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MEMORANDUM

To: [Securities Law Partner of major international law firm]

From: Stephen H. Galebach

Subj: Supplement to Legal Opinion Letter of August 14, 2017 re Blockmason IPO and BCPT

The following will serve to answer the questions in your email of December 14, 2017 and respond to your request that I update, in light of the SEC's December 11, 2017 order *In re Munchee Inc*., the legal opinion I rendered on August 14, 2017 in the matter of the Blockmason IPO and the applicability *vel non* of the United States securities laws to the September-October 2017 Blockmason sale of Credit Protocol Tokens (BCPTs).

Your December 14 email inquires into the current utility of the BCPT token, in light of the *Munchee* order's finding that "no one was able to buy any good or service with MUN throughout the relevant period," thus indicating a need for confirmation that the BTCP can actually be used by lenders and borrowers and developers. Your email further requests confirmation of the current possibility *vel non* of recording smart contracts to the blockchain in connection with CP, as described in the Blockmason White Paper, whether for Blockmason's DApp (distributed application) Friend in Debt or for other DApps. Your email further requests that I address the SEC's findings in paragraphs 7, 10, 12, 20 and 22 of the *Munchee* order, and the possible relevance of *Munchee* to any of the following sections of the Blockmason White Paper: Bounty Program, Support, Off-Chain Transactions, Transaction Capacity Setting, Future Versions, Developers' Token Pool, Use of Funds and Roadmap, and Team Profile and Consultants. Finally, you ask whether the August 15, 2017 version of the White Paper available online is identical to or different from the August 14, 2017 version that I relied on in my August 14, 2017 opinion letter.

I will address first the factual issues of the actual usability of the BCPT token with CP and DApps built on top of CP; secondly the *Munchee* order; thirdly the December 11, 2017 statement of the SEC Chairman about ICOs (initial coin offerings) for its possible relevance to the issues at hand; fourthly the sections of the Blockmason White Paper that your email specifically identifies; and finally some concluding observations relevant to the legal standard for assessing whether ICO tokens are securities under applicable US law.

A. Usability of the BCPT

1. CP network and its relationship to the BCPT

As a preliminary matter, it is useful to summarize the intended use of the BCPT in the Credit Protocol (CP) network. The CP network consists of a patent-pending foundational credit-debt recording protocol built into the Ethereum blockchain via Blockmason's CP smart contract. When the CP network is operational, it enables persons to record indelibly on the blockchain a credit-debt relationship verified by both authenticated parties to the relationship, in such a manner that the data relevant to that relationship can only be altered by the combined future action of both authenticated parties. The code of CP is open source, so that any person or entity can build DApps of various types on top of CP, i.e., to interoperate with CP for the wide variety of functions that are useful in connection with credit-debt relationships recorded on the blockchain. Such DApps on top of CP are built by means of a UCAC (use case authority contract), a particular type of smart contract in the Ethereum network.

Blockmason's BCPT tokens perform two basic functions in the CP network. First, in order to record a credit-debt relationship on the CP network, one must associate a UCAC with CP and hold sufficient BCPTs or associate with a holder who stakes BCPTs to that UCAC. Unless the UCAC attempting to operate with CP is associated on the blockchain with the holding of BCPTs, the CP network will fail to record transactions. Further, any DApp built on top of CP must have its own UCAC that interacts with the CP smart contract and thus enables the DApp to operate in the CP network. The CP network is architected so that UCACs will successfully interact with the CP smart contract if and only if a sufficient number of BCPTs are associated on the blockchain with that particular UCAC and DApp. This can be achieved either by the DApp creator/developer owning sufficient BCPTs on their own, or by other BCPT holders staking their BCPTs to that DApp/UCAC. The current requirement is that each DApp/UCAC must have at least 500 BCPTs associated with it on the blockchain.

The second basic function performed by BCPTs is to control and limit the number of transactions per hour that can be performed by any person recording credit-debt relationships via CP, and by any DApp operating in the CP network. This function is important because the CP network has limited transaction/time capacity as a result of the inherent transaction/time limitations of the Ethereum blockchain network of which it is a part. The control and limiting function of the BCPT has become all the more important with the recent congestion and delay issues in the Ethereum blockchain that have been widely publicized in the blockchain-aware community as a result of the Cryptokitties craze. Currently the transaction/time limit set for the BCPT is .02 tx/token/hour.

A further function of BCPTs in the future will be to control and limit use of a side-chain, which Blockmason has recently announced an intention to design and build in the event that others do not successfully resolve the congestion and delay issues in the Ethereum network.

2. CP and BCPT usability timeline

The following timeline confirms precisely when and how the CP network has been and is usable, and when and how the BCPT became usable for its intended use in the CP network.

The Credit Protocol was operational as a beta version on the Ethereum Testnet as of August 14, 2017, and its open source code was available for inspection and assessment by developers, hobbyists and other potential users considering purchase of BCPTs on and continually after that date. The Friend in Debt DApp (renamed at the beginning of November as "Lndr") was also operational as a beta version on the Ethereum Testnet as of August 14, 2017, as a demonstration of one of many DApps that can be built on top of CP, and as a workable DApp that potential users and developers could assess in the course of deciding whether to purchase BCPTs.

On October 15, 2017 Blockmason completed its sale of BCPTs.

On October 16, 2017 Blockmason issued BCPTs to the purchasers of BCPTs.

On October 17, 2017 Blockmason announced that it was finishing its testing of CP in preparation for moving CP from the Ethereum Testnet onto the Ethereum Mainnet.

On October 18, 2017 Blockmason announced: "The Credit Protocol is now live on Ethereum's mainnet." From this point in time forward, BCPTs were usable for their intended purpose to (a) record credit-debt relationships on the CP network on the Ethereum Mainnet, (b) enable DApps/UCACs to interoperate with CP and (c) perform the rate-limiting function in proportion to the number of BCPTs associated on the blockchain with any particular DApp/UCAC.

Also on October 18, 2017, Blockmason posted online at Github.io for the BCPT holder community an early form of "Credit Protocol Documentation" that explained how to interact with and develop on top of CP, explaining that for those with BCPTs, (a) parties in a credit-debt relationship could now cryptographically sign the elements of a credit record on CP, (b) developers of DApps on top of CP would now have the CP system verify that a credit record is valid for its particular use case under the corresponding UCAC, (c) those deploying such a UCAC to the CP network would now need a minimum number of BCPTs associated with the UCAC in order for the UCAC to interoperate with CP, and (d) a subroutine of CP would now rate-limit the transactions per time for each UCAC based on how many BCPTs are associated with that UCAC on the blockchain. In connection with the latter portion of the October 18, 2017 posted explanation by Blockmason, those BCPT owners who do not have sufficient development skills or interest to launch their own DApps have been enabled from the outset of their BCPT ownership to participate with developers by staking their BCPTs to any developer project on any terms mutually agreed.

On October 31, 2017, Blockmason issued an announcement elaborating on previous explanations of how DApp developers can acquire and use BCPTs – either via the ICO if they purchased before it closed, or on exchanges once a secondary market developed in BCPTs – and

reiterating that BCPT holders who do not wish to become developers themselves can stake their tokens to UCACs and cooperate productively with developers in that manner.

On November 1, 2017, Blockmason announced additions to its team that were significant for providing maintenance and support for CP and for DApps/UCACs built on CP. These additions included a new lead technologist, a web development lead, a lead strategist, a mobile app development lead, an art director, and an operations and finance person.

Also around the beginning of November, Blockmason announced it was renaming Friend in Debt as Lndr. This renaming occurred with input new team members, who had marketing and operational expertise as well as developer and technical expertise.

On November 24, 2017, Blockmason announced that CP token holders may now submit applications for priority support for development and launch of their UCACs/DApps. This created a way for prioritizing support to be provided by the Blockmason team members to BCPT holders/developers to develop and launch DApps built on CP. Around this time, Blockmason announced an email address, apps@blockmason.io, for those interested in partnering with Blockmason in developing and launching DApps built on CP, explaining that "we have dozens of potential apps" for developers to build and launch on top of CP.

On November 27, 2017, Blockmason announced its patent filing for CP.

3. Friend in Debt (Lndr) timeline as demonstration of broad potential for DApps on CP

From the time of its mid-August 2017 White Paper onward, Blockmason made widely known that it had developed a DApp built on CP as an example of what developers who own or hold stakes in BCPTs can build on CP and launch in interoperability with CP. This Blockmason-developed DApp was called Friend in Debt (FiD) from August to October 2017, and was renamed Lndr at the beginning of November 2017.

FiD was available in beta version on the Testnet beginning mid-August 2017 and continually through the ICO and thereafter. After the ICO, Blockmason continued to make announcements about FiD as an example of what developers could create after the deployment of CP to the Ethereum Mainnet on October 18, 2017. On October 27, 2017, Blockmason announced an Expo app version of FiD and provided a link for the BCPT community to download "fiddy-mobile," a mobile demonstration version of FiD. Blockmason conducted approximately five weeks of testing and refining the Testnet version of FiD (Lndr) after CP was deployed to the Ethereum Mainnet and then announced on November 29, 2017 that the UCAC for Lndr was successfully deployed to the Ethereum Mainnet. On that same date, Blockmason announced that it was inviting applications from the BCPT community to act as beta testers for Lndr. Throughout this time Blockmason regularly posted updates to describe the results of Lndr beta testing on Github.io, see, e.g., https://github.com/Blockmason/dev-updates/blob/master/2017-12-06.md

4. Evolution of CP-based development efforts toward public announcement

As a result of BlockMason successfully deploying CP to the Ethereum Mainnet immediately after the conclusion of the ICO, and explaining publicly and repeatedly the use of BCPTs for development and launch of DApps built on CP, Blockmason has been working effectively with developers who are using BCPTs for the intended and advertised CP product-use purpose. These relationships, like any technical development relationship, take time to form and mature. Recently one of these relationships was publicly announced, on December 14, by a Vancouver-based developer that is building a debt-tracking DApp for use in the health sector, based on CP. See: https://medium.com/@mycoralhealth/why-we-need-a-system-of-tracking-debts-in-healthcare-part-1-b19f8a88f6e8

This article is illustrative of how developers can build upon CP, and further illustrates the value and usefulness of CP tokens for those developers who choose to leverage the pre-existing functionality of CP in order to more quickly build DApps with the developers' preferred functionality interoperating with the foundational functionality of CP.

Because CP is open source software that has been available on the Ethereum Mainnet and Github.io, developers such as Coral Financial are able to evaluate CP and build upon it based on what is already available. In order to make it easier for developers to work with CP, BlockMason is developing more and better documentation than has previously existed, as part of its ongoing maintenance and support commitment for the CP product/network/service.

The mention of such further-developed documentation in Blockmason's application does not detract from the facts of what has been available to developers and others at and after the distribution of BCPTs on October 18, 2017.

5. White Paper dating: August 14 and 15, 2017

There are no identifiable differences between the Blockmason White Paper of August 14, 2017 referenced in my legal opinion letter of that same date, and the Blockmason White Paper dated August 15, 2017 that is available online. The date discrepancy appears to be the result of time zone differences: I finished my legal opinion letter and submitted it to the client on August 14, 2017 for publication on their website, shortly before departing from Boston on an inter-continental flight that evening. Blockmason, with personnel in East Asia where it was already August 15, 2017 at the time I reported, as well as personnel in other times zones, posted the Blockmason White Paper in the same form I had consulted on Google Docs on August 14, but did so at a time when the date had already advanced to August 15 in some of those time zones.

6. Summary as to usability of BCPTs

In sharp contrast to ICOs whose blockchain based design was still only an idea at the time of ICO, Blockmason's token sale occurred *after* the CP product/network/system was built and available in beta form for evaluation by prospective purchasers of product-use tokens that in fact enabled use of CP. The open source code of CP was also available for inspection before purchase of the associated product-use tokens. CP was operational on the Ethereum Testnet from August 14, 2017 onward, and became operational on the Ethereum Mainnet with two days

of the issuance of the BCPTs by Blockmason to the purchasers. Blockmason's demonstration DApp Lndr (formerly Friend in Debt) was likewise available in beta version on the Ethereum Testnet before and during the ICO, and its open source code was likewise available for inspection by potential purchasers of BCPTs.

Blockmason's marketing strategy conformed to the nature of its offering tokens that were actually usable as a prerequisite for use of the already-built CP product/network/system. Blockmason repeatedly and consistently informed potential purchasers that they should make their purchase decision based on their evaluation of Credit Protocol in its beta version and the beta version of the Lndr DApp built on it, as well as their open source code. Consistent with advice from legal counsel, Blockmason consistently and repeatedly informed potential purchasers that this was a product-use token and not an investment token, even going so far as to refuse the insistent requests by prospective purchasers to commit that the BCPT would be carried on exchanges. Blockmason followed advice of counsel to state consistently before and during the ICO that the company neither encouraged nor discouraged exchanges to make a market in BCPTs. This was in fact a significant damper on purchaser demand, as it had a naturally discouraging effect on those potential purchasers who were more interested in speculation than in product use, thus reducing the quantum of demand in the token sale. After the ICO was concluded, and some potential developers began to ask how to acquire BCPTs post-ICO, Blockmason did begin to actively cooperate with exchanges to list the BCPT – but this prospect was not touted during the ICO and thus did not shape purchaser expectations as to speculative vs. product-use evaluation of the tokens before and during the token sale. The most recent developments have remained consistent with Blockmason's product-use paradigm, as beta-testers among the BCPT community have been performing tests of the Lndr app in recent days before it becomes available to a more general public on app stores, and as developers such as Coral Financial are seeing the potential of CP as a foundation for useful DApps in various fields.

B. Analysis of December 11, 2017 SEC pronouncements with respect to the Blockmason ICO and BCPTs

The SEC's *In re Munchee Inc*. order of December 11, 2017 and the statement of SEC Chairman Jay Clayton on the same date provide additional elaboration of the factors considered and explained in the SEC's Section 21(a) report of July 25, 2017. These elaborations are summarized below, and then analyzed as an addendum to the undersigned's legal opinion letter of August 14, 2017 in regard to the Blockmason ICO.

1. Key passages in the *Munchee* order

The *Munchee* order's elements elaborating on the July 25, 2017 report consist primarily of two categories, namely, analysis of marketing efforts by Munchee that created or enhanced expectations of token purchasers that they would profit from the rise in value of the tokens caused by actions of the offeror, and (2) analysis of whether the token actually operated as a

means of purchasing a product or service as of the time of the ICO.

As to the first category, the following statements in the SEC order are most relevant:

Pages 1-2: “In connection with the offering, Munchee described the way in which MUN tokens would increase in value as a result of Munchee’s efforts and stated that MUN tokens would be traded on secondary markets.“ Also, the SEC found there was a “reasonable expectation of obtaining a future profit based upon Munchee’s efforts, including Munchee revising its app and creating the MUN ‘ecosystem’ using the proceeds from the sale of MUN tokens.”

Page 3, para. #5: The Munchee white paper described “the way in which MUN tokens would increase in value, and the ability for MUN token holders to trade MUN tokens on secondary markets.“

Para 12: “Munchee and its agents further emphasized that the company would run its business in ways that would cause MUN tokens to rise in value.” This paragraph also states that Munchee’s plan “could potentially increase the appreciation of the remaining MUN tokens” as Munchee took future actions to reduce the total supply in circulation.

Para 13: Munchee will ensure a secondary market and will make a market itself in MUN tokens to ensure liquidityn

Para 14: Munchee “primed purchasers’ reasonable expectations of profit through statements ...”

Para 17: Munchee “touted the opportunity to profit.”

Para 34: Investors’ expectations were “primed by Munchee’s marketing.”

The SEC found that marketing of the sort cited above can override the factor of a legitimate product-use token. Para 35 says that “even if MUN tokens had a practical use at the time of the offering, it would not preclude the token from being a security.”

As to the second category, the following excerpts from the SEC order are most relevant:

Para 7: The timetable for 2018 and 2019 for Munchee included “Development of a smart contract on the Ethereum blockchain to integrate ‘in-app’ use of the MUN token and setting up in-app wallets for end-users.”

Para 10: “no one was able to buy any good or service with MUN throughout the relevant period.”

Para 18: Munchee did not target users of Munchee's pre-existing off-blockchain food review app.

Para 20: Munchee advertised in countries where the Munchee app was not available and where Munchee had no plans to make it available in the future.

Para 24: Future profits depended on Munchee creating an "ecosystem" that did not yet exist.

Para 33: At the time of the offering and sale of MUN tokens, "no other person could make changes to the Munchee app or was working to create an ecosystem to create demand for MUN tokens."

A further relevant factor in the SEC order is that while Munchee said in its white paper that MUNs were "utility tokens" and that Munchee had done a "Howey analysis," nevertheless: "The MUN White Paper, however, did not set forth any such analysis."

Also, in para 22, the *Munchee* order found that "Munchee highlighted the credentials, abilities and management skills of its agents and employees. For example, in the MUN White Paper and elsewhere, Munchee highlighted that its founders had worked at prominent technology companies and highlighted their skills running businesses and creating software.

2. Supplement to Aug. 14, 2017 legal opinion in light of the *Munchee* order

Blockmason's marketing before and during its BCPT token sale of September-October 2017 was fundamentally different from Munchee's, in precisely the categories most emphasized in the SEC's order. Unlike Munchee, Blockmason had its blockchain, token-enabled Credit Protocol product/network/service developed and testable on a beta version basis, with inspectable open source code, before and during its token sale. Blockmason took consistent steps before and during its ICO, under close and continuing advice of counsel, to avoid raising purchaser expectations based on hope of profit from future entrepreneurial efforts of Blockmason.

Specifically , Blockmason did the following:

a. It repeatedly published and re-published advisory notices that its token was not for investment and that potential prospective purchasers of the token should make their decision based on their evaluation of Credit Orotocol, whose source code was available for inspection on Github.o and whose beta version was available for inspection and testing at a link prominently displayed in Blockmason's various online marketing materials.

b. In response to inquiries from prospective purchasers about exchanges where Blockmason's tokens were and would be listed, Blockmason consistently responded before and during the ICO

that it neither encouraged nor discouraged listing on exchanges. This response was a major damper on profit-seeking interest in the token, and was in marked contrast to other ICOs including but by no means limited to Munchees.

c. As to the existence of the Blockmason CP product and its own DApp built on CP, see section A(2)-(3) above.

d. There is an additional aspect of the *Munchee* order, beyond the paragraphs called out in the request for a response, which deserves analysis with respect to the Blockmason ICO. In para 18, the SEC found it relevant that Munchee had promoted its token offering in forums such as BitcoinTalk.org, "a message board where people discuss investing in digital assets," which moreover was available to viewers worldwide while Munchee's food review app was only available in the United States.

From the perspective of the Blockmason sale of BCPTs, there was, to be sure, marketing in channels such as BitcoinTalk.org, but for reasons related to use of the CP product. Many channels such as BitcoinTalk include talk about blockchain development as well as investment in digital assets. For a company such as Blockmason that has developed a blockchain-based product, network and/or service, it is precisely channels such as BitcoinTalk where it is easiest, most efficient and most cost-effective to reach a target audience that includes blockchain developers, hobbyists and others who are interested learning about and experimenting with a novel blockchain-related innovation. Indeed, crypto enthusiasts have been focused for some time on the possibility of recording and settling debts on blockchain, and democratizing money creation. The most promising forums for getting people interested in using CP and developing on it therefore included crypto-asset-focused channels, much more than the established marketing channels in the financial, banking, Venmo, credit card, and such sectors.

3. Relevant aspects of the SEC Chairman's statement of December 11, 2017

SEC Chairman Jay Clayton's "Statement on Cryptocurrencies and Initial Coin Offerings," of December 11, 2017, contains several points that differ from or add significantly to the SEC's Section 21(a) report of July 25, 2017.

Preliminarily, it is noteworthy that Clayton's December 11, 2017 statement is quite different, and much more nuanced, than his November 8, 2017 statement that he had yet to see an ICO token that did not bear of the hallmarks of a security. His most recent statement refers to, endorses and calls for close analysis of the SEC's July 25, 2017 report. Like that report, Clayton now expressly acknowledges that some ICO tokens may not be securities, while others clearly are.

Significant points include:

a. Clayton recognizes that initial coin offerings, whether they are offerings of securities or not, "can be effective ways for entrepreneurs and others to raise funding, including for innovative projects." This is a significant policy statement relevant both to the willingness of the SEC to examine registration statements for future public token offerings and to work with offerors to allow registration – an unfamiliar type of general solicitation for the SEC to accept for registration – and to the willingness of the SEC to look with an open mind at the possibility that some tokens offered in ICOs are not securities.

b. He says that simply calling a token a "utility token" or designing it so that it has some utility does not prevent the token from being a security.

c. He gives an example of a type of token that may well not be a security: "For example, a token that represents a participation interest in a book-of-the-month club may not implicate our securities laws, and may well be an efficient way for the club's operators to fund the future acquisition of books and facilitate the distribution of those books to token holders."

d. He follows immediately with a counter-example of a token that is a security: "In contrast, many token offerings appear to have gone beyond this construct and are more analogous to interests in a yet-to-be-built publishing house with the authors, books and distribution networks all to come."

e. He raises a concern about ICO marketing efforts that is identical to the concern repeatedly expressed in the SEC's *Munchee* order: "It is especially troubling when the promoters of these offerings emphasize the secondary market trading potential of these tokens. Prospective purchasers are being sold on the potential for tokens to increase in value – with the ability to lock in those increases by reselling the tokens on a secondary market – or to otherwise profit from the tokens based on the efforts of others. These are key hallmarks of a security and a securities offering."

4. The Blockmason ICO in reference to the SEC Chairman's statement, in supplement to the legal opinion letter of August 14, 2017

Chairman Clayton's examples of security token and non-security token track remarkably closely with the advice rendered to Blockmason as reflected in the legal opinion letter and the overall structure of Blockmason's product, token and ICO. Namely, Blockmason received legal advice deeming it essential that Blockmason have a developed system, service or product that could be evaluated by its open source code and available beta versions, so that purchase decisions could be shaped by marketing efforts focused on interest in using and developing that system, service and product through the acquisition of tokens essential to those functions. In this way, Blockmason was offering a token that was more equivalent to a participation interest in an

already designed and built system, like a license to use software or a service, or a right to use a product, than to like a security.

C. Discussion of Specific Sections of Blockmason White Paper

The following sections address your inquiry about various parts of the Blockmason White Paper:

1. Bounty program. The bounty program is designed to incentivize the major intended use of BCPTs, namely to incentivize developers (ranging from individual techno-hobbyists and entrepreneurs to larger enterprises) to develop DApps on top of CP. Such persons will experience benefit and value from holding BCPTs as a function of their own development and marketing ability. The bounty program exists in two forms: One, a reward for creating UCACs. Developers who create UCACs and share them with Blockmason and the public will be rewarded with ETH, namely some part of the ICO sales revenue as stated in the White Paper. Second, as a reward for enhancing security, in a manner standard within the software industry, Blockmason will reward those who find significant bugs in Blockmason's software and thus enable resolution of such bugs before bad actors can find and exploit them. This is an important aspect of any software company making sure its users have a secure, safe and overall good experience.

2. Support. This section promises typical maintenance and support that is provided by vendors/licensors of software-based systems. In fact since their September-October 2017 ICO, Blockmason has added staff to provide support, improve CP documentation, respond to bug reports and inquiries, and in short, perform the steps that any responsible and successful provider of an already-developed software-based product like CP would typically undertake to perform in the market.

3. Off-chain transactions. This section recognizes the inherent limitations for transaction throughput capacity in the Ethereum network, acknowledges that the Plasma and Raiden Network initiatives may solve or mitigate congestion problems in the future, and commits to develop a Blockmason-initiated solution (off-chain or side-chain) if others do not solve the problem. This section gives assurance to purchasers of BCPTs that the product they are purchasing the right to use, namely Credit Protocol, will remain a useful product over the long term, unimpaired by congestion issues such as those that have become widely apparent in recent weeks as a result of Cryptokitties.

4. Transaction capacity setting. This section also results from the inherent throughput capacity limitations of the Ethereum network. Like the previous section about off-chain transactions, it gives assurance to purchasers that the credit protocol system they are purchasing the right to use

will continue to handle at least the number of transactions/time that they are expecting based on the number of their BCPT purchases.

5. Future versions. This section describes additional functionality to be provided by Blockmason for its Friend in Debt (now called Lndr) DApp over time. Like Lndr itself, these additional functions are described as an example of what can be accomplished by building upon the already-existing CP product. Holders of BCPTs, i.e. users of the CP system, are not dependent on Blockmason's future managerial or entrepreneurial efforts to develop further features of Lndr; they are able to use CP and build Dapps on top of it whether or not Blockmason further develops Lndr. Of course Blockmason is in fact further developing Lndr, as a model and showcase to developers of all sorts, to show the potential for building new DApps on top of CP.

The Lndr UCAC and Lndr mobile app will be documented significantly for this purpose. Mobile libraries have been developed and are in the process of being documented that simplify the process of building mobile apps for CP by developers.

6. Developers' token pool. This pool consists of 20 percent of the total supply of BCPTs, dedicated to seeding (providing tokens necessary for) the operation of new UCACs for new DApps. Again, the section emphasizes the primary use of BCPTs, namely the enablement of UCACs and DApps built on CP.

7. Use of funds and roadmap. This section describes the progressive development of further features for Lndr (Friend in Debt) amd the issuance of further support documentation for Credit Protocol, as well as deployment guides and examples of UCACs to inspire BCPT-holding developers to create new DApps based on CP. An examination of this section discloses that the new functionality and versions that are described apply to Lndr not CP itself, precisely because CP was already developed by the time of the ICO and thus BCPTs were fully usable for their intended function from the time they were first issued to purchasers.

8. Team Profile and Consultants

This section focuses primarily on those qualifications of the three Blockmason founders most relevant to their ability to design, build, support and maintain a software-based system for credit-debt recordation on the blockchain such as CP: (a) Timothy Galebach, with his "particular focus on data-driven ventures and automated infrastructure, degree in Computer Science from Harvard, work with a variety of companies in CTO roles, and primary focus on making large amounts of data visualizable and actionable" and "eliminating cost centers through aggressive optimization and automated data orchestration"; (b) Jared Bowie, who has been "designing systems to coordinate distributed databases and peer to peer networks for more than 10 years," with experience with multiple altcoin mining operations… and interest in the convergence of big data and display advertising, together with experience writing specialized software and proprietary algorithms; and (c) Michael Chin, who "has spent his entire career in the credit industry" and

thus had the necessary specialized knowledge in the field of credit-debt formation and recordation.

To be sure, the founders' profiles secondarily mention more general business experience, which is also relevant to purchasers of a software-based product and service, who naturally want to know if those running the provider company have the ability to maintain and support the product or service for which they are purchasing rights to use.

There is nothing in the above eight sections that is rendered suspect or vulnerable by the SEC *Munchee* order or SEC Chairman's statement of December 11, 2017. There is nothing directed at raising purchaser expectations of profiting as an investment. The material is overwhelmingly directed at providing a clear, precise, and accurate understanding to potential purchasers of the value of BCPTs for their intended purpose of enabling use of CP and building of DApps on top of CP.

Throughout these sections, throughout the Blockmason White Paper, and throughout the Blockmason ICO, what consistently distinguished Blockmason from the ICOs that the SEC has ruled against and that Chairman Clayton has inveighed against, is that Blockmason had an already-developed software-based product in the form of CP and was therefore able to sell tokens that actually represented, immediately and not in the distant hoped-for future, a participation interest in using and building upon a real product, namely CP.

D. Concluding Observations

One significant aspect of both the SEC's *Munchee* order and the SEC Chairman's statement is that neither of them expressly focuses on the balance that must inevitably be struck between two factors omnipresent in all ICOs: on the one hand, a product-use token for an already developed, testable and usable system, service or product will yield value and profit to those who use the token for its properly advertised purpose; on the other hand, there will always be persons who purchase some of the tokens desiring to make a profit from the future efforts of the offeror and the overall success of its product or network or service over time. As discussed in my legal opinion letter of August 14, 2017, the lower federal courts have adopted various formulations of a comparative test in the course of deciding whether the predominant market demand factor created by the offeror's marketing efforts is profit from the efforts of others or some other value. Meanwhile, during the decades since the *Howey* decision in 1946, the Supreme Court has faced half a dozen opportunities to water down the test from requiring profit expectations based "solely" on the efforts of others, and has explicitly declined to decide whether or not to relax that strict standard.

Ambiguities in the SEC *Munchee* order and the SEC Chairman's statement leave open the theoretical possibility that they could find any and every ICO token to be a security based on the mere fact that some purchasers bought tokens expecting to profit from a rise in the token value over time. If the SEC were to take such an extreme position, it would create severe tension with

Supreme Court precedent and invite a test case. If the test case were to involve a product-use token for a product actually developed, in existence, and subject to evaluation by purchasers considering whether to purchase tokens in order to use the product, the SEC would be in violation of the standard stated in the Supreme Court's 1975 *Forman* decision. But in light of Chairman Clayton's example of a non-security token, and the statements and actions of SEC staff over the past five months considered as a whole, the SEC is unlikely to issue a blanket ukase against ICOs or take a position in a true product-use token case that would set them at odds with the *Forman* opinion.

In sum, the conclusion in my legal opinion letter of August 14, 2017, that the Blockmason ICO of September-October 2017 was in compliance with the U.S. securities laws and that the BCPT token is not a security, remains the same bottom line conclusion in light of the subsequent pronouncements of the SEC discussed above.