Simple agreement for future tokens

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The SAFT is an investment contract under which the investor pays now for tokens to be delivered when the network launches. In FINMA's view a SAFT is itself a security if standardised and offered to many, because it embodies a claim against the issuer for delivery. In Singapore the same conclusion follows under the SFA where the right to receive tokens is a debenture or an investment contract in substance.[1] The drafting therefore keeps the SAFT within an exemption (professional investors, limited number) and addresses the three contingencies that matter: the network does not launch, the tokens that launch differ from those described, or the regulatory classification at launch differs from the one assumed.

> **Investment.** The Investor pays the Purchase Amount to the Company on signing. In consideration, the Company shall deliver to the Investor the number of Tokens calculated under clause [x] at the Token Delivery Date.

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Calculation. The number of Tokens is the Purchase Amount divided by the Discount Price, where the Discount Price is [the lowest price per Token at which Tokens are sold to the public in the Network Launch, less [20] per cent] [a fixed price of [amount]].

Token Delivery Date. The Token Delivery Date is the date on which the Network is live and Tokens are transferable on it, as certified by the Company. If the Token Delivery Date has not occurred by [the Long-Stop Date], the Investor may by notice require the Company to repay [the Purchase Amount] [the Purchase Amount less documented development costs incurred] [nothing] within [sixty] days.

Changed tokens. If the Tokens at launch differ materially from the description in Schedule 2, the Company shall notify the Investor, who may within [thirty] days elect to receive the Tokens as launched or to be repaid [the Purchase Amount].

Regulatory. If at the Token Delivery Date delivery to the Investor would require a registration, prospectus, licence or approval that the Company does not hold, the Company may defer delivery until the requirement is satisfied or waived, for up to [twelve] months, and thereafter the Investor may elect repayment under clause [x].

Status. The Investor acknowledges that this Agreement may constitute a security under applicable law, that it is offered only to [professional clients / accredited investors] in reliance on exemptions from prospectus requirements, and that it may not be transferred without the Company's consent.

Foundation. Where Tokens are to be issued by a foundation or other entity other than the Company, the Company procures delivery by that entity and remains liable to the Investor for its failure.

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The repayment option is the clause over which SAFT negotiations stall. Investors want their money back if the network fails, while founders point out that the money has been spent on development. The compromise that works in most Zug deals is repayment of the balance of unspent proceeds, with an obligation on the company to report spending quarterly. No repayment is owed where the failure is caused by a regulatory event that neither side controlled.

Notes

1. FINMA ICO Guidelines of 16 February 2018, section 3.2.2 (pre-financing and pre-sale); MAS, A Guide to Digital Token Offerings, case study on pre-sales; see Part D, Chapter V and Part P, Chapter V. ↩

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