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LEGAL STATUS OF WHITE RABBIT TOKENS (WRT)

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This report sets forth a legal analysis as to whether the White Rabbit tokens (WRT) would likely constitute securities pursuant to relevant U.S. securities laws for purposes of Section 2(a)(1) of the Securities Act of 1933 ("Securities Act") and Section 3(a)(10) of the Securities Exchange Act of 1934 ("Exchange Act"), including Howey Test, Family Resemblance Test, and Risk Capital Test, which are used in the United States to recognize a particular instrument as a security and other analytical frameworks.

Please consider that each of the tests can be interpreted in different ways, depending on the state, judicial instance and the particular circumstances of the case. While analysing, we were moving from the generally accepted criteria for the application of these tests.

In order to analyse WRT under the federal securities laws, we should start with the broad definition of "security" contained in Section 2(a)(1) of the Securities Act: "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 … investment contract … 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".[1]

Based on the above mentioned definition and our view of relevant case law, as well as on our understanding of the facts and WRT structure, we conclude that designed WRT have not deemed to meet the definition of security and, accordingly, the federal securities laws will not apply to the initial distribution and subsequent trading of such WRT.

THE HOWEY TEST

Based on the background above, we have considered below whether the WRT would fall under the definitions of security outlined in the Securities Act and the Exchange Act, as well as subsequent case law further defining the term "security".

The US Supreme Court case of SEC v. Howey (1946) established the test for whether an arrangement involves an investment contract within the meaning of the Securities Act and the Securities Exchange Act. An investment contract is a type of security.

In the context of blockchain tokens, the Howey test can be expressed as three independent elements. All three elements must be met in order for a token to be a security[2]:

(1) an investment of money;

[1] We note that the Supreme Court has stated that the definitions of "security" under the Securities Act and the Exchange Act are treated as being the same, despite some technical differences. SEC v. Edwards, 540 U.S. 398 (2004) (citing Reves v. Ernst & Young, 494 U.S. 56, 61 n.1 (1990)).

[2] See Edwards, 540 U.S. at 390.

(2) in a common enterprise;
(3) with an expectation of profits predominantly from the efforts of others.

Element 1: Investment of money	**WRT**
Is there an investment of money? Tokens that are not sold for value do not involve an investment of money. For example, if all tokens are distributed for free, or are only produced through mining, then there is no sale for value. 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. Also, an investment of money may include not only the provision of capital, assets and cash, but also goods, services or a promissory note.[3] Given the broad definition of a money investment and the fact that WRT will be distributed through a sale by the White Rabbit Platform to the buyers with the price set per token, this factor should be satisfied. WRT will be sold for digital currency and fiat money.	+
Element 2: Common enterprise	**WRT**
What is the timing of the sale? If the sale of tokens is made 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. Or if there is a functioning network there is less likely, but still it may have some similarities to a common enterprise where the profits arised 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. In White Rabbit case, there is a beta-version of the platform and WRT are sold in a relatively close timeframe before the network goes live. Consequently, the risk of common enterprise is less likely to arise.	-
Different circuits use different tests to analyze whether a common enterprise exists. Three approaches predominate: (i) horizontal; (ii) narrow vertical and (iii) broad vertical. **What do token holders have to do in order to get economic benefits from the network?** Under the horizontal approach, a common enterprise is deemed to exist where multiple token holders pool funds into an investment and the profits of each token holders correlate with those of the other token holders.[4] Whether funds are pooled appears to be the key question, and thus in cases where there is no sharing of profits or pooling of funds, a common enterprise may not be deemed to exist.[5]	–

[3] See, e.g., Int'l Bhd. Of Teamsters v. Daniel, 439 U.S. 551, 560 n.12 (1979); Hector v. Wiens, 533 F.2d 429, 432-33 (9th Cir. 1976); Sandusky Land, Ltd. V. Uniplan Groups, Inc., 400 F. Supp. 440, 445 (N.D. Ohio 1975).
[4] See e.g., Curran v. Merrill Lynch, 622 F.2d 216 (6th Cir. 1980).
[5] See e.g., Hirk v. Agri-Research Council, Inc., 561 F.2d 96, 101 (finding discretionary future trading account was not investment contract because there was no pooling of funds); Wals v. Fox Hills Dev. Corp., 24 F.3d 1016 (7th Cir. 1994) (promoter of condominium timeshare did not pool profits and thus no common enterprise existed).

The narrow vertical approach looks to whether the profits of a token holders are tied to a promoter.[6] The broad vertical approach considers whether the success of the token holders depends on the promoter's expertise. If there is such reliance, then a common enterprise will be deemed to exist.[7] 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 to be aligned in a common enterprise. 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. A common enterprise does not exist in White Rabbit platform taken into consideration the decentralized nature of WRT framework. The content rights holders (CRH), in particular filmmakers, may increase the economic benefits on versioning or complimentary content and, accordingly, build and broaden their fan base.	
Element 3: Expectation of profits predominantly from the efforts of others	**WRT**
What function does the token have? Tokens which give, or purport to give, traditional equity, debt or other investor rights are almost certainly securities. 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 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. White Rabbit Token is an ERC20 token, created on the Ethereum blockchain platform, which gives the access to the high-quality films in the Rabbit Hole with all the extras, behind-the-scenes, and deleted scenes. Additionally, WRT provide the User with the opportunity to enjoy fan and filmmaker interaction, in particular, live through VR cinema, and third-party innovation given the fact that third party developers may contribute to the White Rabbit ecosystem. The functionality of WRT is available after the User offers the token to CRH. If CRH accepts the tokens, they initiate a transaction for content, entering into a smart contract with White Rabbit.	–

[6] See SEC v. Eurobond Exchange Ltd., 13 F.3d 1334 (9th Cir. 1994) (imposition of profit limitations on investors through requiring promoter to receive excess return rate tied promoter's fortunes to investors).
[7] See e.g., SEC v. Continental Commodities Corp., 497 F.2d 516 (5th Cir. 1974) (promoter's recommendations regarding certain futures contracts demonstrated investor reliance on promoter's expertise).

Does the holder rely on manual action to realize the benefit of the token? A token, the value of which 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. 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. However, just because there is a return or profit, it does not mean that the token sale contract is a security. It is the essentially passive nature of the return, as determined by the "efforts of others" analysis, that results in a "token sale contract" and security as opposed to a simple contract instrument. With regard to WRT token, all functionality is inherent in the token and occurs programmatically. Means that a token is built with all the necessary technical permissions and the token holder does not rely on manual actions of any third party. Any incentives are derived through token holders' own efforts, rather than through a passive investment.	**–**
What is the timing of the sale? If the sale of tokens is made 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. Or if there is a functioning network there is less likely, but still it may have some similarities to 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. In White Rabbit case, there is a beta-version of the platform and WRT are sold in a relatively close timeframe before the network goes live. Consequently, the risk of common enterprise is less likely to arise.	**+/-**
Can the token holders exercise real and significant control via voting? 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. 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. WRT holders have no voting rights, cannot influence on the management, government or other issues regarding White Rabbit and fully depends on the decisions made by the development team.	**-**

How is the token sale marketed? 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. Marketed as a sale of tokens which give the right to access and use the network. White Rabbit Tokens Pre-sale is marked as Token Sale and do not operate with words like "investment," "returns" or "profits".	-

RESULTS: White Rabbit Token Sale in the US may look like the activity related with the money investments in the project (Element 1 is very likely). Furthermore, White Rabbit has developed a demo-version of the platform and WRT are sold in a relatively close timeframe before the network goes live. Thus, White Rabbit Token Sale campaign does not meet the "common enterprise element" (Element 2 is very unlikely). What is most important, White Rabbit token has a specific functionality that is only available to token holders; and is more likely to be purchased in order to access that function and less likely to be purchased with an expectation of profit (Element 3 is unlikely).

However, a token will only be a security if it satisfies all three elements. As for White Rabbit, WRT token is unlikely to be considered as a security according to Howey Test.

FAMILY RESEMBLANCE TEST

A separate securities test is the Reves "family resemblance" test from the U.S. Supreme Court decision in Reves v. Ernst and Young (1990) to determine whether a bill should be classified as a security.

The test starts with the default presumption that a bill is a security, but this presumption could be rebutted if it bears a "family resemblance" to one of the enumerated categories on a judicially developed list of exceptions. The Family resemblance test considers:

(1) the parties' motivation;
(2) the plan of instrument distribution;
(3) the expectation of the investing public; and
(4) the presence of alternative regulatory regime.

It should be noted that, unlike the previous test, there is no rule for all the factors to be applied, but the "strong resemblance" should be proved in this case.

FACTOR 1: THE PARTIES' MOTIVATION	**WRT**
The first factor is described as the motivation that prompts "a reasonable seller and buyer to enter into" the transaction. If the seller's motivation is to raise money for his/her business and the buyer's motivation is to earn profits, then the instrument is likely to be deemed a security. This may also apply when the instrument has not necessarily characteristic of a security, but the investors reasonably expected that they were buying a security, and would be protected by the accompanying securities laws. In White Rabbit case, the Buyer is motivated to use the functionality of the platform, in particular, to get access to the high-quality version of streaming at any time and to discover the additional content from the film, interaction with fans and filmmakers, merchandise and VR services.	–

FACTOR 2: THE PLAN OF INSTRUMENT DISTRIBUTION	**WRT**
The second factor determines whether the instrument is being distributed for investment or speculation. If the instrument is being offered and sold to a broad segment or the general public for investment purposes, it is a security. The issuance and sale of White Rabbit token are publicly accessible, but mostly oriented on the audience motivated to initiate legal streaming.	**–/+**
FACTOR 3: THE EXPECTATION OF THE INVESTING PUBLIC	**WRT**
An instrument will be deemed a security where the reasonable expectation of the investing public is that the securities laws (and accompanying anti-fraud provisions) apply to the investment. Generally, White Rabbit marketing information emphasizes that White Rabbit tokens are not an official or legally binding investment. Therefore, all persons and parties involved in the purchase of WRT act at their own perils and risks. Consequently, there is no legal basis for the securities laws to apply to this case.	**–**
FACTOR 4: THE PRESENCE OF ALTERNATIVE REGULATORY REGIME	**WRT**
The fourth and final factor is a determination whether another regulatory scheme "significantly reduces the risk of the instrument, thereby rendering the application of the Securities Act unnecessary". While the Securities Act and the Securities Exchange Act seem to apply to Token Sales in the US., an alternative to it in the White Rabbit case may be laws of the other jurisdictions. As far as citizens of other states are available to participate in WRT Token Sale, securities laws of such countries may be considered as an appropriate alternative regime.	**–/+**

RESULTS: According to the factors of Family resemblance test, since WRT token buyers are motivated to use the functionality of the platform, in particular, to get access to the high-quality version of streamed content at any time and to discover the additional content from the film, interaction with fans and filmmakers, merchandise, VR services, and at the same time they understand the possible risk the Token Sale is associated with.

WRT token may be considered a security with quite low possibility.

RISK CAPITAL TEST

In 1959 the California Supreme Court (Silver Hills v. Sobieski case) has adopted an additional securities test, which is applied in 16 states. States may use different frameworks to judge what constitutes a security. In California, the risk capital test considers whether there is attempt by an issuer to:

(1) raise funds for a business venture or enterprise;
(2) through an indiscriminate offering to the public at large;
(3) where the investor is in a passive position to affect the success of the enterprise; and
(4) the investor's money is substantially at risk because it is inadequately secured.

QUESTION 1: FUNDS FOR A BUSINESS VENTURE OR ENTERPRISE	WRT
Whether funds are being raised for a business venture or enterprise? Yes. The funds are raised for the purposes of White Rabbit project marketing and development (including but not limited to the support of White Rabbit Partner Streaming Sites).	+
QUESTION 2: PUBLIC OFFERING	**WRT**
Whether the transaction is offered indiscriminately to the public at large? Yes. The issuance and sale of WRT tokens are publicly accessible for capable and adult US citizens on the equal rights.	+
QUESTION 3: POSITION OF THE INVESTOR	**WRT**
Whether the investors are substantially powerless to effect the success of the platform? This criterion is not applicable in White Rabbit case, because there is a demo-version of the platform and WRT are sold in a relatively close timeframe before the network goes live.	-
QUESTION 4: RISK FOR THE INVESTOR'S MONEY	**WRT**
Whether the investor's money is substantially at risk? As far as White Rabbit has already developed a demo-version of the platform, the risk for the investor's money is quite low. The project is always in a position to trigger the launch and give an access to the network through buying WRT.	-

The risk capital test applies to a limited number of jurisdictions, and has been typically applied in the context of original "start-up" capitalization – particularly where membership is nothing more than a sale of right to use the existing facilities – i.e., where "the benefits of the membership have materialized and have been realized by other members prior to any capital raised by the sale of [the memberships]."[8]

RESULTS: Thus, depending on the structure of the presale or actual sale, there is some risk that the use of funds to raise capital may be viewed as a security. Taking into consideration the answers, under Risk capital test the recognition of WRT as a security is quite unlikely.

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OTHER ANALYTICAL FRAMEWORKS

a. SYSTEM LICENSE

Another potential framework under which it is worthy to consider WRT Tokens is by using the analogy of a software license, where the rights associated with the WRT Tokens could be considered in line with the contractual contours of such a license.

[8] See Jet Set Travels Club v. Corporation Com'r, 21 Or. App. 362 (1975).

Software licenses are typically governed by contract law, and one of the ways to categorize the software may be through focusing on the legal rights of the licensor and what rights may be granted to the licensor. For example, the licensor's rights would include the ability to grant or distribute all, some or none of the rights attached to the use of the software code (originally the licensor's intellectual property), as well as the right to exclude certain parties from using any of those rights. Thus, the licensee would receive either all of these rights, or a portion of these rights, depending on what the licensor grants.

For the purposes of WRT Tokens, this structure would be applicable in the following manner:

(i) the White Rabbit acts as the licensor of the system, which includes the underlying protocol, as well as the associated rights;
(ii) the token holder acts as the licensee, who receives those rights (or a portion of those rights) in order to use the underlying protocol and the overall system; and
(iii) any associated rights provided to each token holder are accomplished through the initial issuance of the tokens (akin to negotiating a software licensing contract between two parties).

RESULTS: Based on the above, we believe that WRT Token that consists of rights and does not include any investment interests should not be deemed a security, subject to the specific facts, circumstances and characteristics of the WRT Token itself. Rather, given our analysis in the above, it should be characterized as a simple contract, akin to license agreement.

b. FRANCHISE LICENSE

Although we do not suggest that WRT Tokens fall under federal or state franchise law requirements, thinking about the rights that might be included in a WRT Token, we drew an analogy to franchise law.

1. Under the franchise structure, a franchisor operates as the overarching organization that owns the intellectual property of the franchise (and business plan) and has the authority to sell the franchise right to a potential franchisee. The franchisee is the person to whom these rights are granted.

2. In receiving these rights, the franchisee pays money to the franchisor, which can be an initial fee, an ongoing royalty or both.

3. Typically, state and federal laws governing franchises require franchisors to provide to prospective franchisees detailed information about the franchise. The disclosure obligations under the various federal and state franchise laws are primarily to mitigate the risk of loss to franchisees that make a capital contribution to the franchise.

(a) The Federal Trade Commission ("FTC") rules require a franchisor to provide a prospective franchisee with disclosures related to the trademark being used, the total investment needed to begin operations, the provisions of the franchise agreement and other related disclosure items related to receiving the franchise rights. 16 C.F.R. pt. 436.
(b) New York franchise law has detailed disclosure requirements for the prospectus that the franchisor must provide to the prospective franchisee. N.Y. Gen. Bus. Law § 683, et seq.
(c) California state law requires that a franchise agreement include certain protective rights for the franchisee should the franchisor terminate the franchise prior to its expiration date. The purpose of these provisions is to mitigate the loss of investment in the case of unlawful termination by a franchisor. Cal. Bus. & Prof. Code § 20020-22.

4. In a franchise, the franchisee puts forth the effort and work directly to build up the business in

his/her location and the control or management of the franchisor is more remote. Thus, courts have held that a franchise interest should not be considered an investment security.[9]

5. We view the holder of WRT Token as being similar to a franchisee in that the rights granted by the WRT Token allow the holder to contribute to a system in a manner, remote from the issuer of the WRT Tokens. In essence, the issuer provides the WRT Token holder with rights in the system by virtue of the associated WRT Token, rather than through a passive investment interest.

(a) We believe that, despite the more decentralized framework of WRT Tokens, the franchise analogy is still useful based on how the initial issuer grants its intellectual property – i.e., the system and its underlying protocol - to each individual token holder. Under the franchise model, a franchisor grants its intellectual property (which may also include a business plan) to a franchisor. While a franchise results in a more uniform application of the intellectual property or business plan by each franchisee, in the WRT Token context, analogously, the token holder is granted access to a system, which is the baseline framework under which the token holder operates.

(b) Further, we believe it is useful to consider whether the use of disclosures – both to inform token holders of their rights (e.g., voting rights and other systems rights) and to demonstrate the nature of the WRT Token – may be useful to incorporate at the time of the issuance of the tokens.

RESULTS: Based on the above, we believe that WRT Token that consists of rights and does not include any investment interests should not be deemed a security, subject to the specific facts, circumstances and characteristics of the WRT Token itself. Rather, given our analysis the above, it should be characterized as a simple contract, akin to a franchise agreement.

[9] See Koscot Interplanetary, 497 F.2d at 485; Lino v. City Investing, 487 F.2d 689 (3d. Cir. 1973).