Simple agreement for future tokens (SAFT)

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Le SAFT est un contrat d'investissement par lequel l'investisseur paie aujourd'hui des jetons qui lui seront livrés au lancement du réseau. Selon la FINMA, un SAFT standardisé et offert à un grand nombre de personnes est lui-même une valeur mobilière, car il incorpore une créance en livraison contre l'émetteur. À Singapour, la même conclusion s'impose au regard du SFA lorsque le droit de recevoir des jetons constitue en substance une debenture ou un investment contract.[1] La rédaction maintient donc le SAFT dans le cadre d'une exemption (investisseurs professionnels, nombre limité) et traite les trois éventualités qui comptent : le réseau n'est pas lancé, les jetons lancés diffèrent de ceux décrits, ou la qualification réglementaire au lancement diffère de celle qui avait été retenue.

> **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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L'option de remboursement est la clause sur laquelle les négociations de SAFT achoppent. Les investisseurs veulent récupérer leur argent si le réseau échoue, tandis que les fondateurs font valoir que l'argent a été dépensé pour le développement. Le compromis qui fonctionne dans la plupart des opérations zougoises est le remboursement du solde du produit non dépensé, assorti d'une obligation pour la société de rendre compte trimestriellement de ses dépenses. Aucun remboursement n'est dû lorsque l'échec est causé par un événement réglementaire qu'aucune des parties ne maîtrisait.

Notes

1. Guide pratique ICO de la FINMA du 16 février 2018, section 3.2.2 (préfinancement et prévente) ; MAS, A Guide to Digital Token Offerings, étude de cas sur les préventes ; voir Partie D, chapitre V, et Partie P, chapitre V. ↩

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