

November 10, 2017

BITCOMO, a Limited Liability Company (“Bitcomo”)
SOLEC street, No. 81B lok. A-51, ground
WARSAW, 00-382 code, post office WARSAW, Poland
Attention of: Mr. Ivan Karadzhov

Re: BM Token

Dear Sirs and Madames:

Please accept this letter as the legal opinion in regards to the Bitcomo token (“BM Token”) sold by Bitcomo.

BACKGROUND

Bitcomo is a decentralized affiliate marketing network provided by blockchain technology for online advertising. It offers a wholly performance-based platform where marketers are rewarded BM Tokens for each visitor or customer acquired. BM Tokens can be spent on an advertising campaign on the Bitcomo network or sold on the crypto marketplace.

The main goal of performance marketing is lead generation, i.e. creating a stream of incoming requests from potential customers. This principle is implemented in a Cost Per Action (CPA) model enabling any advertiser, including ICO and pre-ICO companies, to become part of its pay per action model. An advertiser who decides to promote their products using Bitcomo’s affiliate network can perform product integration simply by providing a link with a postback script. The target actions may include product purchase, website registration and other variables depending on their requirements. Thus, Bitcomo works with advertisers and publishers alike on a CPA basis. Bitcomo is the guarantor of the integrity and transparency of all transactions performed on its network. Bitcomo’s platform focuses on the ICO marketplace.

TOKEN MODEL

Using MetaHash, an integrated platform on the Bitcomo platform, token purchasers can purchase BM tokens or exchange them for fiat currency at any time. During the post-ICO period, BM tokens can be exchanged using the same platform.

Tokens are the means by which the Bitcomo ad network is secured. The number of BM tokens issued will correlate with the level of goods and services produced by these assets. Token holders can pay for services within the Bitcomo ad network using BM tokens at the current market token exchange rate. Publishers receive payment in BM tokens and can exchange these for any cryptocurrency at third party exchanges or by using the Bitcomo network's exchange.

LEGAL ANALYSIS

As the sole means of interacting with the Bitcomo platform, BM Tokens do not fall under the regulation of U.S. Securities laws. The Bitcomo platform is a functional product that does not offer a profit or any other benefit typically provided by securities.

Regulation of Tokens under the U.S. Federal Law

Currently, the most notable U.S. federal laws that regulate the sale of securities, offer protection to investors and introduce punishment (including criminal) for violations are:

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

Securities represent an interest or right in something. The most common type of securities is shares of equity in a company. However, securities can also include notes, bonds, debentures, certificates of interest or participation in profit-sharing agreements, preorganization certificates or subscriptions, investment contracts, and others.

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

Howey Test

The 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
- Solely from the efforts of the promoter or a third party, whose actions must play a significant role in the success of the business.

Sometimes, the last two prongs are combined in one because of their tight connection, which makes the Howey test a three or four part test depending on the interpretation.

BM Tokens meet the first two prongs of the Howey Test. First, it requires a consideration with value such as a payment in fiat and selected cryptocurrency (BTC, ETH, etc.) for BM Tokens. Bitcomo set the regular BM Token price at US\$0.30 per BM Token. Second, all purchasers of BM Tokens would bear equal risks and receive equal benefits from the use of BM Token on the Bitcomo platform. Each BM Token carries the same rights and there is only one type of BM Token.

However, the BM Token fails to meet the other prongs of the Howey Test, because there is no expectation of profit solely from the efforts of Bitcomo or a third party. BM Tokens can only be owned by one user at a time and can be exchanged for products and services only through the Bitcomo platform. There is no capital appreciation, cash return on the funds used to purchase BM Tokens or any other earnings or monetary compensation. Merely, it is an opportunity for BM Token holders to buy and avail themselves of Bitcomo platform services.

Because the BM Token fails to meet all prongs of the Howey Test, it cannot be classified as securities using this approach.

Family Resemblance Test

Another case heard by the Supreme Court that tests on 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 either provided in any regulations or court decisions, there may be a chance that some tokens may be viewed by courts as 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 a security. 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.

The BM Token is not a security under the Family Resemblance Test either. Bitcomo is not raising funds for general use or to finance the company in exchange for a profit. BM Token has a consumer purpose to be exchanged, initially, as payment for CPM content on the Bitcomo platform.

At no point during the sale of BM Tokens did the company suggest any speculative value of the BM Tokens, neither did it offer any "common trading for speculation or investment" solutions to the potential BM Token purchasers. In addition, the Bitcomo White Paper describes in detail the product and functional nature of the BM Token and specifically states that BM Token "*do not represent equity, shares, units, royalties or rights to capital, profit or income in the platform or software or in the entity that issues tokens or any other company or intellectual property associated with the platform or any other public or private enterprise, corporation, foundation or other entity in any jurisdiction. The tokens are not therefore intended to represent a security or similar legal interest whatsoever.*"

Regulation of Tokens Under the U.S. State Law

The U.S. provides its states with the power to regulate the 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), which was 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

The 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.

The Bitcomo platform is available for use by the BM Token holders as soon as the BM Tokens are distributed. The success of the Bitcomo enterprise is reliant on the interaction of BM Token holders with the Bitcomo platform, and only a BM Token holder has the right to transfer any of its BM Tokens.

Therefore, as long as BM Tokens can be actually used for the purpose they were purchased for and no BM Token transfer may be initiated by another user on the Bitcomo platform, BM Token will likely not be considered a security under the Risk Capital Test.

CONCLUSION

The BM Token is a utility token with functionality and qualities of a product. It does not meet the above securities tests or a statutory definition of the security under U.S. Federal and State Laws.

If you have any question or require additional information, please do not hesitate to reach me directly at tel. (646) 522-9184 or ayastralex@gmail.com.



Alex Yastremski, Esq.