LAW PRISM
LEGAL CONSULTANCY

August 9th, 2023

Att: SecureChain AI

Re: Opinion on the SCAI Token

SecureChain AI (Hereinafter the "Company") has requested an opinion regarding the legal nature of the Secure Chain token **($SCAI)** (Hereinafter the "Tokens"). To these aims, we hereby provide our opinion on the qualification of the Tokens.

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I. SCOPE OF OUR WORK

The content of this legal opinion is based on the whitepaper available at https:// docs.securechain.ai/ as of August 7th, 2023, (hereinafter the "Whitepaper"); and information provided by the Company. We have not reviewed any other documents.

The analysis, comments, and conclusions set forth in this 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. The analysis herein draws upon Argentinean law and incorporates comparative law examples from other jurisdictions to examine the potential outcome of Bill file N° 261/22, currently under consideration by Congress.

For purposes of this 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, resolutions, guidance, 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 Tokens.

This opinion has not considered whether it is necessary to obtain licenses, registrations, exemptions, filings, or any other sort of compliance with the applicable law and/or administrative authorities of Argentina or any jurisdiction including with no limitation the Securities Act of 1933 and 1934, the Commodity Exchange Act & Regulations, Federal Civil False Claims Act, the AntiKickback Statute, the Physician Self-Referral Law, the Exclusion Authorities, and the Civil Monetary Penalties Law, and the Bank Secrecy Act. The scope is limited to the doctrinal classification of the Tokens as "utility" or "security" based on the most widely adopted criteria. The project, the platform, the idea, the invention, the business proposal, and anything beyond the classification of the Tokens as security or utility tokens is outside the scope of this opinion and was not analyzed or considered in this document.

II. EXECUTIVE SUMMARY

We have considered whether the Tokens shall be classified as Security Tokens or Utility Tokens under Argentina law. After the analysis of the information we received, it is our view that, provided that such information is accurate and complete, the Tokens are likely to be considered Utility Tokens. We base our conclusion on the fact that, according to the document reviewed, the Tokens do not seem to be an investment contract.

III. DESCRIPTION OF THE PROJECT AND THE TOKENS

In order to facilitate the analysis and conclusions that follow, the key aspects of the project and the Tokens, relevant to the purpose of this opinion, will be summarized in this section.

According to the Whitepaper *"The total supply of $SCAI is fixed with the aim to create a circular token economy that won't result in diminishing returns for players."*

It is explained that *"Users will be able to convert BEP20 SCAI or any other blockchain assets into SecureChain AI Mainnet coins using the Bridge. The Bridge takes other blockchain assets from the users and then delivers the SecureChain AI assets and vice versa. The process is managed by the bridge smart contracts."*

The Whitepaper explains that *"Staking lets users to stake the coins and earn the rewards. The rewards will be given from the following: Profits generated from SecureChain services, Profits generated from the SecureChain Dapps, Penalty from the premature unstaking."*

IV. RELEVANT LEGAL PROVISIONS

Argentina has not yet issued regulations on the sale of cryptocurrencies and other tokens. In the absence of specific regulations, the Comisión Nacional de Valores ("CNV") stated that token sales in principle are not subject to the regulations applicable to the capital markets, but it will consider on a case-by-case basis if a token sale is subject to such regulations.

In Argentina, a security is defined as "(...) *credit securities or securities representing credit rights, shares, mutual fund shares, debt securities or certificates of participation of financial trusts or other collective investment vehicles and, in general, any security or investment contract or homogeneous and fungible credit rights, issued or grouped in series and negotiable in the same form and with similar effects as securities; which, due to their configuration and transmission regime, are susceptible to generalized and impersonal traffic in the financial markets* (…)"[1]

Moreover, the Civil and Commercial Code states that "*Contracts concluded on a stock, securities*

[1] Law 26.831 Capital Markets Law (2012)

or commodity exchange or market, in so far as they are authorised and operate under state control, are governed by the rules issued by their authorities and approved by the supervisory body. (…)"[2]

Argentine scholars classify crypto assets as follows: (i) Payment tokens; (ii) Utility Tokens; and (iii) Security Tokens. There are no laws that have elaborated on the definition of "security tokens" in the crypto sphere, but certain tokens might be encompassed within an "investment contract" in certain situations and therefore qualify as securities.

V. INVESTMENT CONTRACT ANALYSIS

In Argentina, an "investment contract" is an agreement between a party that invests capital (investor) and a party that receives that investment. The investment contract sets out the terms and conditions of the investment, such as the amount of money or assets, the rights and obligations of the parties, and the terms and conditions for the repayment or return of the investment.

The purchase of the Tokes might be an investment contract. First, according to the Whitepaper, the Tokens are not intended to be negotiated on a decentralized crypto exchange (which is similar to a stock, securities or commodity exchange or market). Second, Buyers apparently might want to buy the Tokens not expecting a direct financial return, as the price for the Tokens is not expected to increase. Buyer's main incentive to base their decision to buy the Tokens seems to be to engage in the ecosystem and enjoy its functionalities.

As a consequence, it appears that the Tokens are not likely to be framed as an Investment contract under Argentine law.

VI. HOWEY TEST ANALYSIS

A doctrinal analysis of comparative law might be helpful to give context to the future outcome of the proposed legislation in Argentina. The "Howey Test" is a popular standard used in the crypto industry to qualify a token as a security token or utility token. Therefore, it is likely that the act and its further implementation bases the distinction on a standard similar to the Howey Test. We proceed to perform such analysis as follows.

Section 2(a)(1) of the United States of America (hereinafter "US" or "USA") Federal Securities Act of 1933 (hereinafter the "Securities Act" or "Security Law") defines a security as: "*Any note,*

[2] Civil and Commercial Code art. 1429

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: "*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 a 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 analyze whether the Tokens meet these criteria and should, therefore, could be categorized as an "investment contract".

(i) investment of money

With regard to the first prong, the US 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."*

Moreover, it has been held that "*If the motivation is focused more on investment, speculation, and creating a secondary market for token sales, rather than functional token use or "utility," it is likely that the token will be considered a security and subject to regulation. If the functional token sale is intended to build a market for the product and develop network participation, or in other words, to get people to use the tokens and thereby grow the network and demand for the digital products, it is less likely to be considered a security*."

In the case at bar, the main motivation buyers seek when purchasing the Tokens is to enjoy the ecosystem's functionalities. Purchasers need to acquire Tokens to use SecureChain AI services as they serve as an in-platform means of exchange.

The Whitepaper claims that "*The total supply of $SCAI is fixed with the aim to create a circular token economy that won't result in diminishing returns for players."* This might suggest that purchasers buy the tokens expecting a return. However, the whitepaper seems to point out that the main purpose of the Tokens is not the promised revenue to the holders or their subsequent likely tradeable value, but their in-platform use. Therefore, any increase in the value of the Tokens would likely be an incidental consequence and not the main expectation of purchasers. Thus, the use and utility of the Tokens inside of the ecosystem appear to outweight any possible expectation of a financial gain and this prong is likely not met.

(ii) common enterprise

The Supreme Court has not specified a definition of a common enterprise. The standard to analyze 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 investor's 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.[3] Moreover, the Securities Exchange Commission (SEC)

[3] *Ltd*, 265 F.3d at 49–50

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.

In the case at bar, according to the Whitepaper, the funds of the Token holders do not seem to be pooled together as there is no liquidity pool. Therefore, the fortune of individual Token holders does not depend on the success of the Company. Consequently, this prong is likely not met.

(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 part 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*".

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."*

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."*

The Whitepaper suggests that users will acquire Tokens to engage with the platform's services and functionalities. There seems to not be an inherent expectation of financial gain derived from such activity as the Tokens are intended to be a means of exchange within the platform and acquired by the users for their own personal enjoyment. Therefore, this prong is likely not met.

a. Summary and conclusion

The Tokens do not seem to cumulatively satisfy the four prongs of the Howey Test. As a consequence, it seems that the Tokens are likely to be qualified as Utility Tokens. 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 qualification of the Tokens.

VII.DISCLAIMERS

We have done our best efforts in conducting the analysis to produce this document. The content of this document reflects the opinion of the undersigned and therefore, nothing contained in this legal opinion should be relied upon as absolutely certain beyond doubt and neither the Company nor any third party may make any claim against the undersigned based on what it is expressed in this document, what it is not included herein, or how we have prepared it. There is no assurance and no representation or warranty is provided as to the accuracy or completeness of the information contained herein nor as to the qualification of the Tokens in any jurisdiction. This opinion is not an approval or endorsement of the Company's activities and we have not analyzed whether they are making any fundraising or investment offerings without complying with applicable regulations. The contents of this document should be understood as a personal opinion of scholarly content and cannot be considered legal advice on US law or the rendering of professional services. This opinion is grounded in Argentinean law, and any references to foreign jurisdictions are solely intended as comparative examples to enhance clarity and facilitate understanding of the underlying concepts. No recourse or action can be taken against the undersigned on the basis of the information contained or not contained in this document.

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Yours truly,

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