

**SPADES TRC20 TOKEN:
A GLOBAL UTILITY TOKEN LEGAL OPINION**

Prepared by:

Dr. Michael U Dolgoruky, Ph.D.

Phone +1(315) 677-1700

e-mail dr.michael@ubiee.com

5755 SW RANCHITO ST
PALM CITY, FL 34990

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LEGAL OPINION ON THE SPADES TRC20 TOKEN BLOCKCHAIN DECENTRALIZED COMMUNITY PLATFORM UTILITY TOKEN.

The SPADES utility token (SPADES) is built on the TRON Protocol and uses a TRC20 smart contract token standard. SPADES Token is an “asset” of the TRON network. When users join the SPADES Community (www.spades.community) they can engage in P2P business between one another using a site credit. The site credits earned in the community can then be converted to the SPADES token for use outside the community.

Businesses who partner with the SPADES community can accept SPADES tokens directly on their own sites, external to the community site; within the community the businesses can accept the site credits which are only convertible to SPADES. The fundamental purpose of the SPADES Token is to act as a stable conversion medium for community credits, for commerce between community members, such as the site credit utilized at the www.spades.community website.

The SPADES community oversight and management is chartered and managed under a non-profit association, section 508 of the U.S. code, and has no shareholders, Members such as in an LLC, or beneficiaries. As such, the SPADES utility tokens would not be considered a security token as defined by the U.S. SEC or other international regulatory agencies.

As SPADES uses the TRON network protocol, it is a blockchain smart contract enabled for transactions between users of the SPADES, and is connected to the SPADES community items offered by community Members, or services offered by the SPADES community administrators to the Members of the community, via the conversion mechanism. Original content users, curators and discoverers are rewarded through the SPADES site credit, which can then be converted to SPADES utility tokens, and only SPADES utility tokens, for use outside the community website.

The SPADES utility token serves as a multi-purpose utility token, since a SPADES platform utility token holder can use the SPADES utility token both within (to purchase site credits) and without the SPADES community

ecosystem with businesses, individuals who choose to trade/swap for SPADES, peer transactions such as acquiring items at auction, or as a currency for donations to charities who work in partnership with the SPADES community. SPADES lets its community Members and retail partners upload content and products on the platform to showcase their latest offerings, raise brand awareness and increase online sales. The community engages with the content through comments, posts, ratings and reviews to highlight acceptability, popularity and authenticity of the uploaded content.

1,000,000,000 SPADES tokens have been minted, with 10% allocated to charitable Awards for non-profits, schools, and charitable organizations. Of the 100 million (10%) of SPADES Tokens allocated for donation, only those released as Awards will actually be in “circulation”, the remainder are frozen for release until awarded. On the 1st and 15th of each month (twice a month) a new organization will receive a SPADES Award numbering between 100,000 and 200,000 Tokens, a maximum of 400,000 per month, totaling 4,800,000 Tokens max per year. In addition, special Awards may be made throughout the year to charitable and non-profit organizations in varying amounts, the aggregate total of which special Awards may not exceed 5,200,000 Tokens annually. The minimum time before all 100 million Tokens allocated for donation will take to be released is 10 years. To whom Awards go is decided upon by the community, by registered Members of the community who nominate and vote for an organization. When special Awards are released. In what numbers Awards are provided is dependent on the price, demand, and at that moment supply of SPADES in circulation. The official, duly empowered Tokenomics Committee makes the final decision on the timing and amount of special Awards.

An additional 5%, 50,000,000 SPADES were distributed equally to the five founding Members, individually, who put the project together and currently act as the Board. The majority (90%) of these allocated Tokens (45,000,000 of the 50,000,000) are restricted for a period of three years.

Private 1st and 2nd round offerings as an initial private offering were made that resulted in the release and pre-sale of 1%, (10,000,000 Tokens) of the minted tokens.

The next phase of offerings will be the Initial Exchange Offering (IEO) session, where the organization will make available an additional 5% of the total token supply available to public exchanges.

The soft and hard capitalization is \$3,300,000 (.0033) and \$12,500,000 (.0125) respectively. The IEO start date is dependent on negotiations with the exchanges and will be conducted in phases. Round 1 IEO will run 30 days with each SPADES Token being offered (dependent on negotiations with the exchange chosen) for approx. \$0.00883, Round 2 will follow for an additional 30-day period on a second exchange, and 1 SPADES is expected to sell for \$0.00965 with 25% discount bonus. Round 3 will start based on demand from rounds 1 and 2 offerings. IEO session can take place on either a Decentralized Exchange (DEX), or a Centralized Exchange (CEX). Know Your Customer (KYC)/Anti-Money Laundering(AML) due diligence prerequisites are handled on the CEX before eligibility to participate in the IEO in a manner that will allow the purchaser to cash-out tokens for public funds. This obviates the need for another KYC/AML due diligence on the SPADES platform.

ISSUE

Is the SPADES token a utility token, and ipso facto not subject to securities regulation of any jurisdiction, or a security token subject to regulation?

LEGAL ARGUMENT

Whether SPADES token qualifies as a utility token in the mode of the Ethereum and other crypto tokens is a national, trans-national, and cross-jurisdictional interest question:

“There is currently no international agreement on how crypto-assets should be defined. Given the lack of an agreed definition of crypto-assets, this paper’s characterization of this phenomenon may not necessarily coincide with the approach taken by other authorities or in the relevant international fora. At

the same time, the approach taken in this paper is not inconsistent with the EU regulator's definition of virtual currencies, which represent a broader set of assets compared to crypto-assets as defined in this paper. Within the scope of its mandate, the ECB works to facilitate a common understanding of this phenomenon so as to avoid a proliferation of definitions at a sectoral and jurisdictional level hampering international coordination efforts.¹.

Blockchain tokens, or other crypto-assets generated on other Distributed Ledger Technologies (DLTs) having cross-border nature and characteristics have caught the attention of central banking authorities, national securities regulators and international standard-setting bodies alike², as they could pose potential risks to the efficiency and inherent stability of the financial system, overall economy, occasion attendant money laundering, terrorist financing and other long-term negative implications and consequences. A utility token, which the SPADES token is, is generally outside the regulatory remit or oversight function of both national securities regulators and international standard-setting bodies³. This does not mean there is an absence of compliance and legal obligation, as there still exists an obligation (moral,

¹ p.7, European Central Bank (ECB) Occasional Paper Series No 223/May 2019. Available at <https://www.ecb.europa.eu/pub/pdf/scpops/ecb.op223~3ce14e986c.en.pdf>.

² Moved by the urgent and present need to protect the securities and financial markets against the disruptive blockchain technology blizzard and onslaught, both monetary and national securities regulators like the Swiss Financial Market Supervisory Authority ((FINMA), Switzerland, Securities and Exchange Board of India (SEBI), India, Monetary Authority of Singapore (MAS), Singapore, European Securities Market Authority (ESMA), European Union (EU), the Securities and Exchange Commissions (SECs) in the United States, Nigeria, Ghana, Canada, Philippines and a host of others, and international organizations and standard-setting bodies, agencies, and departments, such as FSB, IMF, WB (IBRD), CPMI, BCBS, BIS, DTCC, SWIFT, FATF, IOSCO, ISO, et al have on various occasions issued notices, investor warnings, guides, guidance, commenced enforcement actions, introduced regulation, or working on one, and been proactive issuing and releasing study and research papers, holding conferences, workshops, publishing consultation and final reports et al.

³ Some of the actions taken by sovereign nations, regional organizations, national securities regulators and standard-setting bodies so far attempt to clarify and distinguish between utility token and security token through facts and circumstances analysis, and therefore guide and direct that the extant securities regulations and international laws and conventions be complied with, wherein any particular digital token qualifies as a financial investment token. They have seldom taken any conscious effort to regulate utility tokens as a taxon, if ever. Available at https://en.wikipedia.org/wiki/Initial_coin_offering.

legal, ethical) and compliance requirement under the Doctrine of Necessity. A security token, which is another basic token regulated by national securities regulators, with oversight function from the international standard-setting bodies⁴, contrasts with the SPADES token as a utility token. The third often unnoticed token, a hybrid token, can fall partially both within and without securities regulation depending on its nature and characteristics⁵. A hybrid token basically combines the features and functionalities of both utility token and security token.

Utility token and security token differ in requisite fundamental respects, though the applicable jurisprudence are limited and evolving on equally both national and international fronts. Utility tokens are used for access to goods and services, and serves only pure utility purposes, without granting company equity/share ownership, and even without granting speculative profit interest in certain cases:

“As securities law practitioners know well, the answer depends on the facts. For example, a token that represents a participation interest in a book-of-the-month club may not implicate our securities laws, and may well be an efficient way for the club’s operators to fund the future acquisition of books and facilitate the distribution of those books to token holders.”⁶

Only when a crypto-asset is listed on an exchange for purely speculative purposes⁷, can it be considered a security token, otherwise a utility token is

⁴ IOSCO, FATF et al.

⁵ Thijs Maas, Comparison Report The Case for Hybrid Tokens (2019). Available at <https://www.lawandblockchain.eu/the-case-for-hybrid-tokens/>

⁶ US-SEC Chairman Jay Clayton, 11 December, 2017:“Statement on Cryptocurrencies and Initial Coin Offerings”. Available at <https://www.sec.gov/news/public-statement/statement-clayton-2017-12-11>.

⁷ Utility tokens, like normal, regular fiat national currencies such as the US dollar, Japanese yen, Chinese yuan, British pound et al., are used for speculative purposes, and do not ipso facto become securities (security tokens) subject to regulation by a national securities' regulator, or oversight by IOSCO et al. The central banks, currency boards, and monetary authorities who should have regulatory remit over utility tokens cannot exercise such jurisdiction for the fundamental reason that they are not the issuers of these utility tokens otherwise known as “decentralized currencies”. Except of course for the various Central Bank Digital Currencies (CBDCs) projects in the works across the world, all other currency

what it is: a utility token, with neither speculative interest nor investment interest.

Even where a utility token is utilized by a person as a speculative profit potential, does it then become a security token? Or conversely, can a security token ab initio turn into a utility token?⁸ To date, these are abstruse matters whose answers are not straightforward, as various jurisdictions and international standard-setting bodies have different positions on them, most of which lack any regulatory frameworks.

The most thorough statute-law treatment which has taken the utility token asset question head-on is the **Anguilla Utility Token Offering Act (AUTO Act)**⁹. This sovereign statute-law defines the utility token as “any cryptographically secured digital representation of a set of rights, including smart contracts, provided on a digital platform and issued or to be issued by an issuer.”¹⁰, and provides in Part 1, Preliminary, Interpretation 1(1) that:

programs like utility tokens are exclusively private currency operations outside the ambit of sovereign legal tender laws. For more, see

<https://blog.amalto.com/blog/can-speculation-kill-utility-tokens>.

⁸ In the United States SEC staff securities jurisprudence take the Hinman Test, decentralized cryptocurrencies are “sufficiently decentralized”, and may therefore not be considered security offerings both registrable and regulable by the US-SEC national securities' regulator. This therefore brings them outside the four-pronged Howey Test investment contract fact situation (Howey Test is an upshot of US-SEC v. W.J. Howey Co., 328 U.S. 293, 1946). Notwithstanding, the US-SEC Chairman Jay Clayton is of the opinion that the US-SEC is wrong in the Ethereum sufficient decentralization context, thesis and scenario. Available at <https://www.lawandblockchain.eu/hinman-test/>.

⁹ The Act enacted by the Legislature of Anguilla, and assented under section 57 of the Anguilla Constitution and gazetted May, 2018, is the world's first statute-law to require a registration process for utility token offering and sale, the ratiocination and rationalization for which is that digital tokens that pass for securities are required to comply with both the Anguillan extant securities regulation and framework for regulatory regime on the international level, which therefore leaves many utility tokens being offered to the public sans regulation. Available at:

<http://theanguillian.com/2018/05/government-of-anguilla-announces-worlds-first-blockchain-token-offering-registration-process-for-utility-token-offerings/>, and archived at <https://perma.cc/L69R-3JHX>. See also Token Taxonomy Act Bill proposed by the 115th Congress of the United States, which seeks to amend the Securities Act 1933, and Securities Exchange Act 1934 “to exclude digital token from the definition of a security”. The Bill defines digital tokens as “digital units secured through public key cryptography”. Available at <https://www.congress.gov/115/bills/hr7356/BILLS-115hr7356ih.pdf>.

¹⁰ Available at https://www.loc.gov/law/help/cryptoassets/anguilla.php#_ftn4

“any token that

–(a) does not, directly or indirectly, provide the holder(s) thereof, individual or collectively with the other holder(s), any of the following contractual or legal rights –

(i) ownership or equity interest in the issuer or in any person or pool of assets,

(ii) entitlement to a share of profits, losses, assets or liabilities of the issuer or any other person or pool of assets (other than, in the event of liquidation or dissolution of the issuer, to receive a portion of (but not in excess of) the original subscription price paid for the utility token in the initial utility token offering (“Limited Return Rights”)),

(iii) legal status as a creditor (other than with respect to Utility Token Features, or with respect to Limited Return Rights), or

(iv) entitlement to receive distributions of profits, revenues, assets or other distributions from the issuer or any other person or pool of assets other than with respect to Limited Return Rights; and

(b) has or will have in the future, upon launch of the issuer’s Utility Token Platform, one or more Utility Token Features;

“Utility Token Features” means the contractual right for a holder thereof to utilize a token to –

(a) have access to, become a member of, or become a user of a Utility Token Platform developed and managed, or proposed in the issuer’s white paper to be developed and managed, by the issuer;

(b) use as the sole or preferred (by economic discount, preferred access, preferred use or otherwise) purchase, lease or rental price for the products and/or services provided or proposed to be provided by or in the Utility Token Platform developed and managed, or proposed in the issuer's white paper to be developed and managed, by the issuer; or

(c) use as a means of voting on matters relating to the governance, management or operation of the Utility Token Platform developed and managed, or proposed in the issuer's white paper to be developed and managed, by the issuer".

Since the SPADES token as a utility token, and countless other blockchain utility tokens are by nature and characteristics, cross-jurisdictional and cross-border, and are therefore leveraged to facilitate blockchain Internet commerce protocol transactions, the SPADES utility token legal structure analysis situates well within the Anguilla utility token jurisprudence context. Therefore, the crypto utility token institutionalization evidenced by the AUTO Act is applicable.

A succinct summary of the above quoted section of the world standard AUTO Act Interpretation part reveals that the SPADES utility token is in keeping with the requisite facts, circumstances, features, functionalities, behavior and manifestations required of a typical utility token, which are that the token qualify as a utility token must not in any way provide the holder (a) "contractual or legal rights" of (i) "ownership or equity interest in the issuer or in any person or pool of assets". The SPADES utility token creates neither "contractual" nor "legal rights" of "ownership or equity interest in" the "issuer" of SPADES utility token, "or in any person or pool of assets."

Furthermore, no (ii) "entitlement to a share of profits, losses, assets or liabilities" of "the issuer" of SPADES utility token, "or any other person or pool of assets.

By the earning or purchase of the SPADES utility token, no (iii) "legal status as a creditor (other than with respect to the Utility Token Features, or with respect

to Limited Return Rights)” is conferred on the SPADES utility token holder, (b) “and has or will have in the future, upon launch of the issuer’s Utility Token Platform, one or more Utility Token Features;”. “Utility Token Features” is defined to mean a contractual use right that the SPADES utility token holder has in the SPADES utility token context to (a)“have access to, or become a member of, or become a user of a Utility Token Platform developed and managed, or proposed in the” SPADES utility token “white paper developed and managed, by the issuer;” of SPADES utility token, or in the alternative, to be used (c)“as a means of voting on matters relating to the governance, management or operation of the Utility Token community developed and managed, or proposed in the” SPADES utility token “issuer’s white paper.” A security token lets a company provide its security asset token holders share in company dividends, ownership interest rights, voter rights and other relevant interests which may be built on the security asset token blockchain protocol, and relevant standards. SPADES utility tokens do not do this as they have shareholders, and no company with dividends.

By its utility-based nature and characteristics, the SPADES token utility value as expressed through its native ecosystem of P2P crypto exchanges for community product sales and services, therefore, among other reasons present a difficult task linking “to specific entities and/or jurisdictions”¹¹.

From the July 25, 2017 DAO Hack Investigation Report, where it relies on the Section 21(a) of the Securities Exchange Act of 1933, the US-SEC has taken and maintained the position that when crypto-assets are securities, they fall within the regulatory ambit and remit of the extant federal securities laws of the United States. This view has been maintained by the US-SEC in its various court actions for enforcement of the extant federal securities laws, and the same thought thread runs through every speech, interview, guidance, public statement made, or any action embarked upon in line with the US-SEC v. Howey test “reasonable expectation of profit derived from efforts of others”(REPDEO) rubric. Though arguably, “the investment of money and the

¹¹ p. 1., “Decentralised financial technologies Report on financial stability, regulatory and governance implications”, FSB June 6, 2019. This Report delivered to the G20 Finance Ministers and Central Bank Governors for the meeting in Fukuoka, Japan, on the 8th-9th, June, 2019 - view at <https://www.fsb.org/wp-content/uploads/P060619.pdf>.

existence of a common enterprise” are naturally fundamental and met for crypto-assets, not every crypto-asset transaction contract can be concluded to rise to the level of *ownership interest worthy of a national securities' regulator attention*. US-SEC No-Action Letters follow these same logic and reasoning where it outlines the essentials of a typical consumer utility token sans any vestiges or traces of equity security or debt security, or investment contract fact situation analysis framework. The relevant facts and circumstances to observe to ensure that a token sale does not infringe the US federal securities laws in the estimation of the US-SEC are:

Non-utilization of generated funds from token sale to develop the smart contract application platform, etc.,

A developed and operational platform during token sale,

Preservation of the token exchange ratio,

Exclusive usage of the token for company services at a fixed exchange ratio,

Immediate availability and usability of the tokens for their intended functionality,

Token transfer restricted only between and among the platform native crypto-wallets discounting of the token at its original price value exchange ratio when repurchased,

Token not to be marketed as investment with returns,

Tokens to be sold at a fixed ratio amount, and not to be inflated in value,

Except an order of court to liquidate the tokens, and

The platform can only buy back the tokens from holders at the original face value.

The SPADES utility token does fit within this US-SEC Turnkey Jet No-Action Letter set prerequisite parameters for utility tokens, as these prerequisite parameters are at best narrow, and do nothing in the way of providing sufficient clarity and certainty on crypto-assets, especially suggestion in the mode of a comprehensive statutory regulation that creates certainty and clarity. And most importantly the set parameters speak to a typical consumer utility token, rather than speculative-cum-payment utility tokens like Bitcoin, Ethereum, other altcoins, fiat crypto-assets, or the SPADES utility token which are all utilized for purchase of goods and services both within and without their natural habitats.

CONCLUSION

The reasoning and conclusion from the facts and circumstances of the SPADES utility token sales and the token structuring is that the SPADES utility token falls outside the general rubric for a security token in any jurisdiction where the utility token is bought or utilized by a citizen of any jurisdiction. The SPADES utility token is not a security token for the reason that it does not grant any right whatsoever in shares of any company, or beneficial interest in a company that is connected with the SPADES Token community project.

Therefore, the SPADES utility token is an exchange token, and ipso facto, an “unregulated token” under municipal laws, and nondescript under international laws as they currently stand.

DISCLAIMER

Liability is hereby generally disclaimed, as this global utility token legal opinion only serves for legal informational purposes, and no more.

A handwritten signature in blue ink, appearing to read 'William J. DeGardis', is written over a light blue circular stamp.

Signature of Attorney:

Michael U Dolgoruky

Attorney contact Phone +1(315) 677-1700

Attorney contact e-mail dr.michael@ubiee.com

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PALM CITY, FL 34990

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