

May 21st, 2025

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File No. 0291285.0001

Attention: Atul Prakash Khekade

Dear Mr. Khekade,

**Re: Analysis of the XDC Network Token (the “XDC Token” or the “Token”) under
Applicable Securities Laws**

I. INTRODUCTION

TradeFintech Tech Ltd. (the “**Company**”) has engaged Miller Thomson LLP for the purpose of providing a factual and legal analysis (the “**Opinion**”) of whether the XDC Token would be considered a security under securities laws and regulations in the Province of Alberta (the “**Applicable Securities Laws**”).

The legal analysis and conclusions set out herein do not guarantee a particular outcome under the Applicable Securities Laws. The Alberta Securities Commission (the “**ASC**”) and any other securities regulator forming the Canadian Securities Administrators (the “**CSA**”), a court or a crypto asset trading platform may reach alternative conclusions to those contained in this Opinion.

Nothing in this Opinion is intended to create a solicitor-client relationship with any crypto asset trading platform, purchasers or holders of XDC Tokens (“**Token Holders**”) or users of the XDC Network (as defined below). Token Holders and users of the XDC Network should seek independent legal counsel concerning the implications of being Token Holders or their interactions with the XDC Network.

This Opinion has been prepared for the Company and may be submitted to Canadian crypto asset trading platforms in connection with the listing and issuance of XDC Tokens thereon. No other party is permitted to rely on this Opinion or the analysis set forth herein. If the Company shares this Opinion with any other party, the Company risks waiving and losing its attorney-client privilege.

II. SCOPE OF LEGAL ASSESSMENT AND MATERIALS EXAMINED

In connection with this Opinion, we have examined only the following materials provided to us by the Company (the “**Materials**”):

1. Business Whitepaper Version 1.2 dated March 2021 (the “**Business White Paper**”) a document prepared by the Company which includes a description of the XDC Network’s ecosystem. The Business White Paper is made available at URL: <https://xinfin.org/docs/whitepaper-business.pdf>.
2. XDC Consensus Algorithm White Paper (Updated) dated May 4, 2021 (the “**Technical White Paper**”), a document prepared by the Company which includes a description of the architectural design of the XDC Network. The Technical White Paper is made available at URL: <https://xinfin.org/docs/whitepaper-tech.pdf>.
3. XDC press release titled “Xin Fin Comes Around with Prominent Changes With Mainnet Launch” dated May 28, 2019 (the “**Launch Press Release**”). The Launch Press Release is made available at URL: <https://medium.com/xinfin/xinfin-comes-around-with-prominent-changes-with-mainnet-launch-dd7458eeb74a>.
4. The XDC Network website at URL: <https://xinfin.org/>.
5. Other information provided to us directly by the Company regarding the XDC Network and XDC Token.

This Opinion is based solely on the information set forth above. We have not conducted an independent verification, factual investigation or review of the facts set forth in the Materials. This Opinion is subject to change in the event that there are any characteristics of the XDC Token apart from those referenced in the Materials.

Our analysis is predicated on the assumptions which are set out in Article V below. We do not warrant or guarantee the correctness of any facts assumed in this Opinion. If the information provided to us is incomplete or incorrect, any such deficiency may have a material impact on our legal analysis set out herein. Please promptly notify us if there is any additional or differing information regarding the XDC Token that would merit our review.

Applicable Securities Laws in respect of crypto assets are rapidly evolving. This Opinion is given only as to the circumstances existing and known to us as of the date hereof and certain assumptions which are set out in Article V below, and is limited to the application of the Applicable Securities Laws in effect on the date hereof and does not consider the laws and regulations of any foreign jurisdiction. We will not inform you of any changes in the Applicable Securities Laws that may affect the analysis set out herein. It is possible the ASC, any other securities regulator forming part of the CSA or a crypto asset trading platform may disagree with this Opinion.

III. OPINION

Due to the rapidly evolving nature of Applicable Securities Laws as they relate to the creation and sale of crypto assets, we are unable to express a definite opinion as to whether the XDC Token is or is not a “security”. However, based on our legal analysis and our review of the Materials as set out herein and in reliance on the assumptions set out herein, it is our view that the XDC Token would likely not be considered a security by the ASC under Applicable Securities Laws.



IV. RELEVANT FACTS

The facts set out in this section are assumed to be true and are wholly based on the documents and information disclosed in Article II of this Opinion (Scope of Legal Assessment and Documents Examined).

A. XDC Network

The XDC Network is a decentralized, enterprise-grade blockchain platform designed to integrate traditional finance with decentralized finance through its propriety permissioned blockchain (the “**XDC Network**” or the “**Network**”). Utilizing the proprietary XDC01 blockchain protocol (the “**XDC Protocol**”), a hybrid architecture merging Ethereum and Quorum’s features, the XDC Network aims to deliver a secure, scalable and interoperable infrastructure for global trade and finance. The XDC Network is a hub for decentralized finance activities on which developers can build and deploy decentralized applications (“**DApps**”), such as TradeFinex, a peer-to-peer marketplace platform designed specifically for trade and finance transactions using the XDC Protocol. The XDC Network aims to foster a robust environment for enterprises, enabling real-world use cases for blockchain technology in areas such as supply chain, finance and procurement, thereby streamlining transactions and reducing associated costs.

The XDC Network is a hybrid architecture combining features of both private and public blockchains. The private state ensures that sensitive financial data is secure while the public state ensures transparency and verifiability. The goal of the ‘hybrid’ nature of the XDC Network is to provide interoperability with public blockchains like Ethereum and Bitcoin while also capitalizing on the security, privacy and transaction speed inherent in private blockchains.

TradeFinex, a flagship application built on the XDC Protocol, is a decentralized marketplace designed to connect participants for the purpose of facilitating trade finance and settlements through authorized financial institutions. TradeFinex involves three principal categories of participants:

1. **Beneficiaries:** individuals or institutions who are the owners of a project and who seek financing in order to procure goods and services.
2. **Suppliers:** individuals, companies, manufacturers, distributors or service providers who supply goods and/or services to beneficiaries.
3. **Financiers:** individuals, institutions or companies who seek improved opportunities to invest money in an acceptable risk environment.

TradeFinex is designed to address inefficiencies in the trade finance sector, including limited access to funding, supplier visibility, and investment risk, thereby enhancing transparency and operational efficiency within the trade and finance industry.

The XDC Network is powered by the Network’s delegated proof-of-stake (“**XDPOS**”) consensus mechanism among trusted masternodes (“**Masternodes**”). Masternodes are responsible for both running the XDC Network and for maintaining its stability. Only Masternodes can produce and validate blocks on the XDC Network. For blocks to be produced, XDPOS relies on the concept of double validation. Once a block is created by a



Masternode, a second, randomly selected Masternode verifies the new block. Accordingly, a new block is only valid if sealed by the signatures of the Masternode who created the block and another Masternode who verified the block.

In certain instances, the XDC Network also employs the concept of proof-of-work. For example, where potential forks branches are detected on the XDC Network, proof-of-work is employed to select the longest branch and to discard the other branches. Accordingly, the consensus mechanism utilized on the XDC Network can be viewed as a proof-of-stake/proof-of-work consensus model.

B. XDC Token

Overview

The XDC Network is fueled by the XDC Token. The XDC Token is a multifunctional digital asset that serves as the core utility token of the XDC Network's ecosystem. The XDC Token can be utilized to pay transaction fees, execute smart contracts, facilitate real-time settlements and incentive participants in the XDC Network's ecosystem. The Token is not redeemed upon utilization.

Reward Mechanism

To become a Masternode on the XDC Network, a node must stake at least 10 million XDC Tokens. Masternodes that work consistently in the XDC Network by creating and verifying blocks and incentivized with XDC Tokens.

For each iteration of 900 blocks (an “**Epoch**”) created on the XDC Network, a checkpoint block is created, and Masternodes are rewarded with XDC Tokens based on the number of signatures linked to a Masternode in each Epoch. Block creators are selected in a circular and sequential order, allowing each Masternode an equal opportunity to create and sign blocks. There is a reward-sharing ratio among Masternodes. Specifically, for each Epoch created, 250 XDC Tokens are divided among applicable participating Masternodes, based on the number of signatures associated with each Masternode who participates in creating or validating blocks in an Epoch.

Punitive smart contracts on the XDC Network ensure that those who stake XDC Tokens to run Network infrastructure remain honest.

Rights Associated with XDC Tokens

Holding XDC Tokens does not provide Token Holders with legal or contractual rights against any person. XDC Tokens do not represent an ownership interest in any entity or give Token Holders any proprietary rights to the XDC Network, the XDC Protocol or any other right or interest in the Company.

Token Holders do not exercise governance rights akin to traditional shareholders. XDC Tokens do not confer voting rights to participate in decisions concerning the Company, the XDC Network or any revenues generated therein, except as is inherent to the XDPoS consensus mechanism. Any influence Token Holders may have is limited to the XDPoS consensus mechanism and validation of transactions, which does not extend to managerial



or ownership rights of the XDC Network or the Company. Furthermore, Token Holders have no contractual right to receive any pro rata share of any revenues created from or within the XDC Network.

Token Holders cannot request a re-exchange or redemption for the monetary value vis-a-vis any issuer. XDC Token's value or price is not determined by the fluctuation of the value of any underlying asset. Tokens do not represent any rights or claims and hence, do not have a maturity after which any rights or claims represented by XDC Tokens could be claimed. The value of the XDC Tokens is determined solely by market fluctuations.

Allocation of XDC Tokens

There is a total supply of approximately 37.98 billion XDC Tokens (the “**Total Supply**”). Although the Business White Paper states that the total supply of XDC Tokens would be 100 billion, the Launch Press Release states that the total supply was reduced to 37.5 billion XDC Tokens. During the transitory testnet phase, the needs of the XDC Network were evaluated and the total supply of XDC Tokens was reduced accordingly.

The circulating supply of XDC Tokens is currently approximately 15.7 Billion (the “**Circulating Supply**”). The Circulating Supply is subject to change as more tokens become available.

The XDC Tokens are made available pursuant to an allocation structure intended to support the growth of the XDC Network's ecosystem. The manner in which the Total Supply is allocated is designed to promote inclusive growth of the Network's ecosystem. The Total Supply is to be allocated as follows:

- **Founders and Developers:** 15 billion Tokens (40% of the Total Supply) are allocated to the founding team who facilitated the development of the XDC Network's ecosystem. This portion of the Total Supply was fully released to the founding team over the past 9 years. No Tokens comprising this portion of the Total Supply have been traded on the open market. The founding team is committed to holding their Tokens and will only consider trading them in the case of a major strategic partnership or use case that benefits the XDC Network.
- **Ecosystem Development:** 10 billion Tokens (26% of the Total Supply) are retained to fund enterprises that support development of the XDC Network's ecosystem. This portion of the Total Supply is locked and a maximum of 2.5% of this portion can be released each year.
- **Pre-placement and follow-up Token offerings:** 10 billion Tokens (26% of the Total Supply) are reserved for private placement and follow-on Token offerings. The Company conducted private placement sales of approximately three percent (3%) of the total XDC Token supply to third parties in 2017 and again in 2018 (the “**2017 and 2018 Issuances**”). The Tokens issued in the 2017 and 2018 Issuances were issued primarily to communities interested in running the XDC Network as validators or Masternodes, most of whom continue to run the Network as validators. The XDC Protocol was in beta testnet mode during the 2017 and 2018 Issuances. Proceeds from these sales were used to fund the development of the XDC Network and the XDC Protocol, and to cover general operating expenses, support subsequent Token sales



and meet liquidity requirements for participating crypto asset trading platforms. The Company intends to use any proceeds from future Token sales to further enhance the XDC Protocol, expand and strengthen the XDC Network's ecosystem and fund ongoing operational needs.

- **Ecosystem participation incentives:** 87.6 million Tokens (<1% of the Total Supply) are retained to serve as a reward pool for Masternodes and other participants in the XDC Network's ecosystem. This portion of the Total Supply is locked and a maximum of 10% of this portion can be released every year.
- **Contingency fund:** 2.5 billion Tokens (7% of the Total Supply) are retained as a contingency fund, intended to serve as an insurance reserve for unforeseen expenses. This portion of the Total Supply is locked and released strictly on an as-needed basis.

Currently, in the United States, XDC Tokens trades on a number of crypto asset trading platforms that permit trading in the United States, including: BitMart, KuCoin, MercatoX, Stex, WBF, Bitrue, BitTrex, XT.com, Bequant, BKex and Coinex.

Marketing of XDC Token

The marketing of XDC Tokens is, and has been, directed towards developers, enterprises, and users who are expected to actively participate in the XDC Network as validators. The Tokens are not broadly marketed to the general public. The Company has stated that it "...only aims to provide community driven tools to the existing or authorised entities, in order to help solve real world problems."¹

Based upon the assumptions set forth herein and our review of the Materials, the Tokens are and have been consistently promoted for its utility within the XDC Network. The Network does not operate a bounty system designed to promote investment or speculative buying. Any incentive programs are focused on encouraging development of the XDC Network's ecosystem, technical contributions, or community engagement of the decentralized services within the Network – not for the purpose of soliciting investment.

Furthermore, the Company has not made any statements guaranteeing or suggesting that the XDC Token will appreciate in value. The Company has not compared the XDC Token to other crypto assets with respect to price performance. The Company's mission and vision has been to "leverage fast-evolving blockchain financial technology and develop a complete ecosystem around the [XDC Protocol], with the participation of governments, financiers, buyers, suppliers, regulators and various communities to help bridge the global trade and finance deficit."²

V. ASSUMPTIONS

In providing this Opinion, we have assumed the following:

1. All information provided to us by the Company is accurate, complete and not misleading.

¹ *Business White Paper*, at page 32.

² *Ibid*, at page 10.



2. All documents, records and other instruments reviewed by us are authentic and all copies of original documents reviewed by us, whether by photocopy, electronic, certified, conformed or facsimile conform to the original documents.
3. The statements contained in Article IV are true and correct in all material respects as of the date of this Opinion.
4. There are no agreements or understandings between or among the Company and any of its affiliates and any third parties that would expand, modify or otherwise materially affect any characteristics or terms of the XDC Tokens.
5. The XDC Tokens to which this Opinion applies are the same tokens the Company issued to Token Holders.
6. The XDC Tokens have been, and will continue to be, promoted exclusively for their “utility” functions and have not been, and will not be, marketed as an investment or promoted as an appreciating asset by the Company, its affiliates or anyone else acting or promoting the Token on the Company’s behalf.
7. Marketing of the XDC Tokens has not, nor will it, target persons who would not reasonably be expected to utilize the XDC Token and the Company has not, nor will it, sell XDC Tokens for the purpose of raising funds to realize profits from any appreciation in the price of XDC Token.
8. No prior version of the Materials have been disclosed to Token Holders which differ materially from the Materials as presently constituted.
9. Based on confirmation from the Company, the facts set out in Article IV and the assumptions set out in this Article V reflect the most up to date facts with respect to the XDC Tokens and the XDC Network. To the extent that such facts and assumptions differ from the facts or information contained herein or any other promotional, marketing and other outreach materials previously prepared or distributed by the Company (together “**Marketing Materials**”), we have assumed that the Company has updated all such Marketing Materials to conform with such facts and assumptions.

VI. APPLICABLE LAW

A. Overview

There is no federal securities legislation or national securities regulator in Canada. Rather, each Canadian province and territory has its own securities laws and regulator. In Alberta, this regulator is the ASC. The CSA includes representatives from the securities regulators in each province and territory in Canada and is primarily responsible for developing a harmonized approach to securities regulation across Canada. Our analysis as set out in this Opinion considers only the Applicable Securities Laws.

It is illegal to offer or sell securities in Alberta unless the offer and sale of such securities are exempt under Applicable Securities Laws or made pursuant to an effective prospectus filed with the ASC. Crypto assets will be considered securities under Applicable Securities Laws if



they meet the definition of “security” contained in the *Securities Act* (Alberta)³ (the “**Act**”). The Act provides an extensive definition of what constitutes a security which is excerpted in full below:

1 In this Act,

...

(ggg) “security” includes

- (i) any document, instrument or writing commonly known as a security;
- (ii) any document constituting evidence of title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company;
- (iii) any document constituting evidence of an interest in an association of legatees or heirs;
- (iv) any document constituting evidence of an option, subscription or other interest in or to a security;
- (v) any bond, debenture, note or other evidence of indebtedness, share, stock, unit, unit certificate, participation certificate, certificate of share or interest, preorganization certificate or subscription other than
 - (A) a contract of insurance issued by an insurance company, or
 - (B) an evidence of deposit issued by a financial institution;
- (vi) any agreement under which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets other than a contract issued by an insurance company that provides for payment at maturity of an amount of not less than 3/4 of the premiums paid by the purchaser for a benefit payable at maturity;
- (vii) any agreement under which money received will be repaid or treated as a subscription to shares, stock, units or interests at the option of the recipient or of any person or company;
- (viii) any certificate of share or interest in a trust, estate or association;
- (ix) any profit-sharing agreement or certificate;
- (x) any certificate of interest in an oil, natural gas or mining lease, claim or royalty voting trust certificate;
- (xi) any oil or natural gas royalties or leases or fractional or other interest in them;
- (xii) any collateral trust certificate;

³ *Alberta Securities Act*, RSA 2000, c S-4 at section 1.



- (xiii) any income or annuity contract not issued by an insurance company;
- (xiv) any investment contract;
- (xv) any document constituting evidence of an interest in a scholarship or educational plan or trust;
- (xvi) a derivative or class of derivatives designated to be a security pursuant to an order made under [section 10](#),
whether or not any of them relate to an issuer or proposed issuer, but does not include anything designated not to be a security pursuant to an order under [section 10](#) or a security or class of securities prescribed not to be a security;

B. Investment Contract

The broadest of the categories set out above is the “investment contract” which can cover a wide variety of investment arrangements and structures. The leading case in Canada in interpreting the meaning of an investment contract is the Supreme Court of Canada’s (“**SCC**”) decision in *Pacific Coast Coin Exchange v. Ontario*⁴ (“**Pacific Coast**”). In the test set out in *Pacific Coast*, the SCC stated that an arrangement or scheme meets the definition of an investment contract if it meets the four following requirements:

- (1) an investment of money;

Money is not defined in the Act. Courts and the ASC use the word money in the same way it is used in common parlance. Purchasing a digital asset with fiat or another crypto asset will generally satisfy this portion of the test.

- (2) in a common enterprise;

A “common enterprise” is “one in which the fortunes of the investor are interwoven with and dependent upon the efforts and success of those seeking the investment, or of third parties.”⁵ Factors like pre-sales of coins or tokens, sales of pre-mined coins or tokens, or developers who hold a large portion of the total coins or tokens may be indicative of a common enterprise.⁶

- (3) with the expectation of profit;

- (4) to come significantly from the efforts of others.

The third and fourth prongs of the *Pacific Coast* test are usually addressed together. Expectation of profit is addressed from an objective basis.⁷ This means courts and the ASC will look at whether a reasonable investor would, based on the events leading up to their

⁴ *Pacific Coast Coin Exchange v. Ontario Securities Commission*, [1978] 2 S.C.R. 112 [*Pacific Coast*].

⁵ *Pacific Coast*, *supra* note 18 at para 128.

⁶ Peter Van Valkenburgh, “Framework for Securities Regulation of Cryptocurrency”, *Coin Center Report* (June 2016) *Coin Center Report*: online <<https://coincenter.org/entry/framework-for-securities-regulation-of-cryptocurrencies>> at 48.

⁷ *Energy Syndications Inc., Re*, 2013 ONSEC 24 at para 51 citing *Alberta (Attorney General) v Great Way Merchandising Ltd.*, [1971] 3 WWR 133, 1971 ALTASCAD 15 (CanLII) (ABCA).



purchase including the marketing materials provided by the Company, expect to profit from such purchase. The subjective motivations of the individual investor are irrelevant for this analysis; instead, it only needs to be established that “given all the circumstances, investors would have reasonably had the expectation [of profit]”.⁸

The CSA has provided additional commentary regarding their assessment of whether or not an offering of tokens or crypto assets involves an investment contract in CSA Staff Notice 46-308 – *Securities Law Implications for Offerings of Tokens* (“**Staff Notice 46-308**”). Staff Notice 46-308 includes the following guidance:

In analyzing whether an offering of tokens involves an investment contract, businesses and their professional advisors should assess not only the technical characteristics of the token itself, but the economic realities of the offering as a whole, with a focus on substance over form.

We have received submissions from businesses and their professional advisors that a proposed offering of tokens does not involve securities because the tokens will be used in software, on an online platform or application, or to purchase goods and services. However, we have found that most of the offerings of tokens purporting to be utility tokens that we have reviewed to date have involved the distribution of a security, namely an investment contract. The fact that a token has a utility is not, on its own, determinative as to whether an offering involves the distribution of a security.⁹

VII. APPLICATION OF THE LAW TO XDC TOKEN

Based on our review of the facts set out herein, the characteristics of the XDC Token do not fit any of the specific definitions of a security from the Act. The XDC Token is not a document, instrument or writing commonly known as a security, and it does not fit into any of the other “traditional” definitions of a security listed above from the Act. The following sections address why, in our view, the categories “evidence of indebtedness” and “investment contract” would not apply to the XDC Tokens.

A. Evidence of Indebtedness

The XDC Tokens do not have the characteristic of being evidence of indebtedness. The Company does not and will not repurchase Tokens after they been released to the market. If the Company were to guarantee a repurchase of the XDC Tokens upon their release to the market, the XDC Token could possibly be viewed as evidence of indebtedness however, since this is not the case, it indicates that the XDC Tokens do not fit under the definition of “evidence of indebtedness”.

B. Investment Contract

Further analysis is required to determine if XDC Tokens are likely to be classified as a securities under the investment contract branch of the definition. Any crypto asset that meets

⁸ *Nvest Canada Inc (Re)*, 2024 ONCMT 25, at para 61 [Nvest].

⁹ Canadian Securities Administrators, “Securities Law Implications for Offerings of Tokens”, Staff Notice 46-308, (11 June 2018) at 2 [Staff Notice 46-308].



all four requirements in the Pacific Coast test will likely be considered a security under Applicable Securities Laws.

Investment of Money

The first prong of the Pacific Coast test requires that there be an investment of money. Some Token Holders, namely, those who purchased Tokens in the 2017 and 2018 Issuances, acquired the Tokens (which Tokens were immediately delivered to such Token Holders) in exchange for money or other crypto assets. Accordingly, this first prong of the test is likely fulfilled.

Common Enterprise

There is likely not a common enterprise with regards to the XDC Token. The fortunes of a Token Holder are not interwoven with and dependent upon the efforts and success of those seeking the investment, or of third parties.

There are specific features of the XDC Tokens that make it unlikely that there is a common enterprise:

1. Token Holders do not have any governance rights, claims against the assets of the Company or its affiliates, they do not have any rights to dividends, voting rights, rights to receive income, or right to receive any other distributions from the profits of the Company or its affiliates. The absence of any of these features are indicators that the XDC Token is not a common enterprise.
2. If the Company markets XDC Tokens to potential users of the XDC Network only and such marketing efforts only promote the Tokens as a medium of exchange (rather than an investment) as we have assumed herein, there would be no reason, based on representations made by the Company, for an individual to believe that the Company would be acting in a common enterprise with the Token Holders to increase the value of the XDC Tokens.

Token Holders themselves are primarily responsible for maintaining the XDC Network, which provides the infrastructure necessary for the exchange of XDC Tokens and its use as a medium of payment within the decentralized Network. The Network facilitates the use of XDC Tokens in peer-to-peer value transfers, settlement of transactions and interactions with DApps and smart contracts. Accordingly, in our view, there is no common enterprise with respect to the Tokens for the purposes of Applicable Securities Laws. However, to the extent the Company markets the XDC Tokens as an investment, securities regulators may take a reasonable position that a common enterprise exists between Token Holders and the Company due to such representations.

Additionally in our view, the XDPoS consensus mechanism authorized by Masternodes does not create a common enterprise for the purposes of securities laws. Further, the XDPoS consensus mechanism authorized by Masternodes does not pool investor funds and Token Holder's profits are not dependent on the efforts of a centralized authority or identifiable promoter. Masternodes act autonomously, and any rewards are generated by their participation in the XDC Network under a transparent, protocol-defined system.



Expectation of Profit Solely; Predominantly from the Efforts of Others

The third and fourth requirements of the Pacific Coast test are likely not met by the Tokens. There is not likely any expectation of profit from purchasing XDC Tokens, and there is no reason to expect that the efforts of others would create the possibility of a profit.

In order for there to be an expectation of profit from the efforts of others, the public must reasonably expect the actions of the Company to increase the value of XDC Token over time. This expectation must come about because of the actions of the Company in conjunction with the representations that the Company makes to the public.

In *Nvest Canada Inc (Re)*, 2024 ONCMT 25 (“**Nvest**”), the Ontario Capital Markets Tribunal found that notwithstanding the utility function of the GXTokens, many purchasers of the GXTokens purchased the GXTokens without any intention of employing the utility the GXTokens.¹⁰ Furthermore, in *Nvest*, it was found that based upon the various representations that were widely made to the purchasers, the purchasers reasonably expected a profit from their investment, based upon the efforts of others to increase the value of the GXTokens.¹¹ Unlike the GXTokens in *Nvest*, as we have assumed herein, there would be no reason, based on representations made by the Company, for an individual to believe that the Company would be acting in a common enterprise with the Token Holders to increase the value of XDC Tokens.

The XDC Tokens have certain features that weigh in favour of it being unreasonable for a Token Holder to have an expectation of profit from holding Tokens:

1. The Tokens’ utility is as a medium of exchange within the XDC Network to pay for transaction fees, deploy smart contracts and participate in the Network’s consensus mechanism. The function of the XDC Tokens is not as an investment, but rather as a means to utilize the decentralized services offered within XDC Network’s ecosystem. This decreases the likelihood that a Token Holder would have a reasonable expectation of profit from purchasing and holding XDC Tokens.
2. XDC Tokens can be held for extended periods of time without any degradation in value or enforced usage timelines. There are no incentives requiring XDC Tokens to be used promptly and XDC Tokens can be held regardless of direct or immediate utility on the XDC Network.
3. XDC Tokens are not directly redeemable for cash. However, it should be noted that XDC Tokens may be traded on various crypto asset trading platforms where market participants may buy or sell Tokens for fiat or other crypto assets.
4. The XDC Network is a decentralized, community-driven blockchain project that does not operate with a central entity or individual responsible for generating profits. There is no single individual or entity whose activities or plans are critical to the value of the XDC Tokens. The XDC Network evolves through contributions of community participants.

¹⁰ *Nvest*, supra note 8, at paras 49-50.

¹¹ *ibid*, at paras 63-69.



5. Although the early contributors played a foundational role in launching the XDC Network, the ongoing development, maintenance and growth of the Network and XDC Token are now supported by a decentralized group of developers and Masternodes. These contributors are not guaranteed compensation but may receive grants or XDC Network support for specific development initiatives. As such, the XDC Network and XDC Token were not created for the purpose of increasing token value but rather to provide an enterprise-grade blockchain infrastructure.
6. The marketplace for the XDC Tokens, being the XDC Network, is fully functional at the time of this Opinion. Although at the time of the 2017 and 2018 Issuances, the Network remained in beta testnet mode, the Tokens issued in the 2017 and 2018 Issuances were issued primarily to communities interested in running the XDC Network as validators or Masternodes, most of whom continue to run the Network as validators or Masternodes.

Notwithstanding the foregoing, there are certain features of the XDC Tokens that may weigh in favour of it being reasonable for a purchaser of XDC Tokens to have an expectation of profit from holding XDC Token as an investment:

1. XDC Tokens trade on certain crypto asset trading platforms. The CSA has stated that simply trading on the secondary market may weigh in favour of a token being found to be a security.¹² However, the promoters and contributors of the XDC Network, including Masternodes, do not actively support or influence the secondary market by trading XDC Tokens. The XDC Network was developed as an open-source, decentralized network with organic community participation and the 2017 and 2018 Issuances targeted communities interested in running the XDC Network as validators or Masternodes, most of whom continue to run the Network. Furthermore, the XDC Network's founders did not engage in market-making, price-speculative activities, or intervene in the XDC Tokens' trading on crypto asset trading platforms.
2. The Total Supply of XDC Tokens is capped at 37,983,858,612 Tokens. The CSA has stated that if there is a limited supply of tokens, purchasers may have an expectation of profit as increased demand, with limited supply, may be expected to lead to an increase in value. However, in our view, the cap on the Total Supply is offset by the fact the tokens offered in the 2017 and 2018 Issuances were issued primarily to communities seeking to run the XDC Network as validators or Masternodes, most of whom continue to run the Network as validators.
3. The CSA has indicated that staking of a crypto asset is a factor that may be indicative of a security.¹³ Although the XDC Tokens may be "staked", the XDPoS consensus mechanism and the expectation of profit are fundamentally different from passive investment schemes.

The marketing efforts of the Company is one of the most important aspects of the XDC Tokens to consider in determining whether a purchaser of XDC Tokens has a reasonable expectation of profit from holding Tokens. Depending on how the marketing of XDC Tokens is handled by

¹² Staff Notice 46-308, *supra* note 9 at 6.

¹³ CSA Staff Notice 81-336 – *Guidance on Crypto Asset Investment Funds that are Reporting Issuers*.



the Company, it may weigh either for, or against, the classification of XDC Tokens as a security. Marketing is a key factor in analysing whether any crypto asset is a security, because the actions and messaging from the developer/issuer of the crypto asset in question can create a legitimate expectation for purchasers that the crypto assets they are purchasing will increase in price in the future due to the actions taken by the developer or issuer of that crypto asset.

As of the date hereof, no material information asymmetries exist between the promoters and potential purchasers of XDC Tokens. All relevant information, including but not limited to, the Materials are, and have been, made publicly available to ensure transparency and equal access for all participants.

For the purposes of this Opinion we have made the assumption that the Company will not market XDC Tokens as an investment or promote it as an appreciating asset and will only promote XDC Tokens as a utility token. If the Company deviates from this assumption and otherwise promotes XDC Tokens to the public as an appreciating asset or investment, this will significantly weigh in favour of XDC Tokens being classified as a security under Alberta securities laws and may change the conclusions that we have reached herein.

VIII. CONCLUSION

Based on the features described above, and provided the assumptions that we have set out herein are correct, XDC Tokens do not likely meet the third and fourth branches of the Pacific Coast test and would, therefore, be unlikely to meet the classification of a security under Applicable Securities Laws.

Please do not hesitate to contact us should you have any questions about the contents of this Opinion.

Sincerely,

A handwritten signature in black ink, appearing to be 'G. Chipeur', enclosed within a faint, light-colored rectangular border.

Gerald Chipeur, KC
GC/mr

