



# Legal Opinion: BeatBind ICO

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# 1. Introduction, Background, and Nature of Blockchain Tokens

Initial Coin Offering (ICO) represents a capital-raising process in the blockchain environment, otherwise engaging in the offer, sale, or distribution of digital assets when the interests of both parties are aligned. ICO stands out to be a modern way of crowdfunding, which allows blockchain start-up projects to develop financially. Funds generated from the purchasers obtain tokens which depending on the ICO project peculiarities, may be utilized in numerous manners.

With multiple characteristics, blockchain tokens may be used for various purposes. Mainly, the tokens are representations of an asset or utility in the blockchain. Tokens should not be confused with cryptocurrencies. The tokens are modifications of existing cryptocurrencies. These kinds of tokens can be exploited as digital currencies that may be exchanged both within a certain blockchain platform and beyond it.

Depending on the features of the token, issuing and selling of the token may fall under certain legal regulations. For example, issuing a security token falls under US securities laws as this specific kind of token falls into the definition of security instrument, while a token created for utility or payment purposes does not fall under the legal ordinance.

Competent governmental organizations around the globe, such as SEC (Security and Exchange Commission), ECB (European Central Bank), CFTC (Commodity Futures Trading Commission), etc. present a wide range of regulations concerning security instruments. Taking into consideration the analysis of the present-day case law, practice study, as well as excessive data gained from the behavior study of the ICOs around the globe, it is concluded that adequately outlined tokens may not constitute risks of being admitted as an investment instrument and thereby fall out of the scope of security regulations.

Hence, in the legal opinion provided below, we intend to focus on the United States security law and review the regulatory regime suggested by the jurisdiction.

The legal note aims to scrutinize the threats regarding a token issued by BeatBind of being recognized as an investment instrument (hereinafter referred as “BBND Token” or “Token”)



## 2. SEC Security Law framework for Blockchain Tokens

The U.S. The Securities and Exchange Commission has declared in its case law that “*the reach of the Securities Act does not stop with obvious and commonplace. The novel, uncommon, or regular devices, whatever they appear to be, are also reached if it is proved as a matter of fact that they were widely offered or dealt in under terms or courses of dealing with established their character in commerce as “investment contract”, or any interest or instruments commonly knowns as security.*” (SEC v C>M Joiner Leasing Corp., 320 U.S.. 344,351(1943))

The term "security" includes an "investment contract," as well as other instruments such as stocks, bonds, and transferable shares. The digital asset should be analyzed to determine whether it has the characteristics of any product that meets the definition of "security" under the U.S. federal securities laws.

The SEC proclaims that any new forms of investments, such as the ones made through smart contracts or blockchain technologies fall under the scope of U.S. Securities Law. The key here, as outlined by the SEC in the Framework for “Investment Contract” Analysis for Digital Assets, is whether a Token is an “investment contract,” which is included in the statutory definition of a security. Depending on the nature of the digital asset, including what rights it purports to convey and how it is offered and sold, it may fall within the definition of a security under the U.S. federal securities laws.

Thus, the subject of this analysis is to determine whether BBND Token meets the definition of security under the provisions of U.S. security laws.

## 3. BBND Token White Paper Investigation in Light of Security Law

For purposes of this paper, we have carefully examined the White Paper (WP) of the BeatBind ICO project and endorsed the following terms.

BeatBind aims to become the platform for music event organizations, with BBND being the cryptocurrency token used for all its transactions.

As WP claims, a new free-market like this will encompass the creation of events of every kind, from concerts and festivals to exclusive private parties. As the Platform scales, barriers of entry will be lowered



significantly for all parties. And finally, BBND as the official token will capture a good part of that new value, which will be created for the first time in the world on BeatBind.

According to WP, the platform consists of 4 main characteristics: **1) BeatBidder** - A platform for connecting venues, DJs, artists, and all other parties involved in the music event organization process; **2) BeatBuy** - designed for seamless ticketing; **3) BeatX** - App giving fans the impact they need to shape the event they're attending, and event-oriented experiences like dating; and **4) BeatAI** - Providing revenue projections and other heuristics that helps all platform users to decide whom to hire, where to perform, etc.

The roles on the platform are designed to *“allow all participants in the event organization ecosystem to efficiently connect and interact. The platform aims to capitalize on the high demand for the best artists, organizers, and venues and raise their rates significantly using various auction models. BeatBind will give rising artists more opportunities both locally and globally. Furthermore, fans will be able to directly purchase tickets from organizers of all events created on BeatBind, preventing fraud, forgery, and ticket scalping.”*

BeatBind combines *“both bleeding-edge and battle-tested technologies to bring superior performance and flexibility to every part of its ecosystem.”*

BBND will be implemented as an ERC20 Standard token on the Ethereum blockchain network and enjoy the full security of its blockchain.

The founders underline that this gives all the transactions on the BeatBind Platform security, transparency, and immutability, as every transaction on the blockchain is permanent, and no single party has the authority to change history, every transaction on the blockchain is secured by cutting-edge cryptographic protocols and the transactions on the blockchain is accessible and verifiable by anyone:

*“BeatX will extract all the necessary data while interacting with our Smart Contracts on Ethereum, so anyone can confirm that every bid or Platform transaction is transparent and immutable.”*

Another tool on the platform is **BeatBidder Engine** - a *“custom bidding engine for open English auctions, specially designed for the needs of the music events ecosystem.”*



The auction platform suggests different kinds of negotiation forms:

1. **Fixed price offers;**
2. **Open English auction;**
3. **Sealed Dutch auction**

The creators of the platform mention that *“All three negotiation forms that our technology offers are there to help utilize every ounce of potential available on the market to create value. The clients will be able to freely alternate between auction types as they are introduced onto the platform.”*

## 4. BBND Token - A.K.A Token For Music Events

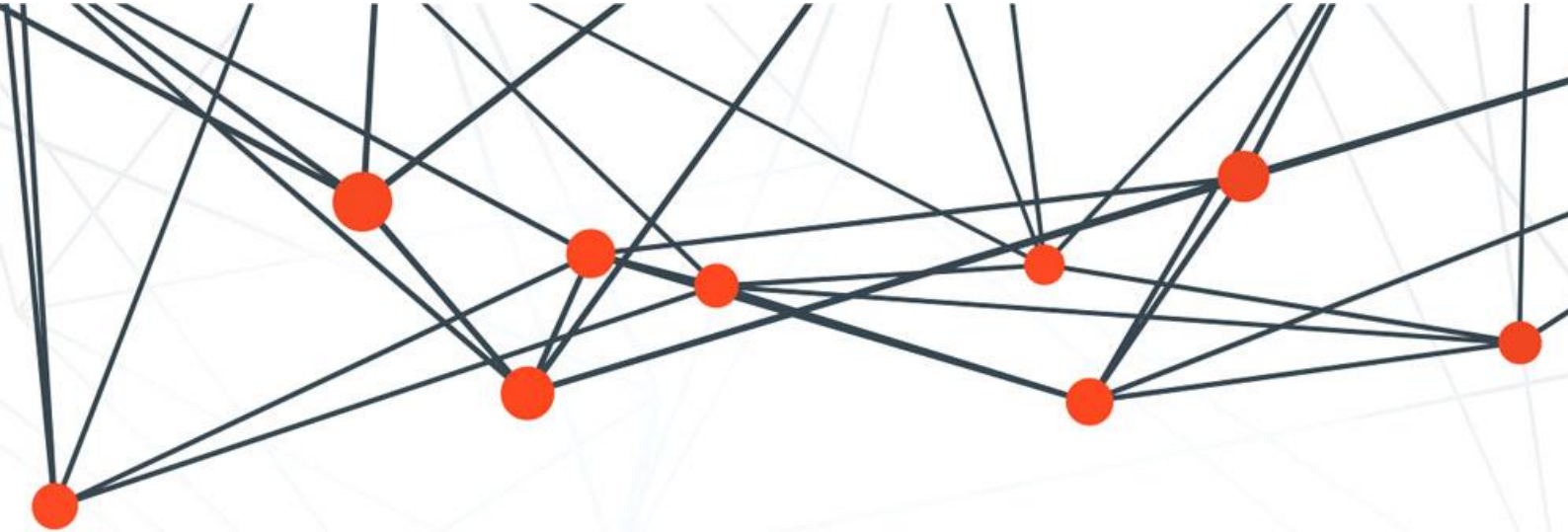
The concept of the BBND Token is interlocked in the WP, according to which, *“ the BeatBind token (BBND) is a utility token and the medium of exchange for all transactions on the BeatBind platform. It will also aim to unify all payment mechanisms in music events”*.

BBND token will be offered to the public in an IEO in Q2 2021

Furthermore, the creators of the BBND Token pursue to list the token on open exchanges and provide liquidity outside the BeatBind platform, so that it can be exchanged with different assets such as Bitcoin and USD.

*“While the dynamics of financial markets is a very complex and often unpredictable phenomenon, BeatBind will do its best to enforce mechanisms that will aim to translate rising demand on the Platform itself into positive price changes of BBND.”*

It is not expected that BBND Token will be a widely accepted payment method for everyday necessities (buying food and groceries, paying mortgage and rent, etc.). This may be a factor as far as earning one's livelihood on BeatBind is concerned.



According to the WP, BeatBind Token will split into Crowdsale Proceeds, BeatBind Platform, Core Team, Early Adopter Bonuses, Crowdsale Bounties, and advisors.

Therefore in addition to BBND, founders aim to allow fiat payment on the platform, “*as such a thing is necessary to make the Platform appeal to as broad an audience as possible*”.

At the same time, using fiat won't let customers participate in the growth of the BeatBind Platform like the BBND token will do.

To sum up, an in-depth investigation of the White Paper has not disclosed that BeatBind founders offer any allocation of assets or dividends gained through the use of the Platform. Therefore, no form of the return of investments has been revealed.

As it was stated in the WP, the BBND Token may be sold on a cryptocurrency exchange market in the future.

#### **4.1. Howey Test**

The U.S. Supreme Court's Howey case and subsequent case law have found that an "investment contract" exists when there is the investment of money in a common enterprise with a reasonable expectation of profits to be derived from the efforts of others.

The so-called "Howey test" applies to any contract, scheme, or transaction, regardless of whether it has any of the characteristics of typical securities. Whether a contract, scheme, or transaction is an investment contract is a matter of federal, not state, law and does not turn on whether there is a formal contract between parties.

Rather, under the Howey test, "form [is] disregarded for substance and the emphasis [is] on economic reality." (*Howey*, 328 U.S. at 298.) The Supreme Court has further explained that that the term security "embodies a flexible rather than a static principle" to meet the "variable schemes devised by those who seek the use of the money of others on the promise of profits." (*Id.* at 299).

The Court has expanded over “investment contract” within the definition of a security, giving it “*more variable character*” that might be considered a form of “a contract, transaction, or scheme, whereby an investor lays out money in a way intended to secure income or profit from its employment.” (*Howey*, 328 U.S. at 298)

More precisely, the Supreme Court concluded that the agreement between the promoter and the investors constitutes an investment contract and the court hereby clarified the definition of security transaction: “*a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the effort of the promoter or a third party.*”



The focus of the Howey analysis is not only on the form and terms of the instrument itself but also on the circumstances surrounding the digital asset and how it is offered, sold, or resold (secondary market sales).

Therefore, issuers and other persons and entities engaged in the marketing, offer, sale, resale, or distribution of any digital asset will need to analyze the relevant transactions to determine if the federal securities laws apply.

## 5. Application of Howey Test

As noted above, under the *Howey* test, an "investment contract" exists when there is the investment of money in a common enterprise with a reasonable expectation of profits to be derived from the efforts of others. Whether an investment contract faces the *Howey* test depends on the specific facts and circumstances. We address each of the elements of the *Howey* test below.

### A. The Investment of Money

The first prong of the *Howey* test is typically satisfied when it comes to tokens. Digital assets are purchased or otherwise acquired in exchange for value, whether in the form of real (or fiat) currency, another digital asset, or another type of consideration.

### B. Common Enterprise

Courts generally have analyzed a "common enterprise" as a distinct element of an investment contract. To satisfy the "common enterprise" aspect of the *Howey* test, federal courts require that there be either "horizontal commonality" or "vertical commonality." (*Revak v. SEC Realty Corp.*, 18 F.3d. 81, 87-88 (2d Cir. 1994) In evaluating digital assets, it is found that a "common enterprise" typically exists.

The horizontal commonality is discussed as "the tying of each investor's fortunes to the fortunes of the other investors by the pooling of assets, usually combined with the pro-rata distribution of profits" while vertical commonality focuses "on the relationship between the promoter and the body of investors".

It is worth mentioning that SEC "does not require vertical or horizontal commonality *per se*, nor does it view a "common enterprise" as a distinct element of the term "investment contract."

### C. The expectation of Profits Derived from Efforts of Others

The third element of the *Howey* test is a "reasonable expectation of profit derived from the entrepreneurial or managerial efforts of others". A purchaser may expect to gain a return through participating in distributions or through other activities of realizing appreciation on the asset, such as selling again in a secondary market.



*“When a promoter, sponsor, or another third party (or affiliated group of third parties) (each, an "Active Participant" or "AP") provides essential managerial efforts that affect the success of the enterprise, and investors reasonably expect to derive profit from those efforts, then this prong of the test is met. “ (SEC, Framework for “Investment Contract” Analysis of Digital Assets)*

While analyzing this element, the courts take into consideration two things: 1) whether potential investors are determined and expecting to gain profits based on their efforts suggested by promoters or 2) or from the managerial efforts of the ICO promoters/creators.

## 6. Examination of BBND Token Under the Howey Test

The definition of securities under U.S. law is very broad. SEC stated that when purchasers buy ICO directly from the issuer, it creates an Investment Contract, which falls under the definition of Securities.

However, the Blockchain Token can be a non-security.

In the following paragraphs, we will examine BBND Token, based on the Howey test.

### 1. Investment of Money

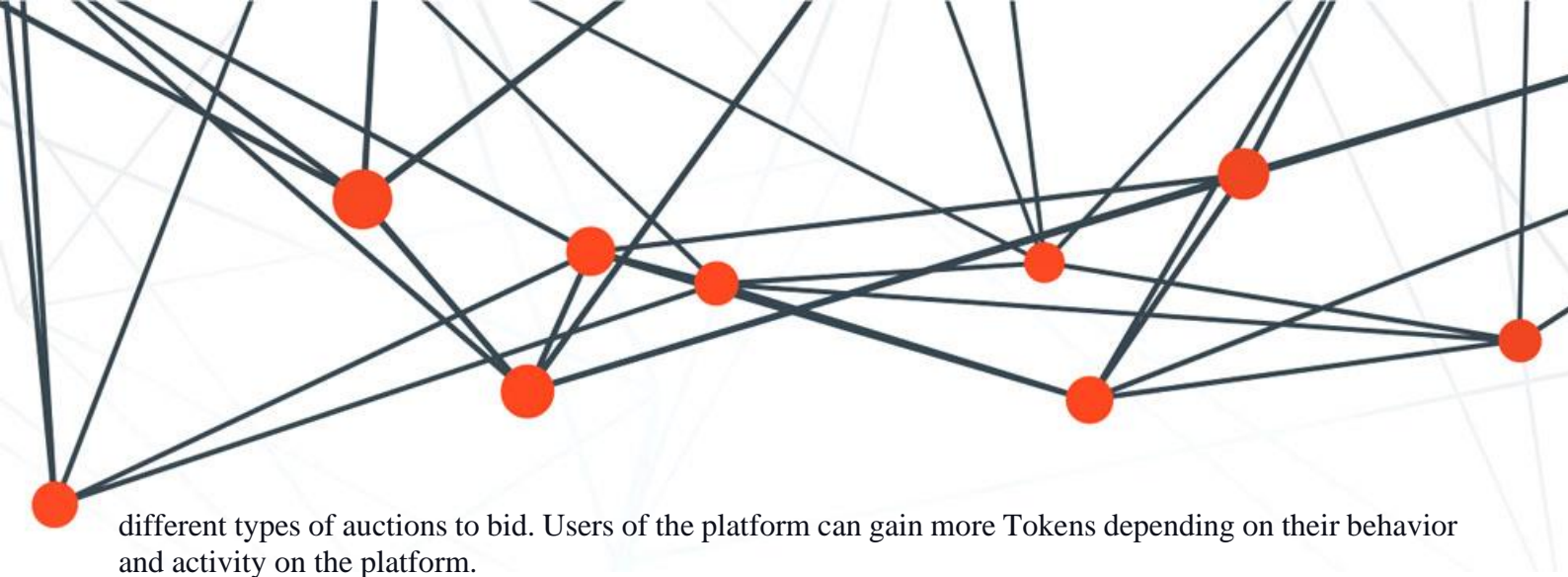
BBND Token satisfies the established criteria for the first prong of the Howey Test since the token promoters use the crowd sale technique which itself means an investment of money.

### 2. Common Enterprise

Under most auspicious circumstances, BBND is not a common enterprise. While the future of BeatBind business and the results of operations depend in significant part upon the continued contributions of the founders, it can not be proclaimed that the profits of BBND Token holders rely on or affect the profits of the other holder.

The BBND Token will have a crowd-sale, which means that with this method of funding a project, the token buyer has the right to participate in an idea being funded by the sale. The tokens are granted equal rights, which may be used in different manners. For example, every buyer has a right to choose between





different types of auctions to bid. Users of the platform can gain more Tokens depending on their behavior and activity on the platform.

Consequently, those token holders, who actively participate in auctions and put the effort into the development of the platform, gain more than those who hold the digital assets passively.

Therefore, there are no signs of common enterprise in light of the horizontal approach.

WE also believe that the vertical approach can be applied to the BeatBind ICO project.

The successful development of the BeatBind platform will positively affect the token holders. However, it does not directly underline that token's price and hereby the profits of the token holders will rise consequently with the effective managerial actions of the platform and BBND ICO founders.

Hence, the second prong of the test is more likely not to be faced.

### **3. Expectation of Profits**

BeatBind ICO does not give its token holders the expectations of gaining profits solely on the possession of the BBND Tokens. On one hand, the token holders will have an opportunity to benefit from selling the tokens on an exchange market (like exchanging them into different assets such as Bitcoin and USD.)

However according to the White Paper, the BBND Token aims to create a universal payment solution for the music industry, so it can not be declared that BBND Tokens may be purchased for speculation purposes.

*“While the dynamics of financial markets are a very complex and often unpredictable phenomenon, BeatBind will do its best to enforce mechanisms that will aim to translate rising demand on the Platform itself into positive price changes of BBND“*

Herby, the platform will allow fiat payments as well. as such a thing is necessary to make the Platform appeal to as broad an audience as possible. Fiat currency does provide stability in the eye of platform founders, but it comes at the cost of longer processing time, significantly higher, and more numerous fees.

Finally, using fiat won't let customers participate in the growth of the BeatBind Platform like BBND token will. Which can be declared as a privilege, but not a direct profit for the token users.

Consequently, we do believe that BBND Token does not satisfy this element of the test as well.

### **4. Solely from the Efforts of Others**

Even though the term “Solely” is not widely used for defining the prong of the effort of others, we do believe that it will be suitable to pay attention to it for the analyses.



The entrepreneurial endeavors of BBND Tokens and the platform itself are established on blockchain technology. However, the founders of the BBND Token aim to create liquidity of the tokens outside of the blockchain as well (opportunity to exchange tokens into USD), which makes the Token partly dependent on the effort of the platform managers.

Hence, if we focus on the above-mentioned logic, the last but not the least prong of the Howey test will be partly satisfied.

## 7. Summary and Conclusion

In conclusion, the Howey Test is satisfied based on our research, which we opine that the BBND Token is not considered a security instrument under the U.S. Federal security laws. The BBND Token has a utility value based on the participation of others.

### Important Notice:

The analysis suggested above is based on the information gathered from the BeatBind ICO Project White Paper, the website of the platform <https://beatbind.io/> and the representatives of the platform. Herein, no guarantees or warrants can be issued regarding the future treatment of BBND Tokens. The analysis has no legal binding power and SEC, as well as other competent state authorities, may reach a different conclusion depending on their jurisdiction.



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