Securities Act of 1933 §5

VIA ELECTRONIC FILING

May 13, 2021

Division of Corporation Finance
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549

Re: LGC Financial Trust

Dear Sir/Madam:

I. INTRODUCTION

On behalf of our client, LGC Financial Trust[1] ("LGC"), for itself and as representative of other current holders[2] of the "Veritaseum" or "VERI" token ("VERI-Holders"), we respectfully request that the Division of Corporation Finance ("Division") concur with the opinion expressed below that the use or sale of VERI tokens and other specific activities (as described below) do not constitute or involve a "security" under the Securities Act of 1933 ("The Act") or falls under a recognized exception to The Act, and that the Division advise us that if the sale or use of the subject token should occur substantially as described, the Division will not recommend to the Securities and Exchange Commission ("Commission") that it take any enforcement action.

The VERI-Holders are owners of a digital asset, the VERI token, which was the subject of litigation against the issuer of the token in 2019. As a result of the litigation and its conclusion, the VERI-Holders have been left in doubt about "what they hold" and whether they can sell,

[1] LGC Financial Trust is managed by one person with sole control of its VERI tokens.

[2] For purposes of this letter, LGC Financial Trust is subject to United States jurisdiction and VERI-Holders similarly situated are all United States citizens or otherwise subject to United States jurisdiction.

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trade or even utilize their tokens and, therefore, request a “No-Action” letter in regard to the designated intended actions.

II. BACKGROUND

On or about August 12, 2019, the Commission filed a Complaint against Veritaseum, LLC and Veritaseum, Inc. (collectively “Veritaseum”) and Reginald Middleton (“Middleton” together with Veritaseum, “Defendants”) in the United States District Court Eastern District of New York, Case Number 1:19-cv-04625. The Complaint for preliminary injunction was allegedly filed to stop the Defendants’ further dissipation of the approximately $8 million of investor proceeds that remained from the approximately $14.8 million they raised in 2017 in an offering of digital fee tokens called “VERI Tokens.”

The Court granted in part the preliminary injunction and ordered that pending a final disposition of the action, Defendants hold and retain within their control and otherwise prevent any transfer or other disposal of any assets, funds, or other property held by, or under the control of Defendants.

In or around September 2019, the Commission and Defendants reached a proposed consent judgment in the case. Defendants were forced into the settlement because with its funds frozen it was not able to mount an effective defense to the action.

On or about October 31, 2019, a proposed consent judgment with respect to all the Defendants was submitted to the Court for consideration. Among other things, the proposed consent judgment permanently enjoined Defendants from committing violations of the federal securities laws, permanently barred Defendants from engaging in any offering of digital securities, and provided for the collection and disgorgement of over $9.4 million of the sales. The Final Judgment did not declare or hold that the VERI tokens were securities.

The Veritaseum platform still exists but the named Defendants cannot hold any of the VERI tokens. The vast majority of the VERI tokens were confiscated by the Commission and maintained in its control. The VERI tokens purchased by our client and those similarly situated have been held by them pending the closure of the legal case. Importantly, the consent judgment made no adjudication or reference to the VERI tokens held by the VERI-Holders.

As can be seen from the above background, LGC and other VERI-Holders were collateral damage in a battle between the Commission and the issuers of the VERI token and have come before you to request clarity as to what remains of the digital assets they purchased and still hold.

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III. THE VERI TOKEN AND THE PROPOSED USES OF THE VERI TOKEN

The VERI tokens held by the applicants are tokens allowing access or discounted access to the intellectual property, products and services of Veritaseum and a platform which allows individuals to "digitize" assets and things of value, such as financial instruments, real property, notes, and even precious metals. The idea behind the VERI token and the Veritaseum platform is that anything can be "tokenized" – essentially have a part of whatever is digitized be represented by a commensurate "piece" of a token. This idea is especially valuable when looked at in context of allowing ownership and trade in something which is not easily divisible. For example, a one hundred (100) ounce bar of silver cannot easily be divided into ten (10) pieces if ten (10) individuals want to share ownership of it or trade a divided piece, but by utilizing VERI tokens or their derivatives) that represent the bar of silver, the bar of silver can be easily purchased by individuals and even broken into smaller pieces with relative ease. And since the VERI tokens reside on a blockchain and, therefore, are stored on hundreds or thousands of computers simultaneously, the chain of custody is open and obvious and immutable – there is almost no way to cheat the system.

LGC purchased approximately fifteen thousand (15,000) VERI tokens during the Initial Coin Offering ("ICO") by Veritaseum in May of 2017. In all, approximately 2.15 million VERI tokens were purchased by holders and/or continue to be held by VERI-Holders. These digital assets exist on the Ethereum decentralized network and are held on exchanges or in private wallets which maintain the token identification and the ability to transfer via smart contract. The other approximately 98 million VERI tokens are in the possession of a third party designated by the Commission and have been ever since the Defendants were required to transfer them into the Commissions possession.

LGC and almost all current VERI-Holders initially purchased the VERI token because they were excited about the idea of using the tokens to "digitize" assets, which would expand the ease and speed of investing. The possibilities were essentially endless as to how the tokens could be used in wide and various applications in the business, financial, medical, agricultural, and investment world.

LGC and those similarly situated intend to utilize the VERI tokens in their possession as follows:

First, LGC intends to utilize the VERI tokens in its possession on the Veritaseum platform/website at dapp.veritaseum.com. Veritaseum would of course be required to buy/sell, rent and consume VERI tokens as intended in order to facilitate the VERI-Holder transactions. The Veritaseum platform still exists and still allows for transfer of digital assets "peer to peer" without any third party involvement and for the digitization of the certain assets.

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The VERI tokens themselves will only be used for access to the platform and the value of the resultant transaction will be based solely on the effort of the VERI-Holder.

Second, LGC intends to "rent" its VERI tokens for third (3rd) parties to access the Veritaseum platform. Rental of the tokens allows third parties to access the platform without possession of the tokens being exchanged.

Finally, LGC intends to sell its VERI tokens either in private "wallet to wallet" transactions or on a public exchange. The sales would be in exchange for either fiat currency (i.e., United States dollars) or for other crypto-currencies and digital assets.

IV. HARM IF NO-ACTION NOT GRANTED

As can be seen from the above background, our Client and all VERI-Holders in a similar position have been left in a legal limbo. They hold digital assets that were arguably deemed by the Commission to be illegal sales of a security. Due to the action brought by the Commission against the Defendants, the tokens have limited use, primarily because the Defendants in the case has refused to allow any further use of the VERI token by United States citizens on its platform, ostensibly out of fear of further action by the Commission against it.

Further, the Defendants in the case brought by the Commission sold the tokens against the backdrop of its applications for international patents that protected and facilitated its use of the tokens. After the confiscation of the tokens and settlement by the Defendants, the international patents were in fact issued. The patents add value to tokens but our client and fellow United States VERI-Holders cannot participate in this created value due to the Defendant's (understandable) concerns about further enforcement actions by the Commission.

V. LEGAL ANALYSIS

A. The Securities Act Of 1933 Does Not Apply To VERI-Holders Because They Are Not An "… Issuer, Underwriter, Or Dealer" Of The VERI Token.

The current VERI-Holders acquired the tokens in their possession directly from the initial sales by Veritaseum, later on public exchanges, or through private sales or transfers with prior purchasers.

Assuming, *arguendo*, that the VERI tokens are indeed securities, the transactions described above are exempt under The Act, Section 4(a). Said provision states that "The provisions of Section 5 shall not apply to – (1) transactions by any person other than an issuer, underwriter, or dealer. (2) transactions by an issuer not involving any public offering." LGC and

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none of the remaining VERI-Holders are "underwriters" or "dealers" as envisioned by the statute.

As detailed in Section 2 of the statute, an "Issuer" is "... every person who issues or proposes to issue any security ... ." None of the VERI-Holders plan on making any "issuance" of the tokens. Nor was the initial sales and purchase of the tokens akin to a private placement. *See S.E.C. v. Ralston Purina Co.*, 346 U.S. 119, 124, 125 (1953). The VERI-Holders are simply purchasers in the normal scope of the word and plan on simply utilizing the tokens or making sales to other individuals. Because the VERI-Holders are not issuers, underwriters, or dealers as defined in The Act, they fall under the exemption specified in The Act, Section 4(a).

B. The VERI Tokens That The VERI-Holders Possess Are Not Securities And, Therefore, Not Subject To Regulation By The Securities And Exchange Commission.

Under the three-part "*Howey* test," which is named after a United States Supreme Court case, *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946), a financial instrument such as a crypto asset will be considered an "investment contract**,"** and therefore a "security," where there is:

1. an investment of money (which could include, for example, an investment of fiat currency or cryptocurrency);
2. in a common enterprise; and
3. with an expectation of profit derived from the managerial or entrepreneurial efforts of others.

Further, the United States Supreme Court, in *United Housing Found, Inc. v. Forman*, 421 U.S. 837, 852-53 (1975), held that "when a purchaser is motivated by a desire to use or consume the item purchased ... the securities laws do not apply."

Going back to the *Howey* test, the VERI-Holders did initially make an investment of money in so far as the VERI-Holders purchased the tokens for their own use. However, there is no longer a "common enterprise," if there ever was, as the Defendants in the underlying case no longer hold any tokens and, therefore, there can no longer be a "common" enterprise in increasing the value of the VERI coin. In fact, outside of the VERI-Holders, only the third party directed by the Commission itself holds any other VERI tokens and those are "permanently" held pursuant to the Judgment in the case.

In regard to the third prong of the test, the VERI-Holders are not expecting any profit to be derived from the effort of others as the only possible profit to be derived by the intended use would be through the individual holders use of the token and in the underlying investment attached to the tokens.

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Although the intended use, as discussed above, obviously "fails" the *Howey* test, the *Forman* case further clarifies that the VERI tokens held by the applicants is not a security. The VERI-Holders are motivated not by a desire to sit back and watch the value of their VERI tokens increase based on the efforts of others but only by the desire to **utilize** the tokens to access the Veritaseum platform to work with others to digitize assets for commercial and investment purposes in which the profits are made in the underlying asset – not the token itself.

Out of all the VERI-Holder's intended uses, the only application which would make the holders any money or gain involving third parties would be from the "rent" of the token to others under the VeRent platform. In this situation, the third party "rents" the token to gain access to the platform for a commercial purpose and agrees to pay the VERI-Holder a pre-agreed percentage of the transaction. But the monetary gain to the VERI-Holder is not through an increase in the price of the token but in receiving a percentage of whatever underlying contract the third party enters into. Therefore, the rent of the token does not involve an investment contract vis a vis the token itself but in the separate endeavor.

Finally, as to both the use and "rent" of the VERI tokens, it is important to again emphasize that there is no third party involvement at play in any of the intended VERI-Holder actions. As Mr. William Hinman, former Director of the Division, stated in his 2018 speech at the Yahoo Finance All Markets Summit: Crypto, *"…* based on my understanding of the present state of Ether, the Ethereum network and its decentralized structure, current offers and sales of Ether are not securities transactions." (*Digital Asset Transactions: When Howey Met Gary (Plastic), 2018,* https://www.sec.gov/news/speech/speech-hinman-061418#_ftn9) The contemplated use by VERI-Holders of the token on the Veritaseum platform is similar to the use of Ether on the Ethereum platform in that having no third party involvement in the transaction, there can be no transaction of a security.

VI. <u>CONCLUSION</u>

LGC and others similarly situated hereby seek a "No-Action" letter in regard to the following three intended actions:

1. The use of the VERI tokens in their possession for "peer to peer" digital asset transfers;
2. The "rent" of VERI tokens in their possession for third parties to access the Veritaseum platform; and
3. The sale and trade of VERI tokens in their possession.

We do not believe that the VERI token as held and for the above intended uses are sales of securities under the *Howey* test and *Forman* case. And even if it what was found to be so,

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the intended uses are not subject to regulation under the exception in The Act, Section 4(a). For these reasons, we request the Division issue the requested No Action letter. We are available to answer any further questions the Division may have and thank you in advance for your consideration.

Sincerely,

Jeremy L. Hogan | Attorney

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