



TOKEN ANALYSIS REPORT

ONEUSD

Prepared by:
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September 2021

ANALYSIS REPORT: ONEUSD TOKEN BY BRITISH CAPITAL LIMITED

TO: British Capital Limited
FROM: Solidity Legal Group (SLG Ltd.)
RE: ONEUSD Token Issuance
DATE: September 20, 2021

REF: APPLICABILITY OF THE SECURITIES LAWS TO THE ISSUANCE OF THE ONEUSD TOKEN

This memorandum analyzes whether British Capital Limited's (the "Company" or "British Capital") issuance of the cryptographic ONEUSD Token ("Token" or "ONEUSD") is likely to be considered an offer or sale of a security pursuant to the Securities Act of 1933, as amended (the "Securities Act"). The scope of this analysis is limited to the issuance of the Token. Ziliak Law, LLC's (the "Firm") analysis is limited in scope to the application of the Securities Act and does not consider any other applicable federal or state laws, nor any international laws or the laws of any non-US jurisdiction. British Capital is advised to obtain the advice of local counsel in any markets where it wishes to sell or has already sold the Token.

This report is prepared based on information and representations made by the Company to the Firm. The Firm does not warrant that any or all facts assumed in this memorandum are accurate or complete as the Firm has neither the means nor the authority to establish the veracity of the information provided by the Company. If the facts that informed this analysis are incomplete, false, misleading, or incorrect, or are revised in the future, the conclusions arrived at in this analysis may cease to be valid. The Firm's legal relationship is limited to British Capital and does not extend to any users of the British Capital platform or Token purchasers.

The regulation and enforcement of cryptocurrency is continuously evolving; thus, regulatory developments may affect the future validity of the Firm's analysis. This memorandum and the legal conclusions contained herein are based on the Securities Act and regulations promulgated hereunder, as well as relevant administrative proceedings and Securities Exchange Commission reports as of September 20, 2021. Any laws, regulations, administrative proceedings, or reports enacted or published after September 20, 2021, have not been considered in this memorandum. Outside of agreement between the Company and the Firm to the contrary, the Firm is under no obligation to update this memorandum after the date of delivery, in response to changes in the law or changes in the Company's operations and policies.

I. The ONEUSD Token

British Capital is a company registered and incorporated in Hong Kong. The Company plans on minting the ONEUSD Token as a utility token to facilitate trades and transactions on Decentralized Finance (DeFi) platforms and gateways. The Token's purpose is to facilitate

transactions on multichain networks. ONEUSD is a digital currency *fractionally* pegged 1:1 with USDC on the Binance Smart Chain (“BSC”).

ONEUSD is the wrapped version of USDC on the BSC. The Token is a BEP-20 token and therefore available to trade with other BSC-supported tokens. ONEUSD is also available to trade with Ethereum’s main network tokens through a bridge on both centralized and decentralized tokens. The Company plans to offer wrapped smart contracts of the Token on Ethereum and Tron for trading on these networks in the future.

ONEUSD is fractionally pegged to USDC because the Company does not fully back each ONEUSD with one USDC and the Company does not hold any fiat currency reserves. Rather, the peg is maintained through smart contracts that will automatically mint or automatically burn ONEUSD. These auto-minting and auto-burning features are written into the deployed smart contract that pegs the price function to USDC’s main smart contract to support the pricing function. When the price of ONEUSD falls below the price of USDC, the smart contract the Company deploys will mint ONEUSD. These newly-minted ONEUSD will be distributed to each holder of ONEUSD at that time and the amount the holder receives is based on the holder’s current ONEUSD balance. When the price of ONEUSD rises above USDC, the smart contract will burn ONEUSD from the main smart contract’s account and will not affect other Token holders.

To purchase ONEUSD, an interested party can deposit USDC or USDT into the Company’s decentralized main custody account. The Token will be transferred to purchasers as soon as their deposit of USDC or other paired digital currency is confirmed by the requisite blockchain ecosystem. ONEUSD holders can redeem their tokens in exchange for USDC on connected and supported exchanges. If the Company does not hold enough USDC to execute a redemption, the Company will offer a “blended redemption.” In this instance, the Company will redeem the holder in USDC held in the Company’s main deposit and mint more ONEUSD to cover the remaining redemption amount. Thus, if a holder wants to redeem 10 ONEUSD and the Company must perform a “blended redemption,” the holder may receive 5 USDC and 5 ONEUSD in return for the holder’s 10 ONEUSD.

In advertising the Token, the Company’s target groups are institutional traders within the Company’s network and individuals active in the crypto industry. The Company is going to use corporate social media channels to promote the Token and plans on paying for media and press release campaigns and producing articles, interviews, and press releases. The Company will advertise the expertise of its executive team, as the team has more than twenty years of experience with FinTech and intelligent monetary systems.

The Company will first run pre-seed and seed funding stages to sell the Token. In these preliminary rounds, the Company is working in collaboration with supported investment firms and private or unaccredited investors cannot participate. The Company has not implemented any identity verification or “know-your-client” (“KYC”) policies other than those already required on cryptocurrency exchanges.

Eighty percent (80%) of the initially raised funds will be locked into centralized and decentralized exchanges to back liquidity of trading with other pairs and currencies. Ten percent (10%) of the funds raised will be used for marketing and promotional campaigns; 5% will be shared with institutional contributors and partners; and 5% will be used as compensation for the developers and managers.

The locked funds will be governed by a Decentralized Autonomous Organization (“DAO”) using a decentralized network workflow. When ONEUSD is listed on a major exchange, Token holders can exchange the Token with other digital assets and currencies through exchange procedures. Token holders can only exchange their Tokens with pairable currencies through listed exchanges.

II. Legal Analysis

A. Introduction to the *Howey* Test

It is illegal to offer or sell securities in the United States unless the offer and sale are made pursuant to an effective registration statement filed with the SEC or the offer and sale are exempt from filing such registration statement pursuant to the federal securities laws.² Therefore, this memorandum analyzes whether the Tokens are “securities” pursuant to the Securities Act such that the Company should register the Token offering and sale issuance with the SEC or should qualify for an exemption thereof.

² 15 U.S.C.S. § 77(e) (2019).

The Securities Act broadly defines “security.”³ The definition, “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.”⁴ When determining whether an instrument or arrangement is a security, the SEC favors substance over form.⁵ This is because the underlying purpose of federal securities law is to mandate honest disclosure from issuers who would otherwise be motivated to overstate the value of their company shares.⁶

Digital assets and crypto currencies are not explicitly distinguished in the definition of “security,”⁷ but the SEC and federal courts use the “investment contract” analysis to determine whether novel instruments or arrangements, like digital assets and crypto currencies, fall within the definition of “securities” and can therefore be regulated by the SEC.⁸ An “investment contract” is one type of security, and has been defined by the US Supreme Court as “a contract or scheme for ‘the placing of capital or laying out of money in a way intended to secure income or profits from its employment.’”⁹ In order to determine whether a security is an “investment contract,” and therefore a “security,” the SEC applies a four-part test that the Supreme Court set out in *SEC v. Howey*. The four-part test from *Howey* states that an investment contract exists when there is:

- (1) an investment of money;
- (2) in a common enterprise;
- (3) with a reasonable expectation of profit;
- (4) based upon the entrepreneurial or managerial efforts of others.¹⁰

If each of these four elements is satisfied, then the asset, interest, contract, scheme, or arrangement constitutes a security. If any one of the elements is not met, then the asset, interest, stock, treasure stock, security future, security-based swap, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, **investment contract**, voting-trust certificate,” contract, scheme, or arrangement fails the *Howey* test and is therefore not a security, unless a separate basis for that classification is appropriate.

³ 15 U.S.C.S. §77b(a)(1) (2019).

⁴ *SEC v. W.J. Howey Co.*, 328 U.S. 293, 299 (1946) [hereinafter *Howey*].

⁵ *Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967).

⁶ The words of the preamble: 'An Act To provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails, and to prevent frauds in the sale thereof, and for other purposes.' 48 Stat. 77, as amended, 48 Stat. 906, 15 U.S.C. § 77d, 15 U.S.C.A. § 77d.

⁷ SEC, Strategic Hub for Innovation and Financial Technology, Framework of “Investment Contract” Analysis of Digital Assets, (Apr. 3, 2019), <https://www.sec.gov/files/dlt-framework.pdf> [hereinafter *Digital Assets Framework*].

⁸ *Howey* at 298 (quoting *State v. Gopher Tire & Rubber Co.*, 146 Minn. 52, 56 (1920)).

⁹ *Howey* at 301.

B. An Investment of Money

The “investment of money” element can be satisfied by the exchange of a digital token for money or other contributions of value.¹¹ A purchaser’s medium of investment is immaterial.¹² A purchaser may contribute goods or services to an issuer to satisfy the “investment of money” factor of the *Howey* test.¹³ In 2013, the Eastern District of Texas held that an investment of Bitcoin is “an investment of money.”¹⁴ As long as the purchaser provides some “tangible and definable consideration in return for an interest” in the issuer, a purchaser’s contribution will be an “investment of money.”¹⁵

Here, purchasers will buy Tokens by depositing USDC or USDT into the Company’s decentralized main custody account. USDC and USDT are both crypto currencies backed a reserve of fiat currency or other cash equivalents thereof. USDT is a stable crypto currency sold by Tether Operations Limited (“Tether”) that is backed by Tether’s reserves of fiat currencies and cash equivalents as well as assets and loans made by Tether to third parties.¹⁶ Tether values 1 USDT at 1 US Dollar. USDC is a stablecoin sold by Coinbase, Inc. and backed by 1 US Dollar or asset of an equivalent value.¹⁷ Because USDC and USDT are crypto equivalents of US Dollars, both are “tangible and definable consideration” and would be considered an “investment of money. Therefore, the offer and sale of ONEUSD satisfies the first element of the *Howey* test.

C. A Common Enterprise

The next element of the *Howey* test is whether a common enterprise exists. Two different tests may be used to determine if a common enterprise exists: vertical commonality and horizontal

¹¹ Tomahawk Exploration LLC, Securities Act Release No. 83839, Admin. Proc. No. 3-18641 (Aug. 14, 2018); Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO, Exchange Act Release No. 81207 (July 25, 2017), <https://www.sec.gov/litigation/investreport/34-81207.pdf> [hereinafter “the Dao Report”].

¹² See *Uselton v. Comm. Lovelace Motor Freight, Inc.*, 940 F.2d 564, 573 (10th Cir. 1991), (holding an “investment of money” applies to non-cash contributions); *SEC v. Shavers*, 2013 28182, at 4, 5 (E.D. Tex. 2013) (holding that an investment of Bitcoin is an investment of money).

¹³ See *Uselton*, 940 F.2d at 574.

¹⁴ *Shavers*, 2013 WL 4028182 at 4, 5.

¹⁵ *Int’l Bhd. Of Teamsters v. Daniel*, 439 U.S. 551, 559-60 (1979).

¹⁶ See TETHER, [Tether.io](https://tether.io), accessed on September 19, 2021.

¹⁷ See COINBASE, “Introducing USD Coin (USDC) – Stablecoin by Coinbase” <https://www.coinbase.com/usdc>, accessed on September 19, 2021.

commonality.¹⁸ The U.S. federal circuit courts are split on which standard is necessary to satisfy the common enterprise element, with some courts accepting horizontal only, others accepting vertical only, and still others accepting either.¹⁹ Therefore, the ONEUSD facts will be analyzed under both standards and the circuit split will be accounted for, if necessary, in the final conclusion.

Horizontal commonality exists when the “fortunes of each investor depend upon the profitability of the enterprise as a whole” and almost always requires a pooling of investors’ funds.²⁰ Showing horizontal commonality can be done through the “pooling of assets from multiple investors in such a manner that all share in the profits and risks of the enterprise.”²¹ While horizontal commonality usually involves the pro-rata distribution of the enterprise’s profits, this is not required.²² For example, in *Balestra v. ABTCoin LLC*, the US District Court for the Southern District of New York found that horizontal commonality existed because the fund’s raised by the sale of ABTCoin’s token were pooled together to facilitate the launch of the ABT Blockchain, the success of which, in turn, would increase the value of the ABTCoin tokens.²³ Thus, horizontal commonality exists where the fortunes of each investor or purchaser of token are tied to the success of the overall venture or enterprise.²⁴

Vertical commonality exists when an investor’s fortune is “tied to the promoter’s success rather than to the fortunes of his or her fellow investors.”²⁵ Vertical commonality is further split into a narrow and broad definition. Narrow vertical commonality exists when an investor’s profits are dependent on the success of those seeking the investment or of a third party; broad vertical commonality exists when the success of all investors is dependent on the promoter’s expertise.²⁶ Courts that apply the vertical commonality standard reject the notion that the pro-rata sharing of profits is required to find that the purchaser invested in a common enterprise.

Here, the offer and sale of ONEUSD likely meets the “common enterprise” element of the *Howey* test. First, horizontal commonality likely exists because the funds contributed by purchasers of ONEUSD will be pooled together and allocated for various uses, including providing initial liquidity, marketing and promotional campaigns, distribution to institutional contributors and partners, and compensation for developers and managers. This pooling of assets will help the Company market and promote the Token, hopefully increasing the Token’s use. As more and more

¹⁸ See *Revak v. SEC Realty Corp.*, 18 F.3d 81, 87 (2d Cir. 1994).

¹⁹ *SEC v. SG Ltd.*, 265 F.3d 42, 49 (1st Cir. 2001).

²⁰ *Id.*

²¹ *Id.* at 50 (finding a pooling of funds where the users’ money was put into a single account to settle users’ online transactions).

²² See *Balestra v. ATBCOIN LLC*, 380 F.Supp.3d 340, 354 (S.D.N.Y. 2019), stating “a formalized profit-sharing mechanism is not required for a finding of horizontal commonality.”

²³ *Id.* at 353.

²⁴ *Id.* at 354.

²⁵ *SG Ltd.*, 265 F.3d at 49.

²⁶ *Id.*

persons buy and use the Tokens, the Token will increase in value. While the Company's smart contract will mint Tokens if the value of the Token exceeds 1 USDC, it is unclear if this will, in reality, lead to a corresponding decrease in the value of the Token. Furthermore, ONEUSD will be automatically minted every quarter in the "minting profit" and distributed to each Token holder. Because a holder can redeem 1 ONEUSD for 1 USDC and 1 USDC can be redeemed at another exchange for 1 US Dollar, the Company is essentially distributing cash to Token holders. The amount of "minting profits" a holder receives will increase with the market capitalization of ONEUSD and therefore aligns the profits of holders with the success and profits of the ONEUSD enterprise. Thus, as more persons purchase 1 ONEUSD with USDC, the Company's decentralized main custody account will in turn have more USDC from which to execute redemptions. Therefore, as more persons use ONEUSD, the value of ONEUSD increases. Thus, regardless of which test a court chooses to apply to determine if a common enterprise exists, ONEUSD is likely not be deemed an investment in a common enterprise.

²⁷ See generally *Munchee Inc.*, Securities Act Release No. 10445, Admin. Proc. No. 3-18394 (Dec. 11, 2017); *Balestra*, 380 F.Supp.3d at 354.

²⁸ See *SEC v. Mutual Benefits Corp.*, 408 F.3d 737, 745, n. 4 (11th Circ. 2005)

D. Reasonable Expectation of Profits

The third prong of the *Howey* test focuses on whether “the purchaser [is] attracted to the investment by the prospect of a profit on the investment rather than a desire to use or consume the item purchased.”²⁹ The Supreme Court has stated that the “profits” from *Howey* are profits that investors seek on their investment, in the sense of income or returns, not the profits of the enterprise itself.³⁰ Under the *Howey* test, an expectation of “profits” may include capital appreciation resulting from the development of the initial investment, participation in earnings from the use of investors’ funds, or periodic payments, such as dividends.³¹ It is of no consequence whether the returns are fixed or variable.³² Rather, the promise that investors may profit from an investment is enough to satisfy this element of the *Howey* test.³³ Additionally, the “profit” portion of this element can be met when a purchaser expects a return through other methods of realizing appreciation, such as selling a digital asset on a secondary market for a gain.³⁴

When considering why someone purchases a token, the courts have considered whether the “purchase of a token looks a lot like a bet on the success of the enterprise and not the purchase of something used to exchange for goods or services on the network.”³⁵ To determine this, courts have looked at the actions of the promoter and behavior of purchasers. This consideration is an objective one focusing on the promises and offers to purchasers as a whole, not the motivation of each individual purchaser.³⁶

In the *Digital Assets Framework*, the SEC highlighted several characteristics that, if present, will lead the SEC to conclude that token or other digital asset offering created a reasonable expectation of profits. These include, but are not limited to, whether:

- The digital asset giving the holder rights to share in the enterprise’s income or profits or to realize gain from capital appreciation of the digital asset.

²⁹ SEC v. Infinity Group Co., 212 F.3d 180, 187 (3d Cir. 2000) (quoting *Steinhardt Group Inc. v. Citicorp*, 126 F.3d 144, 152 (3d Cir. 1997)).

³⁰ SEC v. Edwards, 540 U.S. 389, 390 (2004).

³¹ See *United Housing Found., Inc. v. Forman*, 421 U.S. 837, 852 (1975); *Edwards*, 540 U.S. at 394.

³² *Edwards*, 540 U.S. at 395.

³³ *Id.*

³⁴ *Digital Assets Framework*.

³⁵ William Hinman, Dir., Div. of Corp. Fin., SEC, *Digital Asset Transactions: When Howey Met Gary (Plastic)*, Remarks at the Yahoo Finance All Markets Summit: Crypto (June 14, 2018), <https://www.sec.gov/news/speech/speech-hinman-061418>.

³⁶ SEC v. Telegram Grp., Inc., 448 F.Supp.3d 352, 371 (S.D.N.Y. 2019).

- o The opportunity may result from appreciation in the value of the digital asset that comes, at least in part, from the operation, promotion, improvement, or other positive developments in the network, particularly if there is a secondary trading market that enables digital asset holders to resell their digital assets and realize gains.
 - o This also can be the case where the case where the digital asset gives the holder rights to dividends or distributions.
- The digital asset is transferable or traded on or through a secondary market or platform.
- Purchasers reasonably would expect that an AP's efforts will result in capital appreciation of the digital asset and therefore be able to earn a return on their purchase.
- The digital asset is offered broadly to potential purchasers as compared to being targeted to expected users of the goods or services or those who have a need for the functionality of the network.
 - o The digital asset is offered and purchased in quantities indicative of investment intent instead of quantities indicative of a user of the network. For example, it is offered and purchased in quantities significantly greater than any likely user would reasonably need, or so small as to make actual use of the asset in the network impractical.
- The promoter, sponsor, or other third party has raised an amount of funds in excess of what may be needed to establish a functional network or digital asset.
- There is little apparent correlation between the purchase/offering price of the digital asset and the market price of the particular goods or services that can be acquired in exchange for the digital asset.
- The digital asset is marketed, directly or indirectly, using any of the following:
 - o The expertise of a promoter, sponsor, or other third party or its ability to build or grow the value of the network or digital asset.
 - o The digital asset is marketed in terms that indicate it is an investment or that the solicited holders are investors.
 - o The intended use of the proceeds from the sale of the digital asset is to develop the network or digital asset.
 - o The future (and not present) functionality of the network or digital asset, and the prospect that a promoter, sponsor, or other third party will deliver that functionality.
 - o The promise (implied or explicit) to build a business or operation as opposed to delivering currently available goods or services for use on an existing network.

- o The ready transferability of the digital asset is a key selling feature.
 - o The potential profitability of the operations of the network, or the potential appreciation in the value of the digital asset, is emphasized in marketing or other promotional materials.
 - o The availability of a market for the trading of the digital asset, particularly where the promoter, sponsor, or other third party implicitly or explicitly promises to create or otherwise support a trading market for the digital asset.
- There is little apparent correlation between the quantities the digital asset typically trades in and the amount the underlying goods or services a typical consumer would purchase for use or consumption.³⁷

Courts have also analyzed the structure of ICOs to determine if purchasers have an expectation to profit. For example, in *SEC v. Telegram Group*, the issuer set the initial sale price at a significant discount for a first round of purchasers. Telegram then increased the price of the token during its second round of token sales. Purchasers that bought tokens in the first round were subject to a lock-up period, however purchasers in the second round were not. This allowed purchasers the ability to sell their tokens without competition from the first round of purchasers.³⁸ The court found that this arrangement showed investment intent rather than a motivation for personal or consumptive use, as the purpose of the different prices and lock up mechanisms was to increase investors' profits.

³⁷ Digital Assets Framework.

³⁸ *Telegram*, 448 F.Supp.3d at 373. Telegram also advertised that they would support the market price of the token if the market price fell. This created an expectation that even if the market price fell, investors would still be able to resell their tokens for a profit. *Id.*

E. The Entrepreneurial or Managerial Efforts of Others

Courts find the fourth element of the *Howey* test satisfied when “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.”³⁹ Courts will analyze the actions of promoters both pre- and post-launch to make this determination.⁴⁰ In *Balestra*, the court found that during the issuer’s advertising campaign promoters conveyed to purchasers that their return on investment would be the result of the issuer’s efforts to commercialize the blockchain and tokens.⁴¹ Similarly, in *Tomahawk*, the SEC determined that the issuer’s online offering materials made it clear that purchasers would receive profit from the production operations conducted by the issuer.⁴²

Courts have also found the fourth element met when purchasers have to rely on the issuer to develop a technology in order to profit,⁴³ and when the promoter highlights the skills and experience of the agents and its employees.⁴⁴ The SEC, in its *Munchee* decision, also indicated that by advertising specifically to investors who wanted to profit from the token, and not people looking to use tokens to use services on the platform, Munchee gave MUN purchasers a reasonable belief that it and its agents could be relied on to provide the entrepreneurial and managerial actions necessary to make the token profitable.⁴⁵

Post -launch entrepreneurial and managerial actions are also considered when determining whether the fourth element is satisfied. For example, in *Telegram* the issuer had a critical role post-launch of integrating the new blockchain and another platform to attract more users.⁴⁶ Purchasers anticipated this role when they considered whether to invest in Telegram’s tokens. Similarly, in *Munchee*, the value of the tokens depended on Munchee’s ability to develop its app. Munchee further stated in its advertising that they were going to maintain the app ecosystem and perform specific efforts to cause the MUN’s appreciation, such as burning tokens.⁴⁷ The SEC interpreted

³⁹ *SG Ltd.*, 265 F.2d at 55 (quoting *SEC v. Glenn W. Turner Enters., Inc.*, 474 F.2d 476 (9th Cir. 1973)).

⁴⁰ See *Telegram*, 448 F.Supp.3d at 375; *Balestra*, 380 F.Supp.3d at 355.

⁴¹ *Balestra*, 380 F. Supp.3d at 355.

⁴² *Tomahawk*, No. 83839.

⁴³ See *Telegram*, 448 F.Supp.3d at 376; *Munchee* No. 10445 at 8.

⁴⁴ *Munchee*, No. 10445 at 9.

⁴⁵ *Id.*

⁴⁶ *Telegram*, 448 F.Supp.3d at 377.

⁴⁷ *Munchee*, No. 10445 at 9.

these actions as entrepreneurial and managerial efforts, as Munchee specifically said it would be performing these actions to make the token profitable. The SEC also emphasized that investors had to rely on Munchee's expertise for the tokens to be profitable.⁴⁸

III. CONCLUSION

We can determine that most of the essential elements of the *Howey* test are not met and thus this is to conclude that the offer and sale of the Token is not a security issue.

⁴⁸ Id.