

Tokenizing the Fact Pattern

By:

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SEC v. W. J. Howey Co.

INTRODUCTION: CITRUS GROVE TOKEN ECONOMICS¹

Instead of creating value by owning something, as in traditional equity models, token purchasers/participants create and realize value by (i) occupying, developing the citrus grove themselves, (ii) designing, developing, and deploying the Cooperative (“**Coop**”) eco-system based on a blockchain/supply-chain protocol to govern and enable site management, purchasing, and transactions (products, pricing, retail), (iii) design and deploy dApps atop the protocol for citrus grove operations (iv) use the management/sales/marketing services and buy the citrus via the dApp, and (v) reward members with tokens based on the member’s use of the protocol and dApps.

I. COMMON ENTERPRISE

Proprietary & Centralized Traditional Business Model	Decentralized Cooperative Business Model
Proprietary <ul style="list-style-type: none">• W.J. Howey Company (“HC”)• Howey-in-the-Hills Service Inc. (“HHS”)• Both Florida Corporations under direct common control and management.• HC owns large tracts of citrus acreage in Lake County, Florida.• HC planted about 500 acres annually, keeping half of the groves for itself and offering the other half to the public to help finance additional development.• HHS is service company engaged in cultivating and developing many of these groves, including the harvesting and marketing of the crops. 85% of acreage sold during 3-year period was covered by HHS contract.	Member Owned Coop Member responsibilities: <ul style="list-style-type: none">• Develop membership base.• Manage talent acquisition & HR.• Occupy and develop the land.• Develop and design token economics and blockchain/supply-chain solutions.

¹ SEC v. W.J. Howey Co., 328 U.S. 293, 66 S. Ct. 1100, 90 L. Ed. 1244, 1946 U.S. LEXIS 3159, 163 A.L.R. 1043 (1946)

II. CONTRIBUTION OF FUNDS

Proprietary & Centralized Traditional Business Model	Decentralized Cooperative Business Model
Purchaser Commitment <ul style="list-style-type: none"> Land sales contract; and, Service contract. Purchaser could hire other service companies, but superiority of HHS was stressed. 	Purchaser Commitment <p>Coop sells tokens. Purchasers acquire tokens which will be used to transact, exchange, and receive value in the citrus grove ecosystem. (Similar to “Laundromat” coin and “Book of the Month Club” coin).</p> <p>Purchaser is required to become a Coop member.</p> <ul style="list-style-type: none"> Members commit to contribute to Coop operations, management, and technology development.
HC Land Contract <ul style="list-style-type: none"> Provides uniform purchase price per acre or fraction thereof, varying in amount only in accordance with the number of years the particular plot has been planted with citrus trees. Upon full payment, land is conveyed to purchaser by warranty deed. Purchases are usually made in narrow strips of land arranged so that an acre consists of a row of 48 trees. 31 of 42 purchasers bought less than 5 acres each and sales of as low as .65, .7, and .73 of an acre were made. <p>Tracts were not separately fenced and only indication of several ownership was in small land marks intelligible only through a plant book record.</p>	Membership Registration <p>Join Coop by registering and paying membership fee.</p> <p>1 to 1 voting mechanism applies to all Coop governance operations and management.</p>
HHS Services Contract <ul style="list-style-type: none"> Agreement give HHS a leasehold interest and “full and complete” possession of the acreage with a 10-year duration without option of cancellation. For specified fee plus the cost of labor and materials, HHS is given full discretion and authority over the cultivation of 	Membership Commitment <p>Members are incentivized by token rewards to develop, design, and launch blockchain/supply-chain and/or dApp solutions for operation of citrus grove eco-system. Member productivity correlates with number of tokens awarded.</p>

<p>groves and the harvest and marketing of the crops.</p> <ul style="list-style-type: none"> HHS maintains a large force of skilled personnel and a surplus of equipment, including 75 tractors, sprayer wagons, fertilizer trucks, etc. <p>Without HHS consent, land owner or purchaser has no right of entry to market the crop, and thus no right to specific fruit.</p>	<p>Success of Coop and its token/ blockchain/ environment/ marketplace depends on contribution and productivity of individual members.</p>
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III. EXPECTATION OF PROFITS

Proprietary & Centralized Traditional Business Model	Decentralized Cooperative Business Model
<p>Expectation of Profit from HHS</p> <ul style="list-style-type: none"> Company is accountable only for an allocation of the net profits based upon a check made at the time of fruit picking. All produce is pooled by HC/HHS which do business under their own names. 	<p>Expectation of Benefit or Value</p> <ul style="list-style-type: none"> Coop members are incentivized to contribute to the development and growth of the citrus grove ecosystem (occupy and develop the land) by receiving token rewards based on their productivity and individual contribution to the development, design, and deployment of blockchain/supply-chain technology that will support the ecosystem. Any returns are provided in the form of “rebates”, which correlate to individual ecosystem activity.

IV. EFFORTS OF THIRD PARTIES

Proprietary & Centralized Traditional Business Model	Decentralized Cooperative Business Model
<p>Reliance on Third Parties</p> <ul style="list-style-type: none"> Purchasers are removed from asset by geographical location, most are non-residents of Florida with no direct access to land or citrus. Purchasers are not accredited nor informed; predominantly business and professional people who lack the knowledge, skill, and equipment necessary for the care and cultivation of citrus trees. 	<p>Reliance on Coop membership</p> <ul style="list-style-type: none"> Purchasers are accredited investors knowledgeable (or willing to become knowledgeable) in citrus grove projects, business investments, and emerging blockchain/supply-chain technology. Purchasers are attracted to project because of their ability to contribute to the occupation and development of the citrus grove land, voting rights within the

<ul style="list-style-type: none"> • Attracted by the expectation of substantial profits. Marketed as profits greater than 20% could be expected. • Marketed in correlation with adjacent resort hotel also owned by HC. Guests are told groves are for sale and given sales talk if indicate interest. 	<p>Coop governance, and interest in the development, design, and deployment of blockchain/supply-chain solutions to further the efforts of the citrus grove ecosystem.</p> <ul style="list-style-type: none"> • Token purchases enable members to use or consume products or services generated from the citrus grove ecosystem.
<p>Promoter Managed</p> <ul style="list-style-type: none"> • A common enterprise managed by HC/HHS or third parties with adequate personnel and equipment is essential if the investors are to achieve their paramount aim of a return on their investments. Thus, promoters manage, control, and operate the enterprise. 	<p>Membership Managed</p> <p>Managed by all members of Coop and success depends upon their:</p> <ul style="list-style-type: none"> • active membership with 1-to-1 voting rights; • individual contribution to design, development, launch; and, • Individual productivity is incentivized by token awards.
<p>Brick and Mortar</p> <ul style="list-style-type: none"> • Groves are located in Florida while most purchasers are not. • Purchasers cannot enter groves/have direct access to specific fruit without HHS permission. <p>HC/HHS admittedly used mails and instrumentalities of interstate commerce in the sale of land and service contracts and did not register statement or filed letter of notification with SEC.</p>	<p>Decentralized Environment</p> <p>The relevant blockchain/supply-chain technology will provide certain “essential services”² and goods to each Coop member. The member benefits include being able to transact on a decentralized, distributed ledger that cryptographically and independently authenticates transactions for goods and services within the citrus grove ecosystem.</p>

² *United Housing Found., Inc. v. Forman*, 421 U.S. 837, 95 S. Ct. 2051, 44 L. Ed. 2d 621, 1975 U.S. LEXIS 110, Fed. Sec. L. Rep. (CCH) P95,206 (1975)