

May 23rd, 2022

Att. Emerald Trade Inc

Ref. Legal Opinion on the \$FURA Token

Dear Sirs,

Emerald Trade Inc (Hereinafter the “Company”) has requested a legal opinion regarding the legal nature of the FuraCoin (“\$FURA”, or “Token(s)”). To these aims, we hereby provide our opinion on the legal qualification of the \$FURA as to whether it trigger relevant security laws provisions in the United States of America (hereinafter “US” or “USA”).

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I. SCOPE OF OUR WORK

The content of this legal opinion is based on the following information provided to us: (i) The White Paper entitled “*Emerald Trade White Paper – Asset Token backed by emeralds*” (hereinafter the “White Paper”); (ii) the website www.furacoin.com (the “Website”); and (iii) information provided by the Company. The analysis, comments and conclusions set forth in this legal opinion are based solely on our review of such information and research of the pertinent legislation, regulations and case law in force as of the date hereof.

For purposes of this legal opinion, we have not conducted any investigation as to factual circumstances. This opinion is merely informative and does not address matters of fact. It should be taken into account that the legal analysis herein may be updated in the future as new laws, regulations or case law arise. Likewise, judicial and/or administrative authorities may reach a different conclusion from the one set forth below. No guarantees or assurances are given herein regarding the legal qualification of the Token.

II. EXECUTIVE SUMMARY

We have considered whether the \$FURA shall be classified as a Security Token or a Utility Token. After the analysis of the information we received, it is our view that, provided that such information is accurate and complete, the \$FURA shall be considered a Utility Token. We base our conclusion on the fact that, according to the documents reviewed, \$FURA Tokens do not pass the Howey Test and do not have the most common characteristics of Security Tokens.

III. DESCRIPTION OF THE \$FURA TOKEN

In order to facilitate the analysis and conclusions that follow, the key aspects of the \$FURA, relevant for the purpose of this legal opinion, will be summarized in this section.

According to the White paper “*ABTs operate by backing up customer-held asset rounds with tangible, real-world stores of value that help maintain and manage a stable price and decrease the typical volatility many other digital currencies face.*”



It is explained in the White paper that *“The primary purpose of developing FuraCoin is to create liquidity for the emerald industry through a system that combines emerald trading opportunities with Ethereum-based blockchain technology to establish a well-crafted and transparent system. In addition, FuraCoin strives to create an alternative method for individuals to purchase, trade, hold, and exchange their tokens for Gemological Institute of America (GIA) -certified emeralds. The company also offers investors the historical price data of emeralds over time through Emerald Report (www.emeraldsreport.com).”*

The goal of the project is to *“(...) eliminate the middleman from the process, connecting retailers, traders, and investors directly with the miners.”* \$FURA aims to *“connect global producers and traders of emeralds with buyers through blockchain technology in a safe, transparent, and decentralized way in the different types of transactions in which it is possible to participate in this market.”*

According to the White paper *“An ABT’s value is relatively stable due to the nature of the asset that its value is pinned to, so it is definitely a superior choice for investors who wish to hold an asset that has appreciated throughout historically uncertain times.”* In this sense, *“FuraCoin is an ABT, which means tokens will be backed 100% by physical emeralds.”*

The White Paper holds that *“Once a token is issued, the user can transfer, store, and spend it, similar to traditional digital currencies in circulation. Each token unit launched by Emerald Trade into circulation is backed by a one-to-one ratio, which corresponds to the value of the emeralds held in safekeeping at a vault in Miami, FL. The initial distribution of FuraCoin tokens is equal to 1 USD, and the number of tokens is equal to the total market cap of FuraCoin. Any future tokens allocated into circulation are equal to the value of the newly appraised emeralds entering the round, divided by the current token price.”*

Moreover *“FuraCoin tokens will be redeemable into physical emeralds twice a year.”* *“In the redemption periods the Fura tokens are burned and destroyed, that maintains the balance between the token offerings and the value of the emeralds in Furatrade market place.”*

Finally, *“Emerald Trade keeps the laboratory certificates from the countries where the emeralds are purchased and then re-certifies the gems through the prestigious GIA laboratories located in New York once the emeralds enter the United States.”*



The White paper further explains that “Sources of Income and Token Generation Events:

- ❖ *Token Generation Events (TGE)*
- ❖ *Acquisition and purchase of emeralds through tokens which are again placed for sale in the FuraTrade.com market.*
- ❖ *Redemption of tokens in which Fura Trade charges a 3% transaction and management fee.*
- ❖ *Sale of the Emeralds Report via www.emeraldsreport.com.*”

Furthermore, “FuraCoin’s value will be based on the current appraised value of emeralds, which have been shown to appreciate up to 12%–15% annually.”

Finally, “We can conclude that the purpose of the tokenization of the emeralds and the entire project is to create a single and stable currency with its own blockchain destined to facilitate the world trade of emeralds.”

IV. HOWEY TEST ANALYSIS

Pursuant Section 2(a)(1) of the Federal Securities Act of 1933 (hereinafter the “Securities Act” or “Security Law”) a security is:

“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.”

The Securities Act tend to control issuing of securities and to testify particular interests attached to them. However, the Securities Act prioritizes substance over form. Therefore, if the SEC believes that any kind of cooperation is promising future profits arising from the mere signing of a contract, it may investigate the case and declare such contract a security. In that scenario, parties to such contract shall disclose particular information to the SEC.



In the SEC v. Howey, 328 U.S. 293 (1946) case, the US Supreme Court came up with the “investment contract” standard to determine whether an instrument meets the definition of a security, as follows:

“a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party.”

According to the Court, such definition of investment contracts “*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.*”

Consequently, the standard for determining the existence of an Investment Contract has the following prongs that must be cumulatively fulfilled: (i) investment of money; (ii) common enterprise; (iii) expectation of profits; (iv) solely from the efforts of others.

In the following we will analyse whether the \$FURA meets these criteria and should, therefore, be categorized as an “investment contract”.

(i) investment of money

With regard to the first prong, the Supreme Court has held that the only requirement is “*tangible and definable consideration in return for an interest that had substantially the characteristics of a security.*” According to the White Paper and the information provided to us, one of the purposes of \$FURA is to serve as a means to buy emeralds though the redemption functionality depicted in the White paper and as an in-platform currency allowing users to purchase trading signals subscriptions, newsletter subscription, and the Emerald Report. The main motivation buyers seek when engaging with the platform is to participate in an ecosystem aimed at allowing them to participate in the emerald market. Therefore, there is no tangible expectation of any financial gain solely from the Tokens, as any possible expectation of profits there might be arises from the emerald to which the value of the Tokens is pegged to, not the Tokens themselves. Consequently, this prong is most likely to not be fulfilled.

(ii) common enterprise

The Supreme Court has not specified a definition of a common enterprise. The standard to analyse the existence of an underlying contractual relationship of the parties has been developed by US Federal Circuits as follows: “horizontal commonality” and “vertical commonality”.



Horizontal commonality is found when (i) investors' contributions are pooled together; and (ii) the fortune of each investor depends on the success of the overall enterprise, usually combined with the pro-rata distribution of profits. On the other hand, vertical commonality is found when the investors' fortune depends on the expertise of the promoter or third parties.

However, it must be noted that there is no uniform understanding over the term "common enterprise". Regarding cryptocurrencies, there is a unanimous understanding in US circuits that horizontal commonality satisfies the second prong of the Howey test, but they are divided as to whether vertical commonality suffices.¹ Moreover, the Securities Exchange Commission (SEC) does not require vertical or horizontal commonality *per se*, nor does it view this element of the Howey Test as a distinct element of an investment contract.²

In the case at bar, there is no horizontal commonality, as there is no pooling of funds and the fortune of each user depends on the price of the emerald, something outside of the Company's control. Additionally, there is no pro-rata distribution of profits.

Moreover, there is no vertical commonality, as investors' fortune do not depend on the promoter (the Company). By purchasing \$FURA, users accept risks of a different nature than those risks assumed by the Company. The Company's risks are associated with, among others, problems with developers, inability to develop or launch the platform, lack of users, etc. In all such cases, promoters' risks do not correlate with those of the users. The latter are in risk only if the declarations contained in the White Paper are not implemented. As a conclusion, the second element of the Howey Test is not satisfied.

(iii) expectation of profits (iv) solely from the managerial efforts of others

There is an "*expectation of profit derived from the entrepreneurial or managerial efforts of others*" when potential investors: (i) expect to receive profits from their own efforts; or (ii) from the efforts of the Company.

It has been said that "*It is an investment where one parts with his money in the hope of receiving the profits from the efforts of others, and not where he purchases a commodity for personal consumption or living quarters for personal use*".

¹ *Ltd*, 265 F.3d at 49–50

² *Barkate*, 57 S.E.C. 488, 496 n.13 (Apr. 8, 2004); Commission's Supplemental Brief at 14 in *SEC v. Edwards*, 540 U.S. 389 (2004) (on remand to the 11th Circuit).



The US Supreme Court stated, “*The touchstone is the presence of an investment in a common venture premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others.*”¹

In addition, the SEC staff noted that “*the main issue in analysing a digital asset under the Howey test is whether a purchaser has a reasonable expectation of profits (or other financial returns) derived from the efforts of others. A purchaser may expect to realize a return through participating in distributions or through other methods of realizing appreciation on the asset, such as selling at a gain in a secondary market.*”²

In this case, according to the White Paper users will acquire \$FURA to use it to acquire emeralds and as a means of in-platform exchange. There might be users that decide to purchase \$FURA for speculative purposes as some might purchase the Tokens expecting the appreciation of emeralds. In this sense, users will not expect profit from the efforts of the Company but from the emerald market, which is not controlled whatsoever by the Company. Therefore, this prong will most likely not be met.

A. Summary and conclusion

The \$FURA does not cumulatively satisfy the four prongs of the Howey Test. As a consequence, in our opinion, the \$FURA does not meet the US SEC’s Howey Test as a security and is not subject to enforcement.

In the interest of clarity, it should be noted that the analysis set forth herein reflects only our opinion and assessment to the best of our ability. Judicial and/or administrative authorities may reach a different conclusion. Moreover, the result of the analysis elaborated herein can substantially change after a ruling on the matter or further regulations are issued. There is no assurance and no representation or warranty is provided as to the legal qualification of the Tokens.

¹ 421 U.S. 837, 852 (1975)

² Framework for "Investment Contract" Analysis of Digital Assets (2019), available at: <https://www.sec.gov/corpfina/framework-investment-contract-analysis-digital-assets#edn1>



V. OTHER JURISDICTIONS

We have studied the laws and caselaw in the most relevant jurisdictions for the subject matter. Generally, they define a security as a collection of rights relating to a company. In view of such analysis, we are of the opinion that a token with the following features may constitute a Security token and would therefore be subject to regulation:

- a) Ownership interest in a legal person, including a general partnership;
- b) Equity interests; bonds; financial instruments
- c) share of profits and / or losses, or assets and / or liabilities;
- d) Status as a creditor or lender;
- e) Application for bankruptcy as a holder of interest on the capital or creditor;
- f) Holder of an obligation to repay the system or the legal entity issuing the Token; is
- g) A feature that allows the holder to convert a non-Security token into a Token or instrument with one or more investment interests.
- h) Voting rights in the company

On the other hand, it is our opinion that a token with the following characteristics will be characterized as a utility token:

- a) Rights to program, develop or create functionality for the Ecosystem;
- b) Ecosystem access and use;
- c) Rights to contribute to the work or governance of the Ecosystem;
- d) Right to purchase goods or services on the Ecosystem;
- g) Rights to sell goods or services on the Ecosystem;
- e) Voting rights in terms of features and functionality of the Ecosystem.

In the case of the \$FURA, the general features of Security Tokens are not present. \$FURA do not entitle holders to ownership of the Company, voting rights, profits nor liquidation rights. Consequently, it is our opinion that \$FURA is likely to not be characterized as a Security token in most jurisdictions and, therefore, it will not infringe local securities laws.



B. Summary and conclusion

As a logical conclusion of the foregoing, it follows that the \$FURA has its own utility regardless of the Company's resources and do not correspond to the assets of the Company. It is also clear from the White Paper that \$FURA holders do not acquire ownership or equity of the Company. As a consequence, we are of the opinion that the \$FURA Token shall be classified as a Utility Token in most jurisdictions. However, it should be noted that the analysis set forth herein reflects only our opinion and assessment to the best of our ability. Judicial and/or administrative authorities may reach a different conclusion. Moreover, the conclusions reached herein can substantially change after a ruling on the matter or further regulations are issued by the competent authority. There is no assurance and no representation or warranty is provided as to the legal qualification of the Tokens.

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Yours truly,

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