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LEGAL OPINION
in respect of the security status of virtual currency tokens issued by UAB Syndiqate

1. Introduction and Synopsis

This legal opinion addresses the request for a formal legal opinion regarding the security or non-security status of virtual ("crypto") currency tokens created and released on the blockchain by UAB Syndiqate ("Syndiqate"), the legal entity duly incorporated under the laws of the Republic of Lithuania, under the legal framework established by laws of the Republic of Lithuania and the European Union (the "EU").

This opinion is based upon the analysis and review of the whitepaper provided by Syndiqate for the purposes of defining the security or non-security status of the Syndiqate virtual currency token (hereinafter, the "Token"), i.e., Syndiqate Token ("SQAT"). The Token is therefore reviewed on the basis of the applicable Lithuanian and EU legislation in force at the moment of the issuance of this opinion.

This opinion is not a guarantee of any result, goal or determination outlined by Syndiqate in the whitepaper and other applicable drafts and documents. In an environment of rapidly changing technology and technological advancement, blockchain technology develops at a growing pace causing the law to adapt to the speed of technological progress. As a result, the contracts of this opinion shall be perceived as reflecting the status of the token as of July 2022. The applicability of amendments in the relevant Lithuanian and EU legislation to the statements and conclusions of this legal opinion as well as the (non)-security status of the Token shall be assessed notwithstanding the legal opinion in question, its contents and their applicability and relevance to the legislative framework in force as of July 2022.

Furthermore, this legal opinion does not purport to provide a formal legal opinion with respect to law outside of the scope of the Lithuanian and EU legal frameworks. Should the concerned persons in any other jurisdiction require this legal opinion to be provided for their disposal as confirmation

of the (non)-security status of the Token, the persons in question shall bear in mind that the conclusions of this legal opinion may not be applicable in the respective jurisdiction(s). Nevertheless, for jurisdictions falling into the scope of application of the EU law, this legal opinion may be of assistance to the extent of its applicability to the national legislation of the respective Member States.

This legal opinion is based solely on the sources explicitly described herein. The legal opinion was prepared on the basis of information and documents furnished by the Management board and owners of Syndiqate, including but not limited to information provided over the course of communication with the owners of Syndiqate and other available documentation. To the extent that any additional and/or presently unidentified sources of information or newly enacted regulation may materially alter the opinions contained therein, the undersigned assumes no liability.

2. Background and Factual Assumptions

Syndiqate is a legal entity that is legally and physically present in Lithuania. It is owned by Mr. Elchin Suleimanov, Mr. Kanat Iskakov, and Mr. Stanislav Polyvyannyy, all shareholders being the citizens of Kazakhstan.

The main goal and project of Syndiqate is to create an association of individuals and organizations in a form of a club-based cryptocurrency insurance community to carry out peer-to-peer insurance of investment risks in cryptocurrency projects and crypto currencies themselves. The main distinctive feature of the aforementioned program, according to the whitepaper, lies in the mechanism of investment mitigation risks: instead of vesting the risks with insurance companies, individuals and organizations with the same or similar risks may opt for a so-called collective commitment to mitigate the risks by pooling the said risks into one insurance pool.[1] Thus, each member of the program contributes his or her risk to the insurance pool and pays a certain amount commensurate with the risk. At the same time, the funds payable to the pool do not constitute insurance premium and shall rather be perceived as a voluntary contribution to the insurance pool in the form of a club fee.

Therefore, instead of purchasing a liability based on an insured event that may or may not occur, Syndicate members make a contribution to the general insurance pool based on the concept of voluntary participation with the intention of joining the club mutual aid system when an insured event occurs. This contribution constitutes the payment of the club fee. The said principle of

[1] For the purposes of this legal opinion, the term “insurance” shall hereinafter mean the aforementioned program of mitigating risks related to cryptocurrencies developed by Syndiqate and exclude any definition of insurance provided by legal acts and relevant legislation concerning the legal framework applicable to insurance firms and undertakings.

insuring one's funds by means of joint participation in the general insurance pool may be traced to the Islamic tradition of *takaful*, according to which individuals and entities concerned about insuring their funds and mitigating risks associated with their holding or investment make contributions to a common guarantee pool managed on their behalf by a takaful operator. Such contributions are thus regarded as donations subject to reimbursement in an event giving rise to the repayment, such as loss of funds.

Syndiqate specifically refers to takaful in the whitepaper as the cornerstone principle that gave rise to the mechanism implemented into their insurance program. The program in question consists of two insurance products, or plans, related to mitigating the risks of investment in crypto currencies:

- "Anti-Scam Investment Protection": this insurance plan covers projects, tokens and cryptocurrencies related to initial fundraising at pre-sale, seed-round, private round, Initial Dex Offering ("IDO"), ICO, Initial Exchange Offering ("IEO"), Token Generation Event ("TGE"), seed stage startups, seed-round, as well as round A, B, and C; and
- "Investment protection against loss of asset value": this insurance plan covers tokens and cryptocurrencies traded on the open market, i.e. cryptocurrencies that have a market value as reflected by the rating platforms.

It is important to note that the assessment of the compliance of the above-mentioned features of Syndicate insurance mechanism with the Lithuanian law as well as the evaluation of the goods and services in the scope of the potential event of offering of securities to the public lies outside of the scope of this legal opinion and conclusions presented herein. While it is Syndiqate's sole responsibility to ensure the services and products offered to the customers through the insurance program in question should be brought into compliance with the laws of Lithuania and the European Union, this legal opinion concerns the security or non-security status of the Token only irrespective of the status of the aforementioned services and products.

3. Legal Framework

In assessing the (non)-security status of the Token, it is necessary to review the Lithuanian and EU law applied in relation to Initial Coin Offerings (hereinafter, the "ICO") and Security Token Offerings (hereinafter, the "STO"), in particular. It is worth noting that, in spite of the growing interest of investors, virtual currency enthusiasts, governments, and regulators to ICOs,[2] no legal framework applicable specifically and explicitly to ICOs as such has been introduced at the EU and Lithuanian levels. While some of the EU Member States, such as Malta, France and most recently, Estonia, have passed legislation applying to ICOs and providing stringent framework for their issuing and regulation, in other Member States, including Lithuania, the question of whether

[2] For the purposes of this legal opinion, the term "ICO" shall include the term "STO".

any given token would qualify as a security and whether any regulatory measures should be applicable to it derives answers from the respective financial market legislative tools and laws. The main issue with the aforementioned applicability of the financial market laws is that in the overwhelming majority of cases they were not designed to incorporate ICOs into their framework and shall therefore be adjusted and interpreted to fit ICOs into their regulatory scope.

Thus, in Lithuania, the main guidance for the classification of tokens is derived from the Position of the Bank of Lithuania on Virtual Assets and Initial Coin Offering of 2017 setting forth the regulatory approach to ICOs and virtual assets. In the lack of the ICO-specific national legislation, Bank of Lithuania (hereinafter, "BoL") specifies that the ICO organizers, developers, investors and other market participants in their assessment of the security nature of any token to be issued in Lithuania shall be governed by the principles of the national legislation resulting from the transposition of Direction 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Direction 2011/61/EU (OL 2014 L 173, p.349) (hereinafter, "MiFID II").

In addition to that, depending on the exact nature of the token in question, a whole set of EU and Lithuanian legal acts may be necessary to comply with upon ICO. BoL claims itself to be a "technology neutral regulator"[3] that avoid the abundant reliance on technology in interpreting relevant legislation in regards to ICOs. Therefore, the standard EU framework applicable to securities, in particular – transferrable securities and other financial instruments, encompasses and is enforceable vis-à-vis ICOs. These financial rules and regulations include but are not limited to the following legal acts:

- **EU law**
    - Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OL 2017 L 168, p. 12) (hereinafter – the "Prospectus Regulation");
    - Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (the Market Abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OL 2016 L 171, p. 1) (hereinafter – the MAR);
    - Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and

[3] Bank of Lithuania, 'Guidelines On Security Token Offering' (2019) <https://www.lb.lt/uploads/documents/files/GALUTINIS_Guidelines%20on%20Security%20Token%20Offering.pdf> accessed 5 May 2022 (BoL Guidelines), 2.

Regulation (EU) No 236/2012 (OL 2014 L 257, p. 1), as last amended by Regulation (EU) No 2016/1033 of the European Parliament and of the Council of 23 June 2016 (OL 2016 L 175, p. 1) (hereinafter – the Central Securities Depositories Regulation);

- Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (hereinafter – the Transparency Directive);

- **Lithuanian law:**
  - the Law of the Republic of Lithuania on Securities (hereinafter – the Law on Securities);
  - the Law of the Republic of Lithuania on Markets in Financial Instruments (hereinafter – the Law on Markets in Financial Instruments);
  - the Law of the Republic of Lithuania on Crowdfunding (hereinafter – the Law on Crowdfunding);
  - the Law of the Republic of Lithuania on Settlement Finality in Payment and Securities Settlement Systems.

4. Types of Tokens according to BoL

In the absence of the unified classification of tokens that would be adopted by either EU or Lithuanian law, BoL has introduced its own regulatory standards for the classification of tokens on the basis of their economic functions and rights attributed to their holders. Thus, BoL distinguishes between four types of tokens, namely payment-type, utility-type, investment-type and hybrid tokens.[4] The said token types may be best described as follows:

- **Payment-type tokens** may serve as a means of exchange or payment for goods or services (transfer value).
- **Utility-type tokens** provide some "utility", i.e. consumer rights, such as the ability to use them to access or purchase certain goods or services.

Tokens in these two categories do not grant profit or management rights. Additionally, these two types of tokens are subject to the same regulatory regime, which is why they are often simply referred to as *utility tokens*. These types of tokens derive their value from how they are used, and their issuer can use the tokens to raise funds for their project. However, if payment-type tokens are used solely for payment purposes, these tokens are often seen as coupons, which means that they

[4] BoL Guidelines, 6.

can be exchanged in the future to gain access to the issuer's products or services. In other words, such tokens can be perceived as prepayment for a product or service.

- **Investment-type (security) tokens**

These are tokens with specific characteristics that indicate that they fall under the definition of transferable securities or other financial instruments such as shares or debt instruments in accordance with MiFID II. Tokens belonging to this category give their holder the opportunity to earn profits or management rights. Tokens of this type derive their value from an external, tradable asset (e.g. shares, precious metals, real estate) and qualify as an investment.

- **Hybrid tokens**

Tokens of this type combine the characteristics of both utility and security tokens.

As may be derived from this classification, a careful analysis of every ICO project is necessary to adhere it to the relevant legal framework for issuing such tokens and ensure compliance. Therefore, in order to come to the conclusion whether any given token qualifies as a security or other financial instrument, the issuer of such token should ultimately consider its design and the scope of issue.

This statement is vastly supported by BoL:[5] in its Guidelines, BoL stipulates that in its assessment of the security status of the token, at least three key principles are to be taken into account:

- **Technological neutrality of regulation:** meaning, that the rules and conditions applicable to 'regular' transferrable securities and financial instruments shall be equally applicable to any token that meets the criteria set forth by MiFID II irrespective of the technology applied to the token. The major reasoning behind this principle is that equivalence to a financial instrument or transferrable security should not be affected or otherwise implied by technology and therefore prioritized. Traditional securities and tokenized securities shall be assessed on equal terms and careful review of tokens shall be carried out on the case-by-case basis to determine their security status.
- **Substance over form** approach shall be followed at all times, meaning that any initial classification of a token as a utility token or the existence of characteristics usually attributed to utility tokens shall not preclude the possibility that a token may, in fact, possess some characteristics of a security to a partial or full extent.
- **Detailed analysis of legal and supervisory framework**: meaning that due to the fact that the current legal acts were not originally designed to encompass tokenized securities and be applicable to them, the legal rules and regulations should be interpreted according to the substance of the token as well as allow for some adaptations.

[5] BoL Guidelines, 7.

5. Qualification of Tokens under Lithuanian and EU law

5.1. General Requirements for Entities Conducting an ICO

ICOs became subject to some regulatory certainty in Lithuanian law with the entering into force of the amendments to the Law on the Prevention of Money Laundering and Terrorist Financing (the "AML/CTF Law"). The definition of an ICO was introduced into the law for the first time in Art 17^1, defining it as "an offer made for the first time directly or through an intermediary by a legal person established in the Republic of Lithuania or a branch of a legal person of a Member State of the European Union or a foreign state established in the Republic of Lithuania to purchase its virtual currencies for funds or other virtual currencies with a view to raising capital or investment." Entities engaged in ICOs are not included in the list of obliged entities under the Act, but are required to undergo customer identification and other security screening procedures. The requirements for legal persons conducting an ICO are set out in Article 25^1 of the AML/CTF Law.

For ICOs are required to identify the purchasers and beneficiaries of virtual currency if a customer makes multiple transactions in virtual currency from the ICO in an amount equal to or exceeding EUR 3 000 or its equivalent in virtual currency per day.

The AML/CTF Law vests the obligation of conducting supervisory activities over the AML/CTF Law obliged entities with the Lithuanian Financial Crime Investigation Service (hereinafter, the "FCIS"). The FCIS has the right to obtain data and from entities conducting ICOs to ensure the fulfillment of the supervisory duties and the compliance of the tokens issuers with the AML/CTF regime of Lithuania and the EU.

5.2. Qualification as a Utility

Lithuania has not implemented any legislative act or other legal tools that regulates payment-type and utility-type tokens. Therefore, the issuer of tokens of either of the two types may not and shall not be subject to any licensing requirements within the territory and jurisdiction of the Republic of Lithuania. It shall be noted, however, that in accordance with the statement provided by the Bank of Lithuania on October 11, 2017, legal entities providing financial services under the laws of the Republic of Lithuania shall refrain from activities associated with and related to virtual currencies. Therefore, it is required for any legal entity providing or planning to provide services associated with the sale or exchange of crypto currencies, developing and providing payment means to purchase and sell virtual currencies, as well as offering any other services related to virtual currencies, their obtainment and exchange, including the issue and offering of utility tokens, to apply for the authorization for the provision of virtual currency services with the Registry of Legal Persons.

In other words, in order to conduct an ICO of a utility token, the issuing entity must fulfill the legal requirements laid down by the AML/CTF Law, including the designation of the contract person of the Lithuanian Financial Intelligence Unit responsible for matter related to measures and procedures countering money laundering and terrorist financing, as well as the implementation of the AML/KYC procedures, methods and procedures of customer risk scoring and identification, internal control policies, as well as other measures stipulated by the AML/CTF Law.

5.3. Qualification as a Security

Taking the above-mentioned notions into account, it may be concluded that the qualification of tokens as a security within the scope of the proposed EU/Lithuanian legal framework is determined by the MiFID II, more particularly, by its transposition into Lithuanian law. In order to be regulated under the relevant financial markets regulation the token shall meet the definition of a *financial instrument* under MiFID II.

Financial instruments, as laid down in Art 4(1)(15) of MiFID II, encompass the following instruments:[6]

- transferrable securities;
- money market instruments;
- securities of collective investment undertakings;
- options, futures, swaps, forward rate agreements and other derivative instruments relating to transferable securities, currencies, interest rates or yields, allowances issue and other derivative instruments relating to allowances issue, financial indices and other instruments that may be settled in cash or physically;
- options, futures, swaps, forward rate agreements and other derivative instruments relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of insolvency and termination events), and other instruments.

Within the scope of the Lithuanian Law on Markets in Financial Instruments, in order to qualify as a transferable security and thus an investment-type token, the token should meet the requirements laid down in Art 3(52), namely:

- circulation in the capital market shares in legal entities or otherwise represent the instruments equal to legal entity shares;
- circulation in the capital market bonds and non-equity securities, including depositary receipts;

[6] BoL Guidelines, 8.

- circulation in the capital market securities that do not meet the definition of a share or a bond, yet grant their holders rights on the acquisition or transfer or transferrable securities, cash settlements in regards to transferrable securities, currencies or exchange rates, interest rates, yield of securities stock exchange commodities, or other instruments of a similar kind.

In addition to the characteristics laid down above, in order to qualify as an investment-type token, the token should meet the principle of negotiability under Lithuanian law, meaning that the token in question may be transferred or traded on the capital markets. In order to meet this criterion, it is not necessary for the token to be specifically offered for trading on a regulated capital market: the sole possibility of tradability shall be sufficient to satisfy this requirement. It is worth noting that as of July 2022, the legal definitions of both *negotiability* and *capital market* have not been adopted in Lithuanian law; thus, the BoL applies the previously mentioned principle of substance-over-form in order to determine the negotiability of any given token on a case-by-case basis. Yet, with respect to the capital market, the BoL seems to have generally accepted the largely applied definition of capital markets as venues or spaces, both in-person and digital, in which various entities, comprised on the suppliers of funds and users of funds, trade financial instruments between each other.[7]

It shall be specifically noted, that transferability and tradability of the token may be restricted on a contractual basis, thus making the token non-transferrable and no longer negotiable. In this regard, the BoL is of an opinion that while the restriction of transferability and tradability of a token does not specifically eliminate its negotiability, in some cases, certain contractual terms and restrictions may result in a loss of negotiability. Therefore, the analysis of negotiability of a token shall be conducted on a case-by-case basis.

5.4. Analysis of the Token

The following section applies the elements characterizing the virtual currency token as a security elaborated on in the previous section of this legal opinion to the Token. The assessment of the Token presented below concerns the overview of the Token and its features, followed by the application of the factors determining the qualification of the Token as securities in accordance with the review of the legal framework of the EU and Lithuania and concluded by a final assessment assigning the status to the Token in regards to the analysis.

In accordance with the whitepaper, the implementation of the SQAT Token into the architecture of the Syndiqate insurance program is observed at the stage of the contribution to the common insurance pool. SQAT may be best described as a unit for donation to the common contribution

[7] BoL Guidelines, 10.

pool: by paying the club fee in SQAT tokens, the holder of cryptocurrency funds sends the asset to be insured to a smart contract, which, in turn, records the payment of the club fee and the amount of cryptocurrency funds to be insured and 'freezes' the assets for a fixed term. Finally, the platform generates a non-fungible token ("NFT") containing all the necessary data about the investment and terms of its insurance. The NFT is transferred to the cryptocurrency address of the holder and may be forwarded back to the smart contract by investor during the validity of the insurance terms or after its expiration to recover the full amount of insured cryptocurrency funds.

The club fee is not repaid to the investor regardless of whether the event rising rise to the insurance claim arises or not. Should an event giving rise to a claim arise, the smart contract will authorize the repayment of the insured investment amount made at the time of making the investment and fixed by the smart contract in full. In such a case, the insured amount shall be paid out to the investor in SQAT tokens at the exchange rate at the time of payment. If the insurance claim event does not occur, the smart contract annuls the NFT token and forwards the insured amount to the investor in full while the club fee remains in the contribution pool and is not repaid.

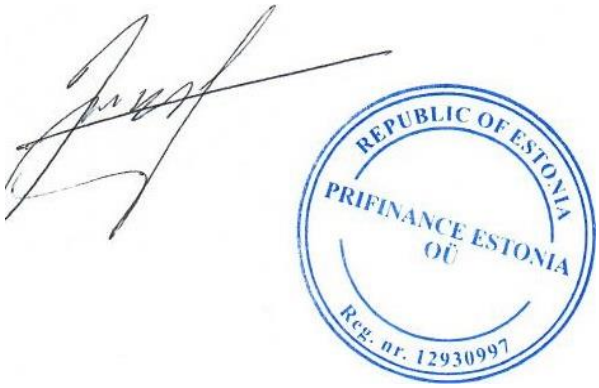
It stems from this description that the nature of SQAT is that of utility and the Token does not possess any of the characteristics of a transferrable security or a financial instrument in accordance with the EU and Lithuanian law. SQAT does not grant the holders ownership of Syndiqate nor any other rights equivalent to those of shares, including the management of company rights, entitlement to the company's profits and dividends nor anticipation of receiving a part of the capital in an event of liquidation. In the similar manner, SQAT does not grant rights to any other securities, such as bonds, options, derivatives, warrants, etc., which further contributes to the fact that the Token is question does not meet the criteria established by the EU and Lithuanian law in regards to transferrable securities and investment instruments.

Lastly, the criterion of SQAT negotiability is not met as the token is not tradable on any capital markets by design as its sole utility is created for the purposes of being contributed to the common guarantee/insurance pool of the Syndiqate insurance program as well as means of reimbursement of the insured funds in an event of their loss. In this regard, the Token does not promise any return on investment made in SQAT and does not offer any rights on revenue derived from holding the Token. The amount of SQAT Tokens to be received by an investor in an insurance claim event is determined solely by the initial amount of funds insured and is thus repaid accordingly. It is therefore made clear that the investors may have reasonable expectations to simply return their insured investments in an events of a loss in the amount initially insured and not be paid any profits or revenue expressed in SQAT in regards to the insured amount.

It may thus be concluded with a high degree of certainty that SQAT Token is not a security under the EU and Lithuanian law and shall be classified as a utility-type token. No regulatory rules and provisions on financial markets, participants of the financial markets, laws on securities and other financial regulations are therefore applicable to SQAT Token.

6. Conclusion

According to the Syndiqate platform architecture and general public offering plans, and applying the European and Lithuanian legal framework applicable to ICOs, SQAT Token should not be considered a security under the EU and Lithuanian law and shall be perceived as utility-type token.



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