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## **THE GENEOS TOKEN:** A LEGAL OPINION

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# The genEOS Token: A Legal Opinion

**LEGAL OPINION ON THE genEOS SECURED TOKEN OFFERING (STO) COMPLIANCE WITH EXTANT SECURITIES REGULATIONS OF JURISDICTIONS ACROSS THE WORLD**

**ISSUE**
Does the genEOS Secured Token Offering (STO) comply with securities regulations of the world legal jurisdictions?

**BACKGROUND FACTS**

genEOS is a fourth generation blockchain technology project provisionally based on EOS. The EOS is an open source blockchain technology platform, upon which Decentralised Applications (D'Apps) are built. According to the genEOS white paper, genEOS is a "powerful, fast, secure, and scalable, decentralised ecosystem", that "enables businesses to create, deploy, adopt, and operate their own blockchain applications". The genEOS platform makes "enterprise software development tools" provision for its technology members, to build and operate Decentralised Applications (D'Apps), at "enterprise scalability, interoperability, and performance". Some of the major challenges to adoption faced by the blockchain technology, which are addressed by genEOS are performance, scalability, energy consumption and ease of use.

genEOS plans to address socio-economic based issues of implementation faced by blockchain, such as "Mission Critical Application Business Owners" unable to adopt because of "expensive expert resources", and "Small Business Owners", who cannot adopt because of high entry barriers, "Blockchain Subject-matter Experts" who cannot focus on blockchain implementation because of "trading nature of Bitcoin and altcoins," and "Technology Professionals", unable to focus and build blockchain-based Decentralised Applications (D'Apps), because of lack of Integrated Development Environment (IDE).

This is an exposition on the range of obstacles that the genEOS blockchain as a Blockchain 4.0 hopes to address by building a community of technology professionals who will maximize the power of blockchain, while integrating with next-generation technologies like Artificial Intelligence (AI) and Virtual Reality (VR) to drive an accelerated business environment adoption speed for the blockchain technology.

genEOS's valuable advantages and value proposition as a Blockchain 4.0 include permissioned hierarchical security, transparency and governance to drive cryptographic distributed ledger technology adoption through the delivery of a suite of D'Apps for next-generation enterprise digitisation and productivity via self-executing smart contracts and asset tokenisation.

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[1]KEYWORDS. GenEOS, D'Apps, EOS, Blockchain 4.0, tokenisation, smart contracts

**genEOS Secured Token Offering (STO)**

The genEOS token is an ERC20 token standard distributed on the Ethereum blockchain. It uses the ERC20 smart contract mechanism. The total token supply is set at 1,000,000,000 (One Billion), which would be available throughout the 176 distribution windows. On the completion of the token distribution during the Security Token Offering (STO) period, there is no intention to increase the token supply. No actual market price value is set for the genEOS token. Therefore, the market forces of demand and supply, which consist of investors, partners and individual contributing members of the genEOS blockchain ecosystem control and determine the genEOS token sale price.

Further on the token distribution and allocation curve, out of the 1,000,000,000 (One Billion) tokens available, 900,000/90% (Nine Hundred Million) tokens are allocated for the blockchain smart contract Security Token Offering (STO) process sale period, while the remaining 100,000,000/10% (Hundred Million) tokens are allocated to NextGen.One LLC., the Sarasota, Florida-based incorporated non-profit United States entity that oversees the genEOS Security Token Offering (STO) process. NextGen.One LLC. takes care of roles such as administration, Anti-Money Laundering (AML)/Know Your Customer (KYC), other compliance aspects, legal support and customer support for the genEOS Secured Token Offering (STO).

The genEOS STO has no hard cap. Based on its enterprise software development and implementation experience, the genEOS soft cap is set at USD2,000,000.00 (Two Million United States' dollars). In any event that it is unable to reach this soft cap, it will not be able to create, grow and operate the genEOS ecosystem. Thus, if this happens, genEOS plans to refund investors the ETH value of their contribution during the Secured Token Offering (STO) period (June 26th, 2018 – December 23th, 2018). NextGen.One LLC., which is responsible for the genEOS STO conduct, would return the initial investment value to the investors.

Also, in case an individual or an organization who has sent ETH to the token smart contract address is unable to complete their Anti-Money Laundering (AML)/Know Your Customer (KYC) due diligence conditio sine qua non, NextGen.One LLC. will send back the ETH contribution, less 10%, which will be retained as the administrative fee by NextGen.One LLC.

**The genEOS STO Participation Conditio Sine Qua Non**

i. Accredited investor status verification (worldwide)
ii. Own jurisdiction's KYC/AML requirements
iii. SAFT-type Private Placement Memorandum (PPM)

**Worldwide Securities Regulation Consideration Perspective**

Both the common law and civil law traditions influence a fairly large portion of the contemporaneous Earth geography; the modern securities laws and regulations evidence this much. The modern securities market has its foundation laid in the first public securities issuance offered and sold in an Initial Public Offering (IPO) in 1602 by the Dutch East India Company, on the floor of Amsterdam Stock Exchange, Netherlands, where the company raised 6.5 million guilders  on the public equity capital market. Over the decades and centuries, this naturally efficiently organised trend courses through investment and securities businesses in almost every part of the rest of the world, and asset securitisation typically became both norm and custom in the global financial and capital stock market ecosystem. With the advent of global asset tokenisation on the cryptographic distributed ledger as an Internet commerce protocol, both the word and concept of securitisation assume a new expression as cryptographic digital asset tokenisaton through a technology decentralised by both design and structure.

Though comparative analysis, practice and research across jurisdictions and national borders have shown that securities regulations and standards of countries of the world bear striking resemblances in common securities jurisprudence, there is no absolute securities regulation uniformisation across the world securities law practice jurisdictions.

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[2]Available at https://en.m.wikipedia.org/wiki/Initial_public_offering.
Accessed at 7:37am GMT, 29th October, 2018.
Neal, Larry (2005). "Venture Shares of the Dutch East India Company," in Origins of Value, in The Origins of Value: The Financial Innovations that Created Modern Capital Markets, Goetzmann & Rouwnhorst (eds.), Oxford University Press (OUP), 2005, pp. 165—175.

## (1) International Organisation of Securities Commissions (IOSCO)

The International Organisation of Securities Commissions (IOSCO) is an international organisation of commissions, boards and authorities, and seeks to, among other things, foster common standards in the global investment business and securities market. Its Objectives and Principles of Securities Regulation made June, 2010 sets out 38 Principles of securities regulation based upon three Objectives of securities regulation:

> **"protecting investors;**
> **ensuring that markets are fair, efficient and transparent;**
> **reducing systemic risk."**

In the IOSCO's Multilateral Memorandum of Understanding (MMoU) , to which 101 of its 124 members that include commissions, boards and authorities that regulate securities markets across the world are signatory, specific requirements are set for co-operation and information exchange in regard to fraud prevention, price manipulation, insider trading, or misconduct that might have negative influence on the securities market ecosystem. Further in the Part 1, General Provisions of its By-Laws, securities commissions, boards, authorities and bodies with responsibilities similar all over the world are expected to be joined together in IOSCO to better carry out their respective missions through the forum for discussions and co-operation provided by IOSCO. Objective of IOSCO is the enablement of members to exchange information regarding:

**i.** securities market efficiency development and improvement
**ii.** securities regulation enforcement co-ordination
**iii.** common standards implementation

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[3] Available at www.pcma.ps/portal/english/CMA/IntCo/Pages/IOSCO.aspx. Accessed at 10:46 AM GMT, on the 30th October, 2018.

Other securities regulation considerations in the By-Laws Preamble include co-operation i n the implementation, and promotion of adherence to internationally recognised and consistent regulatory standards, oversight and enforcement in order to protect investors, maintain transparent markets, enhance investor protection, promote investor confidence in the securities market, through strengthened information exchange, supervision of markets and market intermediaries, for the purpose to exchange information both at global and regional levels on their respective experiences in order to assist the development of markets, strengthen market infrastructure and implement appropriate regulation.

On the whole, the continuous integration of the domestic securities markets into the global market cannot be over-emphasised. By virtue of this integration, securities markets reserve enormous potentials to provide on the global stage the same benefits available at the domestic level. Securities markets play a pivotal role in business capital formation, resource allocation, both public and private entity and enterprise financing. They offer and allow wide selection of financing for investment instruments to public private entities, enterprises, and investors.

**(2) North American Securities Administrators Association (NASAA)**

The North American Securities Administrators Association (NASAA) is yet another supranational securities regulator, a voluntary investor protection association, founded in 1919. NASAA has:

**"membership that consists of 67 state, provincial and territorial securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico.".**

NASAA's regulatory and legal activities consist of collaboration with regulatory counterparts for joint investor protection purposes. Among other activities that NASAA performs, its members provide insights to Security and Exchange Commissions (SECs) and Self-Regulatory Organisations (SROs) from their various unique perspectives, and in furtherance of their rule-making mandates. This is essentially done through the "Statement of Policy, comment letters, model rules, State proposals, legal briefs, enforcement statistics and more".

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[4]In an effort to sanitise the cryptosphere through investor protection, NASAA conducted investigations into more than 200 cryptocurrency-related investment products and Initial Coin Offerings (ICOs), and coordinated more than 50 enforcement actions. The operation codenamed "Operation Cryptosweep" commenced April, 2018, and sought to enforce compliance culture with the Securities and Exchange Commission (SEC) laws of the various State,

**Securities Regulation Application to Blockchain Token Offerings Across Jurisdictions**

Regulations on legacy securities in jurisdictions bear striking resemblances; though with international consensus, custom, conventions and treaties, voluntary common standards have seeped through the established securities issuance, trading, clearing, settlement and practices in various countries. The Multilateral Memorandum of Understanding (MMoU), Objectives and Principles of Securities Regulation, and By-Laws of the International Organisation of Securities Commissions (IOSCO) are some of the instances that foster common principles and objectives on global securities market regulation. One of the questions though, is whether these voluntary common standards are enforceable against a defaulting member-body of an international, or regional voluntary securities organisation, and other securities regulation authorities, who are their member-bodies.

The national securities laws of various countries do not apply to blockchain token offerings the same way in the countries that have woken up to the reality

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provincial and territorial securities administrators. Available at https://ww.google.com.ng/amp/s/www.cnbc.com/ap/2018/08/28/st-te-regulators-expand-operation-crypto-sweep-to-200-initial-coin-offeringinvestigations.html Accessed at 5:00pm GMT on the 6th December, 2018. See also the Public Statement titled "Statement on NASAA's Announcement of Enforcement Sweep Targeting Fraudulent ICOs and Crypto-asset Investment Products", made by United States Securities and Exchange Commission Chairman Jay Clayton on the 22nd March 2018. Available at https://www.sec.gov/news/public-statement/statement-nasaas-anouncement-enforcement-sweep-targeting-fraudulent-icos-and Accessed at 6:41PM, GMT, on the 24th December, 2018.

[6]NASAA was founded in Kansas, United States (US). It has as its 67 securities administrators from across North America as members. Available at http://www.investopedia.com/terms/n/nasaa.asp Accessed at 1:18pm GMT, on the 9th December, 2018.

[7]Operation Cryptosweep, supra at note 4.

of Internet-based blockchain security token offerings, and are therefore taking effective steps to regulate the new capital market product offerings . The securities laws and standards by Swiss regulators for instance, put blockchain tokens in three categories as payment token, utility token, and asset token . Under the Swiss securities regulation, and the By-Laws, Multilateral Memorandum of Understanding (MMoU), Objectives and Principles of Securities Regulation, or any other international treaty or convention, to which Switzerland may be a signatory, blockchain token classification is a foreign idea.

The Swiss Initial Coin Offering (ICO) Guide provides regulatory clarity and certainty. On the legal treatment of blockchain tokens, there is a world of difference from the securities laws and regulation in the United States for instance, which focus on the substance and economic reality of the blockchain token offering, in addition to the form and characterization of the blockchain token offering, to determine whether or not the token falls within the jurisdiction of its Securities and Exchange Commission (SEC) for the purpose of regulation. In New Zealand and Netherlands, the below captures the regulatory disposition toward blockchain token offerings:

**"For instance, in the New Zealand, obligations may apply depending on whether the token offered is categorized as a debt security, equity security, managed investment product, or derivative. Similarly, in the Netherlands, the rules applicable to a specific ICO depend on whether the token offered is considered a security or a unit in a collective investment, an assessment made on a case-by-case basis".**

Regulation of blockchain token offerings has been a particularly difficult task for jurisdictions across the globe, and the United States regulators in particular:

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[8]"Regulation of Cryptocurrency Around the World", released June 2018, The Law Library of Congress, Global Research Center. Available at law@loc.gov, http://www.law.gov Accessed at 8:16am GMT, on the 17th December, 2018.

[9]According to the Swiss ICO Guide, payment token is not subject to securities regulation, and likewise, utility token is not subject to securities regulation, if the platform behind the product was functional before the utility token lunch. Asset token, unlike utility token, is unconditionally subject to securities regulation. Available at http://www.finma.ch/en/news/2017/09/20170929-mm-ico. Accessed at 5:00pm GMT, on the 6th December, 2018.

[10]"Mar 22, 2018 - To restore confidence, Congress passed the Securities Act of 1933 and the Securities Exchange Act of 1934, which created the SEC.". Available at https://www.investopedia.com/terms/s/sec.asp. Accessed at 11:26AM GMT, on the 10th of January, 2019.

[11]Supra at Note 8. In the report, the regulatory landscape on cryptocurrencies, cryptosecurities, and relevant blockchain products in 130 countries were addressed, albeit the regulatory landscape is yet nascent and inchoate.

**“These new innovations and markets presented America’s regulatory and legislative institutions with unique challenges, as well as technology that could revolutionize the world’s digital landscape and economy”.**

United States government agencies such as the Securities and Exchange Commission (SEC) see the blockchain token in an Initial Coin Offering (ICO) as an offering of security , to which the legacy securities laws and regulations apply willy-nilly, subject to the relevant, and qualifying securities offering exemptions . The Commodities Futures Trading Commission (CFTC) regards cryptocurrencies and cryptocurrency-based investment products as commodities, subject to its regulatory jurisdiction , while the Internal Revenue

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[12]P. 201, Chapter 9, Building a Secure Future, One Blockchain at a Time, 2018 Joint Economic Report, House of Representatives Joint Economic Committee Congress of the United States, United States. The US Economic Report, from pages 201-227 considers legal and regulatory issues of Initial Coin Offerings (ICOs), blockchain and cryptocurrencies. It further considers securities regulation, money transmission laws, regulatory questions, future regulatory questions, and made conclusions and recommendations. Available at https://www.congress.gov/115/crpt/hrpt596/-CRPT-115hrpt596.pdf . Accessed at 02:00pm GMT, on the 1st October, 2018.

[13]The US-SEC has reiterated that while bitcoin and ether are not securities, all Initial Coin Offerings (ICOs) create an investment contract fact situation, which therefore gives rise to a security token product offering and sale, and thus become registrable with the Commission. This could only otherwise not be filed with registration statement, prospectus and other accompanying documents subject to the relevant exemptions. Available https://www.google.com/s/www/cnbc.com/amp/2018/06/06/sec-chairman-clayton-says-agency-wont-change-definition-of-a-security.html Accessed at 7:13PM, GMT on the 24th December, 2018.

[14]A proposed Token Taxonomy Act Bill HR 7356 before the 115th Congress of the United States presented by Congressmen Warren Davidson and Darren Soto on the 20th December, 2018, seeks to amend the Securities Act (1933) and Securities and Exchange Act (1934), by exclusion of digital tokens from the traditional legal definition of security, and thereupon direct the United States Securities and Exchange Commission (US-SEC) to change certain regulatory rules regarding digital units “secured through public key cryptography”, “adjust taxation of virtual currencies held in individual retirement accounts”, “create a tax exemption for exchanges of one virtual currency for another”, “create a de minimis exemption from taxation for gains realized from the sale or exchange of virtual currency for other than cash, and for other purposes”. Available at https://www.scribd.com/document/396096529/Token-Taxonomy-Act-of-2018; https://www.youtube.com/watch?v=O-VGla5UcLY. Accessed at 8:39AM GMT, on the 11th January, 2019. See also the Cryptocurrency Taxation Fairness Act 2017, co-sponsored by Congressmen Jared Polis and David Schweikert. The amendment sought to “create a de minimis capital gains tax exemption for personal cryptocurrency transactions”, and give guidance on how cryptocurrency exchanges (inclusive of security token exchanges by necessary implication) “could offer third-party tax reporting”. Available at https://coincenter.org/link/the-cryptocurrency-tax-fairness-act-was-offered-as-amendment-to-the-house-tax-reform-bill-last-night-in-congress; https://coincenter.org/pdf/CTFA.pdf. Accessed at 10: 40AM GMT, on the 11th January, 2019.

[15]Convertible virtual currencies involved in interstate commercial transactions in the United States are regulated subject to the Commodity Exchange Act (CEA) and relevant regulations. According to a federal court ruling, the CFTC tasked with power to regulate commodity, futures and derivatives markets also possesses concomitant authority to regulate convertible virtual currencies as commodities. Available at https://www.cnbc.com/2018/09/14/do-no-harm-in-regulating-cryptocurrencies-but-be-vigilant-cftc.html; https://cryptobriefing.com/cftc-jurisdiction-cryptocurrencies/. Accessed at 11:01 AM GMT, on the 11th January, 2019.

Service (IRS) on its own part regards crypto-assets and offerings as property subject to its property taxation jurisdiction .

Long before the invention of blockchain, a Distributed Ledger Technology (DLT) by Satoshi Nakamoto , various countries have had national securities laws and regulations for decades and centuries. National securities regulators as securities exchange business and investment authorities, boards and commissions belong to international bodies such as the International Organization of Securities Commission (IOSCO).

**Compliance of the genEOS Secured Token Offering (STO) Under the US Securities Laws and Regulation**

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[16]In United States v. Coinbase, Inc. Case No. 17-CV-01431-JSC, 2017 WL 3035164 (Northern District of California, July 18, 2017), the Inland Revenue Service (IRS) served a "John Doe" administrative summons on the convertible virtual currency exchange service provider Coinbase over failure to observe tax reporting obligations regarding bitcoin transactions that took place from January 1, 2013 through December 31, 2015 on its platform. There were 8.9million transactions by 14,355 users within this period, who each had more than USD20,000 in annual transactions performed on the Coinbase convertible virtual currency exchange platform. The "John Doe" administrative summons issued requested nine categories of documents that include "complete user profiles, know-your-customer due diligence, documents regarding third-party access, transaction logs, records of payment processed, correspondence between Coinbase and Coinbase users, account or invoice statements, records of payments, and exception records produced by Coinbase's AML system". Available at https://www.scribd.com/document/365896015/Coinbase-IRS#from_embed. Accessed at 7:26 AM, GMT, on the 27th December, 2018. See also https://techcrunch.-com/2017/11/29/coinbase-internal-revenue-service-taxation/ Accessed at 7:26AM, GMT, on the 27th December, 2018, and https://www.liebertpub.com/doi/full/10.1089/glr2.2017.21911 Accessed at 2:48PM, GMT on the 27th December, 2018 and https://lexfuturus.io/2018/01/08/consumer-protection-regulation-taxation-cryptocurrency-transactions/. Accessed at 9:57 AM GMT, on the 31st December, 2018.

[17]The pseudonymous entity who invented the blockchain technology and the open source decentralised cryptocurrency known as bitcoin. Available at https://www.google.com/search?q=satoshi+-nakamoto&rlz=1C1DV-JR_enNG829NG829&oq=Satoshi+N&aqs=chrome.0.0j69i57j0l4.11831j0j7&sourceid=chrome&ie=UTF-8. Accessed at 7:49AM GMT, on the 28th December, 2018.

[18]The financial securities regulator in various countries go by different names such as Financial Conduct Authority (FCA) in the United Kingdom, Securities Exchange Board of India (SEBI) in India, Swiss Financial Market Supervisory Authority (FINMA) in Switzerland, Monetary Authority of Singapore (MAS) in Singapore, Securities & Futures Commission (SFC) in Hong Kong, Securities Commission Malaysia, European Securities and Markets Authority (ESMA) in the European Union (EU), Securities and Exchange Commissions (SECs) in Nigeria, United States of America (USA), Philippines, Canada etc. These mentioned national securities regulators have been active in the Distributed Ledger Technology (DLT) and cryptospace by issuing notices, warnings, guides, guidance, and commencement of enforcement actions. Available at https://en.wikipedia.org/wiki/List_of_financial_regulatory_authorities_by_country. Accessed at 8:00 AM, GMT on the 29th December, 2018.

The genEOS Secured Token Offering (STO) is a Security Token Offering (STO) . Thus, the general rule is that registration statement, and allied documents such as prospectus are required to be filed with the United States Securities and Exchange Commission (US-SEC). The genEOS Security Token Offering (STO) comes within the relevant securities offering exemptions . Notwithstanding, separate compliance with State securities laws "including state registration requirement or a state exemption from registration" may still be required, depending on the facts and circumstances of the United States' State-specific preferences, since the Rule506(c) is a federal exemption. Generally, States are preempted from its substantive regulation and registration under their

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[19]Of all the later variants of Distributed Ledger Technology (DLT)-based Initial Coin Offering (ICO) such as the Initial Security Offering (ISO), Digital Security Offering (DSO), and Security Token Offering (STO), which are securities-law complaint coin offerings, the Security Token Offering (STO) is the most straightforward industry term that captures the spirit and essence of automated security issuance. Security Token Offering arguably reflects the mode of an Initial Public Offering (IPO), an extant business capital formation strategy used by legacy companies. Available at https://cryptocurrencyfacts.com/digital-security-offering-dsos-and-security-token-offerings-stos/ Accessed at 8:30AM, GMT, on the 31st December, 2018.

[20]Section 5, Securities Act (1933) as amended.

[21]Regulation D establishes three exemptions from registration under the Securities Act 1933. These exemptions are contained in Rules 504, 505, and 506. Form D, titled "Notice of Exempt Offering of Securities" is required to be filed with the United States Securities and Exchange Commission (US-SEC) under Regulation D, within 15 days after the first offer and sale of an exempt securities offering. The TON Issuer Inc. which conducted the Telegram ICO that raised USD1.7billion, incorporated in the British Virgin Islands (BVI). It filed a FORM D with the US-SEC during its Initial Coin Offering (ICO) as an exempt foreign securities offering. This allows the Telegram cloud-messaging company to offer and sell its ICO tokens to United States persons. Among other blockchain-based token offerings which have used Regulation D Rule 506(c) FORM D are the Protocol Labs' Filecoin ICO (raised USD200million+).
Available at https://www.ecfr.gov/cgi-bin/text-idx?node=17:3.0.1.1.12&rgn=div5. Accessed at 6:44AM GMT, on the 2nd January, 2019, and https://www.disclosurequest.com/form/ton-issuer-inc/0000950172-18-000060. Accessed at 6:45AM GMT, on the 2nd January, 2019, and https://www.crowdfundinsider.com/2017/08/121075-protocol-labs-files-two-form-ds-sec-regarding-enormous-filecoin-ico/ Accessed at 7:45AM GMT, on the 2nd January, 2019.

[22]The State-level securities laws, "which serve as an additional regulatory layer to federal securities rules" are colloquially known as "Blue Sky Laws". They require private investment funds to register in their home States, as well as every State where they wish to conduct a security offering and sale business. "Blue sky"'s earliest known use in a securities law context happened in the U.S. Supreme Court case: Hall v. Geiser-Jones Co., 242 U.S. 539 (1917), where the constitutionality of State-level securities laws in the United States came under judicial hearing and determination. Available at https://www.investopedia.com/terms/b/blueskylaws.asp. Accessed at 8:38AM GMT, on the 2nd January, 2019. See also https://en.wikipedia.org/wiki/Blue_sky_law. Accessed at 9:02AM GMT, on the 2nd January, 2018.

[23]In addition, even though the offering may be exempt from US-SEC registration, the offering may have to separately comply with State securities laws, including State registration requirements or a State exemption from registration, where it comes under Regulation S. Available at https://www.investor.gov/additional-resources/-news-alerts/alerts-bulletins/investor-bulletin-private-placements-under. Accessed at 7:07AM GMT, on the 2nd January, 2019.

securities laws, though they may still require an issuer to make a notice of filing and collect the attendant fee thereupon .

The genEOS Security Token Offering (STO) based on the facts and circumstances of the genEOS blockchain token offering and sale, and further save permissible exception(s) is a private placement exempt offering caught by Rule 506(c) of Regulation D. Rule 506(c) allows general soliciting and advertising, as all the private securities purchasers are required to be accredited investors, with an extra obligation imposed on the issuer to take reasonable steps in respect to accredited investor status verification.

Section 2(a)(1), Securities Act 1933 defines "security" as:

**"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, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, 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, or warrant or right to subscribe to or purchase, any of the foregoing.''.**

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[24]Available at https://medium.com/@jrlmaker/concurrent-reg-d-reg-s-icos-b847696a77db. Accessed at 7:02AM GMT, on the 2nd January, 2019.

[25]The US-SEC issued in July 2013 the new regulations as required by the Jumpstart Our Business Startups Act (2012), among which is the Rule 506(c). Available at https://en.wikipedia.org/wiki/Regulation_D_(SEC). Accessed at 6:06AM GMT, on the 2nd January, 2019.

[26]Supra at Note 18. The 1933 Act with the Long Title: "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", is the first of the U.S. federal securities pieces of legislation, which came about as a result of the stock market crash of 1929 to ensure more financial statement transparency, and to "establish laws against misrepresentation and fraudulent activities in the securities markets". President Franklin D. Roosevelt signed the 1933 Act on the 27th May, 1933. Available at https://www.investopedia.com/terms/s/securitiesact1933.asp and https://en.wikipedia.org/wiki/Securities_Act_of_1933. Accessed at 2:41PM on the 2nd January, 2019.

The above though comprehensive from a both statutory and regulatory perspective, is lacking from a case-law perspective, thus additionally, the Supreme Court of the United States held in a notable pronouncement that a "security" is "quite broad", and ipso facto includes "the many types of instruments that, in our commercial world, fall within the ordinary concept of a security".

The closest words that capture the soul of the definition for security are that it is a product of investment with value exchange capability. It is standard that a requisite security investment must be fungible between persons, with the attendant ownership, loss and transfer risks of the invested principal and profit accrual therefrom.
In this breath therefore, a product that does not entail investment risk is not a security .

The Supreme Court of the United States established a judicial definition for what passes as an investment contract fact situation in the Howey Test , where the court held that there are four inherent elements, which it listed as (i) investment of money; (ii) common enterprise; (iii) reasonable expectation of profit; (iv) efforts of others. These elements are prerequisite to the court holding that a financial instrument creates an investment, which gives rise to a tradeable security agreement, for which a registration statement alongside accompanying documents such as prospectus must be filed under Section 5 of the Securities Act 1933.
The federal circuit courts have since created additional test standards as the (i) horizonal commonality approach; (ii) narrow vertical approach; (iii) and the broad vertical approach, to complement the Howey Test, in finding whether or not a financial instrument is a security .

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[27]Marine Bank v. Weaver, 455 U.S. 551, 555-556 (1982). Available at https://www.americanbar.org/groups/business_law/publications/blt/2017/04/06_loev/. Accessed at 9:48AM GMT, on the 3rd January, 2019.

[28]Available at What Is A Security? - Series 62 | Investopedia https://www.investopedia.com/study-guide/series-62/chapter-1-4/equity-securities/what-security/#ixzz5bX7A1Gn8. Accessed at 9:48AM GMT, on the 3rd January, 2019.

[29]The "Howey Test" is named for the Defendants in SEC v. W.J. Howey Co., 328 U.S.293, 66 S. Ct. 1100, 90 L. Ed. 1244, 1946 U.S. LEXIS 3159, 163 A.L.R. 1043 (U.S. May 27, 1946). The case brief summary is that the Defendant "sold small strips of citrus grove to buyers who also signed a service contract for cultivation of said land.". The US-SEC (Plaintiff) sought an injunction to prohibit the use by the Defendants of an "interstate commerce to market the contract on the grounds that it established the sale of unregistered securities". In the investigation report released by the United States Securities and Exchange Commission (US-SEC) on the 25th July, 2017, the US-SEC decided based on the "Howey Test" that the Ethereum DAO tokens were unregistered security offering, but imposed no penalties, based on the "conduct and activities" of which the US-SEC was aware at the time of the investigation into The DAO project. The DAO (Decentralised Autonomous Organisation), also known as The DAO project runs on smart contracts embedded on the Ethereum Virtual Machine (EVM), a Turing-complete blockchain protocol. Available at http://www.google.com/amp/s/www.casebriefs.com/blog/law/securities-regulation/securities-regulation-keyed-to-coffee-/definitions-of-security-and-exempted-securities/securities -and-exchange-commission-v-w-j-howey-co/amp/. See also https://www.sec.gov/litigation/investreport/34-81207.pdf. Accessed at 6:48PM GMT, on the 5th of November, 2019 and Section 5, Securities Act supra. Accessed at 11:38 GMT, on the 4th January, 2019.

Apart from the fact that the genEOS token fits into the investment of money by the accredited investors into common enterprise, with the reasonable expectation of profit solely from the managerial and entrepreneurial skills of the genEOS team, the most prominent statutory security definition phrases that bear out the genEOS token offering are “profit-sharing agreement”, “investment contract”, “transferrable share”. The genEOS STO is invested in by accredited investors worldwide, based on a Private Placement Memorandum (PPM) execution between the qualified and verified accredited investor and NextGen.One. Thus, the PPM as a financial instrument qualifies the genEOS STO process as a “profit-sharing agreement”, wherein the “investment contract” creates a security interest, and the acquired genEOS tokens under the PPM becomes “transferrable shares”/tradeable documents/securities somewhere in the future after the lock-up period.

The genEOS tokens are security tokens acquired under a private placement as restricted securities . Restricted securities are private securities offered and sold through private placement exemption rules, which the United States federal securities laws restrict from public distribution as they are exempt from registration statements . This creates an investment contract in the estimation and intendment of the United States federal securities laws; thus Regulation D FORM D Rule 506(c) compliance is requisite for the qualification of the genEOS STO automated securities issuance process as an exempt security offering .

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[30]“common enterprise” as the second prong of the four-pronged Howey Test is defined by the circuit courts in these three different ways. Available at https://blj.ucdavis.edu/archives/-vol-5-no-2/why-the-common-enterprise-test.html. Accessed at 5:22PM, on the 4th January, 2019.

[31]The “Rule of Law is that “A “security” is a document that provides proof of a monetary investment in a common enterprise with profits earned exclusively through the work of others.”. Available at http://www.google.com/amp/s/www.casebriefs.com/blog/law/securities-regulation/securities-regulation-keyed-to-coffee-/definitions-of-security-and-exempted-securities/securities -and-exchange-commission-v-w-j-howey-co/amp/. Accessed at 1:16AM GMT, on the 4th January 2019.

[32]“Under Regulation D rules, the securities tokens are restricted securities subject to a lockup period of anywhere from six to twelve months before they can be sold on the market. After that, sales are often restricted to accredited investors only.”. Available at https://hackernoon.com/ico-in-2018-the-challenges-of-complying-with-securities-laws-ea5ff5be2c59. Accessed at 11:14AM, on the 7th January, 2019.

[33]Available at https://www.investor.gov/additional-resources/general-resources/glossary/restricted-securities. Accessed at 2:56PM GMT, on the 3rd January, 2019.

[34]“A securities offering exempt from registration with the SEC is sometimes referred to as a private placement or an unregistered offering. Under the federal securities laws, a company may not offer or sell securities unless the offering has been registered with the SEC or an exemption from registration is available. Sep 24, 2014”. Available

Outside the US-securities laws compliance, the genEOS STO token sale, in the spirit of inclusivity, transparency, and worldwide investment contract compliance with country-specific securities laws, required that accredited investor status be demonstrated by a prospective individual or an organisation from any country seeking to participate in the genEOS security token sale. And further at the Anti-Money Laundering (AML) and Know Your Customer (KYC) due diligence compliance with the genEOS STO automated securities issuance process, an organisation, or an individual is able to buy the genEOS token.

While accredited investor status differs in different countries , subject to the securities regulation within each jurisdiction, the genEOS Security Token Offering as a cross-border blockchain token offering takes extra steps and measures to ensure that the cross-border genEOS token sale participants are qualified under the various securities regulations and regulatory standards of their individual legal jurisdictions.

On the whole, it is not in doubt that the genEOS token offering is compliant with the US federal securities laws. The pertinent question that arises therefore, is whether the security token being offered to the worldwide investor base by the genEOS ecosystem complies with securities regulations of every jurisdiction, whose citizens are invited to participate in the token sale, provided that they fulfil the genEOS STO token participation conditio sine qua non. In the light of the universal securities regulation and jurisprudence analysis above, the genEOS STO token sale complies, so that the securities regulation compliance question resolves.

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at https://www.sec.gov/oiea/investor-alerts-bulletins/ib_privateplacements.html. Accessed at 2:28PM GMT, on the 3rd January, 2019.

[35]Supra at Note 25.

[36]ACCREDITED INVESTOR EQUIVALENTS BY JURISDICTION. Available at https://www.toniic.-com/accredited-investor-equivalents/. Accessed at 2:09PM GMT, on the 7th January, 2019. In the United States, an accredited investor is generally defined as a person who makes USD200,000 a year, and has a net worth of at least USD1,000,000. See also https://www.google.com/amp/s/www.cryptoninjas.net/2018/08/03/why-would-anyone-still-use-a-saft/ Accessed at 10:08PM GMT, 16th December, 2019.

### i. Accredited Investor Status Verification (Worldwide)

As noted above, accredited investor statuses differ from one jurisdiction to another. A prospective participant in the cross-border blockchain smart contract Security Token Offering (STO) process of the genEOS ecosystem is expected to demonstrate their credibility by showing evidence that they are an accredited investor in their local jurisdiction. This ensures that individual has an accredited investor status in their domestic jurisdiction before they qualify for participation.

### ii. Own Jurisdiction's KYC/AML Requirements

The global asset tokenisation space for security necessitates that a token issuer requires prospective token investor(s) who may be governments, corporates and citizens demonstrate sufficient evidence through compliance with Know Your Customer (KYC), Anti-Money Laundering (AML), and Counter-Financing of Terrorism (CFT) due diligence measure , before they are qualified to participate legally in the global cryptographic distributed ledger token offering.

NextGen.One requires that a KYC/AML be done on a prospective genEOS token sale participant as a conditio sine qua non, before they are allowed to enter the Secured Token Offering process. It is part also of its terms that the implication of failure to KYC/AML is that the prospective participant will not be eligible, and will have a portion (90%) of their already sent ETH/BTC/euro/dollar sent back to the prospective participant's Ethereum smart contract token address, while NextGen.One retains the other (10%) as administrative fee.

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[37]ACCREDITED INVESTOR EQUIVALENTS BY JURISDICTION. Supra at Note 36.

[38]The Financial Action Task Force (FATF) level AML and KYC is required. See "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation - the FATF Recommendations". http://www.fatf-gafi.org/publications/fatfrecommendations/documents/internationalstandardsoncombatingmoneylaunderingandthefinancingofterrorismproliferation-thefatfrecommendations.html. Accessed at 9:39AM GMT, 13th January, 2019.

### iii. SAFT-Type Private Placement Memorandum (PPM)

The genEOS STO offered as a private placement for securities offering to accredited investors only worldwide, operates the same way as Simple Agreement for Future Token (SAFT) , because the "functional utility tokens" of the genEOS platform are expected to be delivered to the accredited investors who invested in the genEOS tokens during the STO token sale, after the lock-up period.

The Simple Agreement for Future Token (SAFT) creates a global standard, as the SAFT project has partnership from various jurisdictions, involved in its formulation.
SAFT functions as a legally compliant investment contract instrument that sought to put paid to non-compliant token sales. The SAFT, built on venture capital Simple Agreement for Future Equity (SAFE), functions like a privately negotiated forward contract for future delivery of a network tokens to investors, when network becomes ready. The accredited investors participating in the prospectus-exempt genEOS Secured Token Offering (STO) buy into the future platform through its utility token, the genEOS token, which then becomes tradeable security after its lock-up period, and it is listed on an exchange.

The cross-border blockchain smart contract Security Token Offering (STO) process through which the token sale is conducted as an Internet-based business capital formation strategy is a novel phenomenon, while the genEOS Secured Token Offering (STO) as a security offering is offered and sold with the implementation of blockchain smart contract to an international investor pool.

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[39]"Protocol Labs, Inc. Confidential Private Placement Offering Memorandum Purchase Rights for Tokens pursuant to Simple Agreement for Future Tokens". Available at https://coinlist.co/assets/index/filecoin_index/Protocol%20Labs%20%20SAFT%20%20Private%20Placement%20Memorandumbbd65da01fdc4a15219c49ad20fb9e28681adec9fae744c41cccd124545c4c73.pdf. Accessed at 9:43AM GMT, 14TH January, 2019.

[40]The SAFT as an investment contract, is a security subject to securities regulation. The developer of a cryptocurrency offers the SAFT to an accredited investor for future promise of a functional, tradeable token. The implication where a cryptocurrency developer sells the SAFT to an accredited investor is that no coin or token is sold, offered or exchanged, but only the promise of functional, tradeable future tokens, or access to the platform is the consideration. SAFT is different from Simple Agreement for Future Equity (SAFE), which is an agreement where cash is converted into future equity, but they are the same in respect to the shared, common enterprise risk, as though purchasing a SAFT is the same as purchasing a SAFE. Available at https://www.investopedia.com/terms/s/simple-agreement-future-tokens-saft.asp. Accessed at 10:28AM GMT, 13th January, 2019.

[41]"Structuring Legally Complaint Token Sales". A panel discussion available at https://www.coindesk.com/icos-saft-cftc-sec-cardozo/amp/ Accessed at 6:10pm GMT on the 17th December, 2018.[42]

## CONCLUSION

The question whether the genEOS Secured Token Offering (STO) complies with the securities laws of jurisdictions across the world, apart from its dependence on the securities regulation peculiarities of a prospective accredited investor's jurisdiction, also substantially depends on its compliance with, and observance of the Objectives and Principles of Securities Regulation, Multilateral Memorandum of Understanding (MMoU) , By-Laws of the International Organisation of Securities Commissions (IOSCO), documents of the North American Securities Administrators Association (NASAA), the US federal securities regulation, jurisprudence, and legisprudence, as expressed through her securities case-law , statute-law , common law, and the securities regulation, rules and prerequisites of the specific State of the issuer NextGen.One LLC., where it has corporate personhood, and the former as applicable to securities offering in line with registration statement and accompanying statements like prospectus, except where prospectus and registration exempt offering application is required to be filed with the United States Securities and Exchange Commission (US-SEC) under the 1933 Act.

One of the crucial questions is whether universal blockchain-, or other distributed ledger technology-based security offerings, which by their nature, are machine-readable smart contract mechanisms would finally herald the bindingness and enforcement of lex informatica  through lex cryptographia .

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[43]Since the United States is a signatory to the Multilateral Memorandum of Understanding (MMoU) to which member countries, national securities regulators, securities commissions, Self-Regulatory Organisations (SROs) subscribe, as members of the International Organisation of Securities Commissions (IOSCO).

[44]US-SEC v. W.J. Howey Co. 328 US 293 (1946) (supra) at Note 27.

[45]Securities law and practice in the United States of America (USA) are regulated primarily by the Securities Act (1933), Securities and Exchange Act (1934), Trust Indenture Act (1939), Investment Company Act (1940), Investment Adviser Act (1940), Securities Investor Protection Act (1970), and Uniform Securities Act (USA) etc. The Uniform Securities Act (USA) was created by the National Conference of Commissioners on Uniform State Laws (NCCUSL) to guide the States in the United States of America (USA) in drafting their own State-level securities laws. Available at https://libraryguides.law.pace.edu/c.php?g=319368&p=2133592. Accessed at 8:22AM GMT, on the 9th January, 2019. See also https://www.sec.gov/reports-pubs/investor-publications/investorpubssecuritieslawshtm.html. Accessed at 8:29AM GMT, on the 9th January, 2019

[46]"Technological capabilities and system design choices impose rules on participants. ... This Article argues, in essence, that the set of rules for information flows imposed by technology and communication networks form a "Lex Informatica" that policymakers must understand, consciously recognize, and encourage.". Available at https://ir.lawnet.fordham.edu/cgi/view-content.cgi?article=1041&context=faculty_scholarship.Accessed at 3:11AM GMT, on the 7th January, 2019.

[47]Lex Cryptographia is the law as applicable to cryptographic contracts in the digital world that enforce themselves. Smart contracts are a good example. "In this Article, we explore the benefits and drawbacks of this emerging

Thus, in consideration, final reasoning and conclusion on the facts and evidence of country-specific accredited investor status verification, executed Private Placement Memorandum (PPM) between NextGen.One LLC. and the prospective investor— be it government, or corporate, or citizen, or all of the following, and further measures such as Anti-Money Laundering (AML)/Know Your Customer (KYC) compliance measures as the conditio sine qua non for the genEOS STO token sale participation, the genEOS STO token sale complies with country-specific securities regulation worldwide, and common standards put in place, based on consensus ad idem  in respect to the jurisprudence, principles, objectives and practices of securities regulation.

**DISCLAIMER**

This is a legal opinion for the genEOS project. The Security Token Offering (STO) project, which sought to raise USD2million in soft cap, but could not reach the milestone. Its last token sale Window 176 closed on the 23rd December, 2018. NextGen.One refunded accredited investor participants worldwide on the 26th – 28th December, 2018 in the crowdsale.

This legal opinion creates neither liability nor obligation whatsoever, but rather serves a general information purpose, and thus no commitment has been made whatsoever as to the accuracy or non-accuracy of any fact stated therein.

**SIGNED.**

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decentralized technology and argue that its widespread deployment will lead to expansion of a new subset of law, which we term Lex Cryptographia: rules administered through self-executing smart contracts and decentralized (autonomous) organizations.". Available at file:///C:/Users/BOULEVARD/Dropbox/lex%20cryptographia%20by%20Aaron%20Wright%20and%20Primavera%20de%20Phillipi.pdf. Accessed at 7:59AM GMT, on the 9th January, 2019. [48]