has been explicitly excluded from the definition of money transmittance.

And lastly, the issuer does not purchase back the issued LPK token, as a business nor as a dividend, and therefore only "transmits" but not "accepts" the LPK token. Thus, this activity is insufficient for "exchanger" status.

FinCEN Guidance (**FIN-2013-G001**) also defines an "administrator", who is a person engaged as a business in issuing (putting into circulation) a virtual currency, and who has the authority to redeem (to withdraw from circulation) such virtual currency. Such "administrator" requires a license of a money services business.

To address the "administrator" definition, per the data you have provided us, you do not possess the authority nor the power to remove or eliminate the LPK tokens from the digital existence, which do not constitute a "redeem ", and therefore you are not being an "administrator" per FinCEN's definition.

Thus, being constructed as it is and in the ICO purposed configuration as described to us, we see no relevance of obtaining a FinCEN money services business license for the LPK ICO.

NYC BitLicense

In the state of New York, a license must be obtained in order to conduct a Virtual Currency Business Activity which is somehow related to New York state. A Virtual Currency Business Activity is defined as:

> "the conduct of any one of the following types of activities involving New York or a New York Resident:

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> (1) receiving Virtual Currency for Transmission or Transmitting Virtual Currency, except where the transaction is undertaken for non-financial purposes and does not involve the transfer of more than a nominal amount of Virtual Currency;
> (2) storing, holding, or maintaining custody or control of Virtual Currency on behalf of others;
> (3) buying and selling Virtual Currency as a customer business;
> (4) performing Exchange Services as a customer business; or
> (5) controlling, administering, or issuing a Virtual Currency." (T**itle 23. Chapter i. Part 200. Virtual currencies**).

So, we can clearly see, *prima facia,* that the fifth definition is tailored for ICOs. We should examine the definition of "Virtual Currency":

> "Virtual Currency means any type of digital unit that is used as a medium of exchange or a form of digitally stored value. Virtual Currency shall be broadly construed to include digital units of exchange that (i) have a centralized repository or administrator; (ii) are decentralized and have no centralized repository or administrator; or (iii) may be created or obtained by computing or manufacturing effort."

New York Resident is defined as:

> "any Person that resides, is located, has a place of business, or is conducting business in New York;"

Therefore, we can clearly see that every token generating event, or initial coin offering or issuing, involving a New Yorker, can be immediately be deemed as an act requiring the BitLicense – as stipulated per **subsection 200.3**(a):

> "No Person shall, without a license obtained from the superintendent as provided in this Part, engage in any Virtual Currency Business Activity."

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Nevertheless, under the same section, in subsection (c)(2) there is a relevant exemption; the bitLicense regulations clearly exempt "merchants and consumers that utilize Virtual Currency solely for the purchase or sale of goods or services or for investment purposes … from the licensing requirements otherwise applicable under this Part".

Needless to say, L-PESA claim not that the Company utilizes the Virtual Currency for investment purposes, but rather to sell its services as part of a digital cooperative initiative. Additionall, in general, and as a secondary consideration, the "customers" (the LPK token purchasers), of course, may or may not utilize the Virtual Currency for investment purposes, or buy the token for to benefit from the Company's project.

Therefore, to our opinion, the Company does not require a BitLicense in order to sell its tokens to the New Yorker of the State of New York.

This opinion is made for your benefit, written in good faith, and does not consist a guarantee or obligation on behalf of the undersigned.

Best regards,

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