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March 5, 2019

To:

Mr. Evgeniy Vasilev

VIVIGLE INC.

Dear Sir,

**Re: Legal Opinion: the Compliance of ViviCoins sale with Securities Law and Regulation**

**Background**

This Legal Opinion set forth our legal analysis as to whether the sale of the ViviCoins would likely be considered a securities offering pursuant to existing United States Securities Laws and Regulations. This opinion and conclusion are limited to the matter expressly stated herein, are fully based on information and material furnished to us by you, and no opinion or conclusion is to be inferred or may be implied beyond the opinion and conclusions expressly set forth herein. This opinion is made for your benefit only, written in good faith. Subject to the foregoing, we hereby provide you with our opinion concerning the legal compliance of the sale of the ViviCoins by VIVIGLE INC. (hereinafter, "**VIVIGLE**") to the United States Securities Laws and Regulations, based on data and materials furnished to us by you. It should be noticed that the legal analysis herein may be updated in the future as the

law in this area develops. This Legal Opinion discusses the relevant legal principles for determining what constitutes a security, and why we concluded, based on those principles, that the ViviCoins are not securities given the attributes that we has been provided. Our analysis is based on our discussions with you, the materials you provided to us, information from https://vivigle.com, and the law as it exists as of the date of this Legal Opinion.

**ViviCoin Description**

ViviCoin – a discrete native digital asset of the online Vivigle Platform, attributed to a specific Address and transferrable between different Addresses. Online Vivigle Platform is a decentralized arbitration service for safe cooperation between different users (agents) into P2P ecosystem. The Vivigle is a cryptographic software product, created by the company as a proof of membership of their holders in the online Vivigle Platform (but not in a legal entity). ViviCoin is a service payment method, as well as a central smart-contract ecosystem unit of is a social network with a decentralized reward system based on a blockchain technology. Due to the fact that online Vivigle is an online virtual Vivigle platform, we could consider the token is the **utility token** as a "membership certificate".

The ViviCoin is a tool of access to the platform Vivigle services. This is an internal accounting unit of the Online Vivigle platform based on blockchain technology, which users can exchange for products and services of all services of the company. Thanks to the closed chain of Online Vivigle services, customers using Vivigle can significantly reduce the costs of their business processes, freeing themselves from various external commissions.

On online Vivigle platform, there are several scenarios of using an ViviCoin. It depends on the tokenholder choice. All scenarios of the ViviCoin turnover are strictly ordered and implemented on the blockchain by smart contracts. There are no other scenarios are considered as technically feasible. None of the scenarios of utilizing the token has the signs of securities rights realizing.

The ViviCoin has its own value (utility) regardless of the company's assets. Such a digital instruments are not the Company assets. There are no other scenarios are considered as technically feasible. None of the scenarios of utilizing the token has the signs of securities rights realizing.

A value and current price of the ViviCoin does not depend on a value of the company business, cost of the assets, and company profit. In turn, platformusers and tokenholders does not have the right and technical ability to receive the relevant part of the company's profit.

The platform does not carry out the reverse purchase of the token.

Tokens will not burned and token will remain owned by the other tokens holder. All the processes are based on blockchain. This sign is the equivalent of a real exchange of services between the platform participants. All the processes are based on blockchain.

Thus, the company has no rights and technical ability to regulate the current rate (cost) of tokens. The online Vivigle does not keep tokens on its accounting company balance, so under securities and accounting laws, the ViviCoins are not the asset of the Company.

**Legal Analysis**

The world practice first appeals to the laws of the United States to determine the legal substance of the token. There are several main reasons. The U.S is a substantial market for selling blockchain tokens, and concurrently holds complicated set of laws which govern this area. In the US there are court decisions that are directly related to the token. All main exchanges follow the requirements of the US regulatory body. This section sets forth our Legal Opinion as to whether the sale of ViviCoins would likely constitute a securities offering for purposes of Section 2(a)(1) of the Securities Act of 1933 ("Securities Act") and Section 3(a)(10) of the Securities Exchange Act of 1934 ("Exchange Act").

In order to analyze the ViviCoins under federal securities laws, we begin with the definition of "security" contained in Section 2(a)(1) of the Securities Act: "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, or warrant or right to subscribe to or purchase, any of the foregoing."

The foundational Supreme Court case for determining whether an instrument meets the definition of security is SEC v. W.J. Howey, 328 U.S. 293 (1946). The Supreme Court has reaffirmed the Howey analysis more recently in SEC v. Edwards, 540 U.S. 398 (2004). Howey focuses specifically on the term "investment contract" within the definition of security, noting that it has been used to classify those instruments that are of a "more variable character" that may not fit neatly into other categories and that may be considered a form of "contract, transaction, or scheme whereby an investor lays out money in a way intended to secure income or profit from its employment."[1]

Not every contract or agreement is an "investment contract," rather, the Supreme Court has developed a four-prong test to determine whether an agreement constitutes an investment contract and therefore a security. The Court articulated the test as follows: A contract constitutes an investment contract that meets the definition of security if there is:

- (i) *an investment of money*;
- (ii) *in a common enterprise*;
- (iii) *with an expectation of profits*;
- (iv) *solely from the efforts of others* (e.g., a promoter or third party), "regardless of whether the shares in the enterprise are evidenced by formal certificates or by nominal interest in the physical assets used by the enterprise." **In order to be considered a security, all four prongs must be satisfied**.

Most recently, the SEC Division of Enforcement's investigative report involving DAO tokens revealed that tokens that function like investment contracts under

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[1] W. J. Howey, 328 U.S. at 298-99.

Howey will be treated as securities.[2] The DAO Report applied the Howey test to digital tokens offered and sold by a virtual organization known as "The DAO," and concluded that the tokens were in fact securities. The DAO was created by German corporation Slock.it UG and Slock.it's co- founders with the objective of operating for profit. The DAO would raise assets by selling digital tokens (the "DAO tokens") to investors, and then using the assets to fund projects intended to generate profits. Investors contributed original versions of Ethereum tokens, now known as Ethereum classic ("ETC"), and received DAO tokens, which granted the DAO token holder certain voting and ownership rights. According to the SEC, promotional materials for The DAO stated that The DAO would earn profits by using the contributed assets to fund projects that would provide DAO token holders a return on investment. The projects would be proposed by the holders of the DAO tokens, vetted by "curators" (initially identified by Slock.it), and voted upon by the holders of the DAO tokens. The SEC emphasized that the various promotional materials disseminated by Slock.it's co-founders touted that DAO token holders would receive "rewards," which the promotional materials and White Paper defined as, "any [ETC] received by a DAO generated from projects the DAO funded." DAO token holders would then vote to either use the rewards to fund new projects or to distribute the ETC to DAO token holders. In addition, DAO token holders could monetize their investments in DAO tokens by re-selling DAO tokens on a number of web-based platforms that supported secondary trading in the DAO tokens.

The DAO Report is a clear warning signal to the industry and market participants that the federal securities laws "apply to those who offer and sell securities in the U.S., regardless of whether the issuing entity is a traditional company or a decentralized autonomous organization, regardless whether those securities are purchased using U.S. dollars or virtual currencies, and regardless of whether they are distributed in certificated form or through distributed ledger technologies." The

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[2] SEC, Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO, Exchange Act Release No. 81207 (July 25, 2017), available at https://www.sec.gov/litigation/investreport/34-81207.pdf (the "DAO Report").

SEC did not take the position that virtual currencies, or interests in such currencies, are themselves securities.

The Howey test has not yet been directly applied by the courts to any digital currency or blockchain token. To determine whether ViviCoins are securities, we examine each of the Howey factors in light of the SEC's analysis of the DAO tokens.

(i) **An investment of money**

Under Howey and subsequent case law, an investment of money may include not only the provision of capital, assets, and cash, but also goods, services, or a promissory note. In short, to constitute a security, there must be a contribution of value. Investors in the DAO tokens used ETC to make their investments. The SEC found that an investment of ETC is the type of contribution of value that can create an investment contract under the Howey test.

Under U.S. law, any investment assets are acquired only for the purpose of investing, making a profit, preserving and with "investment" purposes. This is impossible to regulate the users activities under the securities and investment legislation.

Any Investment instrument (share, bond, investment contract, etc.) grants equal rights to its potential owners. Any holders of a particular type of securities have equal rights. Thus, certain types of securities determines the rights and actions of the holder of these securities.

This is securities when the investor does not receive property in nature (company assets), but he is entitled to a share of the property or profits that is create through the "efforts of others". The option of profit making by the tokenholders is excluded at the part of blockchain technology implementation.

Vivigle is a tool for use in the social networks on the market using the decentralized principle of encouraging users' activity; an ecosystem, which is transferred to the buyer and the buyer, uses Vivigle in accordance with the known conditions. Because Vivigle is a «stand-alone» utility for the holders.

If we classify such actions of the platform as the issue of securities, it will create a precedent that destroys the legitimate and positive activity of online market publishers organized on a network principle. If modern blockchain technologies and

smart contracts are often used to issue securities and sell the assets of the organization, this does not mean a ban on the use of such technologies in other areas, such as online Vivigle.

Therefore, customers buy ViviCoins to operate on online Vivigle Platform, but it is not an "investment in company assets".

Thus, to be a security, the investment of money must be “in a common enterprise.” Different courts use different tests to analyze whether a common enterprise exists. The two dominant approaches are horizontal and vertical. Under the horizontal approach, a common enterprise is deemed to exist where multiple buyer’s pool funds into an investment and the profits of each investor correlate with those of the other buyers such that the fortunes of all investors rise and fall together. Whether funds are pooled appears to be the key inquiry, thus, in cases where there is no sharing of profits or pooling of funds, a common enterprise may not be deemed to exist. Vertical commonality test requires that the investors' fortunes be "interwoven with and dependent upon the efforts and success of those seeking the investment ... of third parties" (SEC v. SG Ltd., 265 F.3d 42, sec. 31-35 (1st Cir. 2001)). Vertical commonality exists where the financial success of the seller’s enterprise itself rises and falls with the value of the tokens. This is the case where the seller is attempting to make a profit from an ongoing business that uses the token. However, where a seller is not seeking to make a profit, but instead plans to spend the money raised from the token sale on development (and then liquidate the entity), courts will be less likely to find vertical commonality. Under such a model, the seller intentionally becomes insolvent over a period, but the value of the utility token simultaneously increases. Thus, the horizontal commonality test’s requirements are not met. By applying the narrow vertical commonality test, we can clearly see that the investors’ funds are not connected or dependent upon the success of the token issuer. The right of the token holders to receive services from the company is definitely not subject, dependent or in any way based upon the success of Company. We see these vertical commonality tests’ requirements unmet.

It`s normally, when a Net- or Gross profit of any company will be turned to business development or capitalization. However, in our case, the customer's money was not spent on the company's creation and token production. These were two different moments when tokens were produced and sold. Thus, the token buyers received not an "Expectations of Profits", but they got the real product - utility token will be applied on online Vivigle platform according to the clear instruction based on blockchain.

The next important legal matter is the market price of token does not influence on a company profit and the company profit does not influence on the token market price. The token buyers do not have any rights to the company profit.

We conclude that the ViviCoins sale would not constitute an investment of money.

(ii) **In a common enterprise**

To be a security, the investment of money must be "in a common enterprise." Different courts use different tests to analyze whether a common enterprise exists. The two dominant approaches are horizontal and vertical.

Under the horizontal approach, a common enterprise is deemed to exist where multiple buyers pool funds into an investment and the profits of each investor correlate with those of the other buyers such that the fortunes of all investors rise and fall together. Whether funds are pooled appears to be the key inquiry, thus, in cases where there is no sharing of profits or pooling of funds, a common enterprise may not be deemed to exist.

Conversely, the vertical approach looks at whether the profits of the buyer are tied to the promoter such that the fortunes of buyers and sellers rise and fall together. More precisely, vertical commonality exists where the financial success of the seller's enterprise itself rises and falls with the value of the tokens. This is the case where the seller is attempting to make a profit from an ongoing business that uses the token. However, where a seller is not seeking to make a profit, but instead plans to spend the money raised from the token sale on development (and then liquidate the entity), courts will be less likely to find vertical commonality. Under such a

model, the seller intentionally becomes insolvent over a period of time, but the value of the utility token simultaneously increases.

The DAO Report did not specifically analyze the common enterprise prong. However, the SEC did assert that "investors who purchased DAO tokens were investing in a common enterprise," presumably based on the fact that The DAO raised ETC from multiple investors who had a common interest in the success of The DAO. Here, like most token sales, the sale of the ViviCoins would likely be considered investment in a common enterprise under the horizontal approach since the tokens are fungible, and, thus, the values rise and fall together. As for the vertical approach, the whitepaper does not make clear how the funds raised from the token sale shall be used. Therefore, we do not have sufficient to arrive at a conclusion as to whether the common enterprise criterion is met under the vertical approach.

(iii) **With an expectation of profits**

The third prong of the Howey test looks to whether buyers who purchased an instrument reasonably expected to earn profits from the enterprise. For tokens, this can refer to any type of return or income earned as a result of being a token holder. However, subsequent case law interpreting Howey has clarified that the expectation of profit from the mere existence of a secondary market is insufficient to satisfy this prong.

The SEC found that the promotional materials publicized by The DAO creators informed investors that The DAO was a for-profit entity whose objective was to finance projects in exchange for a return on investment. The DAO was intended to make profits, via investments in contractor projects proposed by the token holders, to share with its token holders, once the projects had been approved by The DAO curators and voted upon by the token holders. Since the functional value of a DAO token was to provide token holders with the prospect of profits, the SEC reasoned that The DAO's investors would have been motivated by a reasonable expectation of profits. The SEC statements in the DAO Report make it clear that the "expectation of profits" is not necessarily limited to distributions of cash or appreciation of equity

interests, and it can include the types of rewards that The DAO promised to provide such as participation in contractor projects.

The expectation of profit need not be the only motivating factor for purchasers, but it must predominate to constitute a security. Therefore, based on this consideration, we conclude that the third criterion regarding expectation of profits is not satisfied.

(iv) **Solely from the efforts of others**

The fourth prong of the Howey test examines whether or not the profits of an instrument are derived from the managerial efforts of others. Typically, courts have been flexible with the word "solely," such that, in addition to the literal meaning, it need only be predominately from the efforts of others.

The SEC determined that because the efforts of the DAO organizers and curators were required for the success of The DAO enterprise, and because the DAO token holders' voting rights were limited, The DAO's investors were reliant on the managerial efforts of others. Specifically, without the efforts of The DAO organizers and curators, The DAO would not have been able to succeed for several reasons. First, through their conduct and marketing, the organizers of The DAO led investors to believe that they could be relied on to provide significant managerial efforts and the Ethereum blockchain expertise required to make The DAO a success. Second, the contractor project approval program placed substantial discretion in the hands of The DAO organizers and curators, and the limited nature of the DAO token holders' voting rights meant that they were substantially reliant on the efforts of The DAO organizers and curators. Third, when The DAO was attacked by hackers, the organizers intervened and took crucial steps to resolve the situation, demonstrating the organizers' active oversight of The DAO.

In this case, we would conclude that although purchasers of ViviCoins may have a reasonable expectation of profit, such expectation does not predominantly result from the managerial efforts of others. Therefore, since the expectation of profit from purchasing ViviCoins does not predominantly depend on the management efforts of others, the ViviCoin is not likely to be considered a security under U.S. federal law.

**Conclusion**

**The ViviCoins is not securities.**

The main positions on which we rely:

1) The online Vivigle business model looks like a traditional for on-line Vivigle business. The ViviCoin has its own value (utility) regardless of the company's assets. Such a digital instruments are not the Company's assets.

The ViviCoin is a tool of access to the platform online Vivigle services. The ViviCoin is a functional tool for Vivigle Platform. Such a way the ViviCoin is a digital crypto "score" for the online Vivigle platform. Any outsider could start as a platform user who gets access to the platform by buying the ViviCoin on the exchange or from online Vivigle website.

On online Vivigle platform there are several scenarios of using an ViviCoin. It depends on the tokenholder choice.

2) In the case of investment agreements, buying the share of the company, or the purchase of securities there is a "Failure of consideration" when the investor gets the tokens as a digital utility tool / digital score.

3) Token buyers do not have any rights to the company profit. The ViviCoins don't give equal rights to their holders. This fact excludes the identification of the token as securities.

4) The founders of Vivigle has not any ability to effect on the token price. The market price of token does not influence on a company profit and the company profit does not influence on the token market price.

5) Under law, any investment assets are acquired only for the purpose of investing, making a profit, preserving and with "investment" purposes. This is impossible to regulate the user's activity under the securities and investment legislation.

Any Investment instrument (share, bond, investment contract, etc.) grants equal rights to its potential owners. Any holders of a particular type of securities have equal rights. Thus, certain types of securities determines the rights and actions of the holder of these securities. Otherwise, the Token transforms its value depending on the holder's choice, behavior scenario and his motive. The ViviCoins don't give

equal rights to their holders. This fact excludes the identification of the token as securities.

6) This is securities when the investor does not receive property in nature (company assets), but he is entitled to a share of the property or profits that is create through the "efforts of others". The option of profit making by the tokenholders is excluded at the part of blockchain technology implementation. Vivigle is a tool for use in the Vivigle ecosystem, which is transferred to the buyer and the buyer uses Vivigle in accordance with the known conditions. Because Vivigle is a «stand-alone» utility for the holders.

7) If you classify such actions of the Vivigle online P2P platform as the issue of securities, it will create a precedent destroys positive activity of P2P platforms around the world. If the blockchain technologies and smart contracts are using for issues the securities and for selling the organization assets often, BUT it does not ban to use such technologies in other spheres such as media channels and social network media that are working by the principle of UGC, «user generation content».

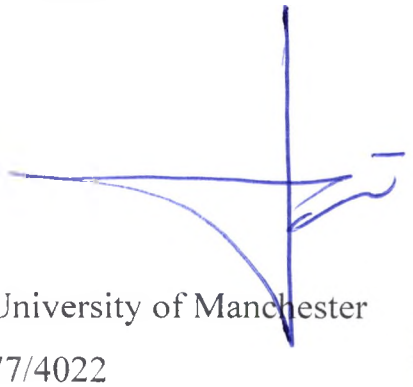
8) All scenarios of the turnover of the ViviCoin is strictly ordered and implemented on the blockchain by smart contracts. No other scenarios are technically feasible. None of the scenarios of utilizing the token has the signs of securities rights realizing.

9) To use Vivigle smart contract deployed in decentralized platform.

10) We have found no signs of fraud and scam, Ponzi scheme, tort, consumer fraud, known schemes of income laundering and tax evasion.

11) There was no public sale of tokens.

Very Truly Yours,



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ANNEX 1 to Legal Opinion.

Legislation

Securities Act of 1933,

The Securities Exchange Act of 1934,

Cases.

"Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO" (Release No. 81207 / July 25, 2017),

United Housing Found., Inc. v. Forman, 421 U.S. 837, 849 (1975) (the "Forman" Case)),

(SEC v. C.M. Joiner Leasing Corp., 320 U.S. 344, 352-53 (1943)),

SEC v. Edwards, 540 U.S. 389, 393 (2004);

SEC v. W.J. Howey Co., 328 U.S. 293, 301 (1946); see also the Forman case, at 852-853

SEC v. Shavers, No. 4:13-CV-416, 2013 WL 4028182, (E.D. Tex. 2013), reconsideration aff'd, No. 4:13-CV-416, 2014 WL 12622292 (E.D. Tex. 2014).

The Forman Case; SEC v. Glenn W. Turner Enters., 474 F.2d 476, sec. 28 (Feb. 1, 1973)

Sinva v. Merrill Lynch, 253 F. Supp. 359, 367 (S.D.N.Y. 1966)

State v. Consumer Business Systems, Inc., 5 Or. App. 19, 482 P.2d 549 (1971)

Silver Hills Country Club v. Sobieski, 55 Cal. 2d 811 (1961) (hereinafter, "Silver Hills")

Amfac Mortgage Corp. v. Arizona Mall of Tempe, Inc., 583 F.2d 426 (9th Cir. 1978)

Jet Set Travels Club v. Corporation Com'r, 21 Or. App. 362 (1975)

The Blue-sky laws and regulations.

Alaska (Act of July 2, 1975, ch. 217, 1975 Alaska Sess. Laws (codified at ALASKA

STAT. §45.55.130(12) (Supp. 1979)))

California (the Silver Hills case);

Idaho (State ex rel. Park v. Glenn W. Turner Ents., [1971-1978 Transfer Binder] BLUE SKY L. REP. (CCH) 71,023 (Idaho Dist. Ct. 1972));

Oregon (the Jet Set case)

Arkansas (Smith v. State, 266 Ark. 861, 587 S.W.2d 50 (ct. App. 1979))

Michigan (MICH. STAT. ANN. § 19.776(401) (I) (Supp. 1980));

Oklahoma (OKLA. STAT. tit. 71, § 2(20)(P) (Supp. 1980);

Ohio (State v. George, 362 N.E.2d 1223 (Ohio Ct. App. 1973));

Hawaii (State v. Hawaii Market Center, Inc., 52 Hawaii 642, 485 P.2d 105 (1971));

Guam (Securities Admin. v. College Asistance Plan, Inc., 533 F. 118 (D. Guam 1981), aff'd, 700 F.2d 548 (9th Circ. 1983);

Washington (WASH. REV. CODE § 21.20.005(17)(a) (1979))

North Dakota (N.D.C.C. 10-04-02 (1951);