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**Securities Act of 1933 Section 2(a)(1) and Section 5  
Securities Exchange Act of 1934 Section 3(a)(10) and Section 12(g)**

April 2, 2019

VIA ELECTRONIC SUBMISSION

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: TurnKey Jet, Inc.

Dear Sir or Madam:

TurnKey Jet, Inc., a Delaware corporation (“TKJ”), with its principal business location in West Palm Beach, Florida, proposes to offer and sell blockchain-based digital assets in the form of “tokenized” jet cards (“Tokens”). On behalf of TKJ, I respectfully request that the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) confirm that it will not recommend that the Commission take any enforcement action against TKJ if TKJ offers and sells Tokens in the manner and under the circumstances described below without registration under Section 5 of the Securities Act of 1933, as amended (the “Securities Act”) and Section 12(g) of the Securities Exchange Act of 1934, as amended (the “Exchange Act,” and together with the Securities Act, the “Securities Acts”).

**I. FACTUAL BACKGROUND**

**A. About TurnKey Jet, Inc. and the Proposed Token Program**

TurnKey Jet, Inc. provides interstate air charter services as a licensed United States air carrier and air taxi operator. TKJ currently operates two business jets and is in the process of acquiring a third business jet. TKJ has successfully and profitably conducted flight operations since 2012. In the last two years, TKJ has operated its aircraft for at least 899 flight hours and conducted at least 643 landings for 141 customers. In that time, TKJ has had zero FAA violations or incidents and is accident-free. As discussed in more detail below, TKJ proposes to launch a Token membership program (“Program”) and develop a Token platform (“Platform”) to facilitate Token sales for air charter services via a private blockchain network (“Network”). TKJ will manage the Program as program manager (“Program

Manager”). Operating the Platform and Network would be within TKJ’s economic authority as a federally-licensed air carrier and air taxi operator. Each user will access and use the Platform via an application (“App”) that includes a wallet (“Wallet”). There will be three types of users of the Platform, depending on their role in the delivery of air charter services. Users who buy Tokens to consume air charter services are consumers (“Consumers”). Users who take part on the Platform by brokering charter flights between Consumers and carriers are brokers (“Brokers”). Users who deliver charter flights directly to Consumers via the Platform with their own fleet of planes are carriers (“Carriers”). Each type of user will have a distinct membership agreement and collectively the users of all types are members of the Program (“Members”). All Members will be required to pay membership subscription fees to take part in the Program and purchase Tokens. Consumers may be individuals or business entities. Brokers and Carriers are business entities and cannot be Consumers. Consumers will buy Tokens which TKJ will sell only at a price of one United States Dollar (“USD”) per Token throughout the life of the Program. A typical transaction will involve a Consumer redeeming bought Tokens for air charter services.

## **B. Blockchain Technology Solves Air Charter Services Payment Settlement Problems**

In supplying air charter services, TKJ faces significant transactional costs and inefficiencies, including delays, regarding payment settlement and regulatory compliance. From a customer’s perspective, the delays and inefficiencies can prevent the customer from travelling. As with accepting credit cards, TKJ faces difficulties at times in accepting wire transfers for payment settlement. Further, TKJ must conduct extensive and time-consuming bookkeeping and operations records management of all transactions to meet its regulatory compliance obligations.

As discussed in more detail below, TKJ’s proposed Program and Tokens for prepaid on-demand air charter services allows for settlement via blockchain which decreases the settlement time and improves the efficiencies of paying for and obtaining air charter services for both Consumers and TKJ. Consumers would be able to obtain the air charter services and leave on their trip much faster than under the current system. The advantages of utilizing blockchain technology for air charter services payment settlement include a significant reduction in financial transaction costs that financial institutions charge in payment settlement for air charter services. Transferring Tokens on the Platform and Network will significantly increase efficiencies in the delivery of air charter services. These improved efficiencies and rapid settlement of large transactions that are typical in the air charter services industry will in turn allow for faster delivery of air charter flights.

The Platform will diminish the possibility of fraudulent transactions and potential chargebacks, by relying on transparency and distribution via the Network. The Network is private to TKJ Program Members and mirrored across multiple servers, each of which verifies the validity of each transaction and keeps a copy of the entire ledger. TKJ as Program Manager will be responsible for verifying the validity of the ledger. The Platform will allow for increasing global transparency to Consumers, Brokers and Carriers by relying on the Network that will be used to record the terms of the Token contracts, manage documentation and complete transaction terms with immediate payment. This transparency will in turn provide access and insight into the clearing and settlement of the TKJ financial transactions to

prevent disputes because all participants will be able to inspect their personal Platform and Network activity and monitor settlement of their Token redemptions and delivery of air charter flights. These advantages show the utility of the proposed Tokens as an improvement to the existing air charter travel services payment settlement process.

## **II. PROPOSED PROGRAM AND TOKEN SALES**

### **A. The Token Infrastructure**

#### **(i) Blockchain Platform and Network**

The proposed TKJ Tokens will operate and be deployed on the Platform and Network consisting of a private, permissioned, centralized blockchain network and smart contract infrastructure operated by TKJ. TKJ will run the Platform and Network and use third-party service providers, as necessary, to meet operational requirements, including providers of internal tools for developers, user-facing app interfaces, wallets, smart contract infrastructure and private network and token management services.

TKJ will account for each TKJ Member via the Wallet that each Consumer uses to hold their Tokens. Each Wallet is part of the Platform, Network and App. TKJ will provision a Wallet to each Consumer, Broker and Carrier who will use the App and Wallet to send and receive Tokens via the Platform to TKJ, Consumers, Brokers or Carriers who are also TKJ Members on the Platform. TKJ Platform participants will be able to view their Token balance and related Platform and Network activities through a console via the App. The respective Token balances and related activities of each Member will not be public, but private to each individual Member and the TKJ Network administrators. Consumers will not satisfy the obligation to pay for air charter services. Rather, TKJ will satisfy the obligation by paying the Brokers or Carriers directly using escrow funds, which are comprised of the Token sale proceeds, upon the Consumer's redemption of Tokens. TKJ will manage payment to Brokers or Carriers but will have no contractual obligation to do so until Consumers, Brokers or Carriers transfer Tokens to TKJ for redemption.

TKJ will allow Brokers to be Members of the Platform because of antitrust legal concerns that would arise if TKJ were the sole broker of air charter services on the Platform and the Consumer user base became large. The Program attributes will incentivize Brokers to become Members and join the Platform because they will be able to transact with Consumers outside of banking hours using the Platform and App. Currently, Brokers cannot transact outside of banking hours due to the unavailability of wire transfers. Further, Brokers would need to be participants in the Program because the industry still needs their involvement in processing air charter services transactions via phone, email and fax. There is currently no automated air charter services scheduling and purchase system in place. In addition, Brokers have recently become regulated entities pursuant to 14 CFR Part 295, governing the brokerage of air charter services, and may provide air charter services as agents of Carriers or as principals with Carriers under contract to them. As such, Brokers (which may also be Carriers), as air charter services providers, Carriers (which may also be Brokers), and TKJ (which may be a Broker or

Carrier), will all be regulated entities on the Platform. TKJ will operate the Program in a manner compliant with applicable federal, state and foreign law including regulations of FinCEN, FAA, DOT and other applicable law governing the handling, custody and transmittal of funds, and other matters within their respective jurisdictions. In short, the Tokens, Platform and Network will simply be an air charter services payment debit/credit system for large financial transactions conducted inside and outside of banking hours.

(ii) **The Tokens Will Be Smart Contracts Between TKJ and Token Consumers and Subsequent Holders for Air Charter Services**

The proposed Tokens will include smart contract functionality and TKJ will create and deploy them on the Platform and Network. The Tokens will meet a token standard based on the chosen Platform technology and TKJ will develop the code for the Tokens with standard-compliant rules and methods, including transferring Tokens from TKJ to Consumers and between Network Members, reporting the balance of Tokens at a certain address, and reporting the total supply of Tokens. TKJ will be in privity of contract with each first Consumer of Tokens and the later holders of the Tokens via the Program membership agreement and the Token sales agreement embedded in the Tokens. The terms of the TKJ membership agreement will vary depending on whether the user is a Consumer, Broker or Carrier. The terms will obligate TKJ to release Token escrow funds to a Broker or Carrier to pay for the provided air charter services to a TKJ Member and holder of Tokens who exercises their right per the smart contract to redeem the Tokens at their equivalent value for those services on-demand.

TKJ, via the Platform, will update the smart contracts corresponding to each Token after each transfer of Tokens within the Platform to reflect the current holder of the transferred Tokens. The smart contracts will include the terms of service restricting transfer and setting forth that the Tokens are the prepayment of the future consumption of air charter services and there will be no return of principal or interest on the monies that are prepaid. Further, TKJ will use the smart contracts to execute the consideration for TKJ Token redemptions. Consumers will execute separately the respective TKJ Program membership agreements and Token sales agreements prior to issuance of Tokens. The agreed to terms and conditions will be embedded in the smart contract code. The smart contracts will programmatically acknowledge redemptions on the blockchain and notify TKJ of the redemptions for disbursement of the escrow funds corresponding to the Tokens to Brokers or Carriers for payment of the air charter services.

Redeemable for air charter services, the proposed Tokens in operation will be like the business jet card programs that are common in the aviation industry today. The typical jet card program operator arranges flights on behalf of their jet card clients with Carriers. In supplying the service, the air carriers keep complete operational control of the charter flights. Here, the Program Carriers will be part of the TKJ Platform. TKJ will require that all Carriers meet or exceed all FAA and TKJ safety standards.

Token issuances to Consumers will occur after they execute a Program membership agreement and Token sales agreement together with a smart contract issued on the Network that contains legally

binding terms and conditions between the Token holders and TKJ to provide air charter services equal in value to the redemption amount of the Tokens. Only Consumers will be able to buy Tokens. The Tokens will not represent a TKJ obligation to supply a specified number of flight hours regardless of cost. Rather, the Tokens will represent a TKJ obligation to supply air charter services to the Consumer/Token holder at a 1 USD:1 USD value, to allow for the variable costs of charter flights, jet fuel, catering, and other incidental costs related to each charter. When a Token enters circulation, TKJ Consumers may freely trade or exchange the Tokens in their possession between any other Consumer, Broker or Carrier within the Network. Only TKJ has the authority and capability to issue Tokens into circulation, or upon redemption remove them from circulation. In addition to the terms of the smart contracts restricting transfer of the Tokens TKJ will implement technical restrictions via the Platform and Network that restrict transfers of Tokens to TKJ Wallets only, and not to wallets external to the Platform.

A Consumer may redeem Tokens to pay for a flight directly with TKJ, which will arrange the flight using its own fleet of aircraft, a Broker or a Carrier. In that scenario, TKJ, as Program Manager, will transfer the escrow funds corresponding to the retail cost of the flight and the redeemed Tokens to itself as a Broker or Carrier and to its own bank account, deliver the flight and then pay for the costs associated with the flight using the transferred funds. In the alternative, a Consumer may transfer Tokens to a Broker or a Carrier other than TKJ to arrange and deliver the flight. In those types of transactions, the Broker or Carrier will then redeem with TKJ the Tokens that the Consumer transfers to the Broker or Carrier for the retail cost of the flight, and TKJ will then transfer the funds held in escrow directly to the Broker or Carrier for payment of the costs associated with the delivered flight. The terms stated in the Program membership agreement, Token sales agreement and each smart contract corresponding to each Token will obligate TKJ to disburse the escrow funds for the payment of air charter services when a Consumer redeems them. Further, the terms of the Program membership agreement, Token sales agreement and smart contracts for each Token will expressly state that at no time will TKJ have any discretion to do anything with the escrow funds other than disburse the funds for payment of air charter services upon redemption.

At all times, the identity of each Consumer as a TKJ Program Member will be known to TKJ in compliance with Transportation Security Administration regulations and federal law regarding TKJ's obligations to know its customers. See, e.g., 49 CFR 1540.107, governing passenger identification, which requires all passengers to provide identification using a valid verifying identity document. In addition, all passengers must provide their full name, date of birth, and gender, which is screened against the travel ban watch list in effect at the time of travel. The Tokens will be transferable only to other TKJ Program Members who are eligible to receive Tokens and become Token holders on the Platform and submit to 49 CFR 1540.107. To become a TKJ Program Member, all users must agree to the representations, terms and conditions regarding disclosure of their identity. In addition, prior to redemption and use of Tokens, all Token transferees must hold a current TKJ jet card Program membership which they can only obtain approval for after going through the TKJ application process which includes stringent KYC/AML background checks and TSA anti-terrorism watch list checks.

Construction of the TKJ Platform, Network, App and Token will be funded by TKJ through its own capital resources. At no time will TKJ utilize funds received for the purchase of Tokens to develop the TKJ Platform, Network, App or Token, and each of these will be fully developed and operational at the time any Tokens are sold. At all times, such funds will be held in escrow until redemption. At the time of their choosing, Consumers may redeem their Tokens into air charter services for the best price of those services correlated with the value of those services in the market offered directly by TKJ or by another verified and authorized Broker or Carrier that is a Program Member on the TKJ Platform. A Consumer will be able to redeem Tokens immediately after issuance for air charter services via TurnKey Jet, Inc. under its economic authority as an air carrier and air taxi operator. In addition, Consumers will be able to redeem their Tokens with any other verified and authorized Broker or Carrier that is a Program Member of the Network.

## **B. The Proposed Token Lifecycle and Steps of the Ongoing Token Sales**

**Step 1** – TKJ Consumer agrees to the terms of the Program membership agreement and Token sales agreement and deposits USD into TKJ’s bank escrow account. The proceeds will be deposited into the TKJ interest-bearing escrow accounts<sup>1</sup> at FDIC-insured depository banks corresponding to the purchaser’s Tokens, and any interest in those accounts will not be distributed to Consumers/Token holders but will be retained by TKJ.

**Step 2** – TKJ creates TKJ Wallet on Platform and Network for the Consumer and credits the Consumer’s Wallet with the number and value of Tokens bought. TKJ creates the smart contract and transfers the Token to the Consumer’s Wallet. The Tokens are now in circulation with the Consumer as the first holder of the Tokens. The amount that the Consumer deposits equals the number of Tokens issued to the Consumer at a 1:1 ratio (i.e., 100,000 USD deposited = 100,000 Tokens issued).

**Step 3** – TKJ Consumers can transfer and exchange Tokens to other Consumers, Brokers or Carriers exclusively on the TKJ Platform and Network. TKJ Consumers, Brokers and Carriers will be contractually and technically restricted from transferring Tokens outside of the TKJ Platform.

**Step 4** – The Consumer deposits/transfers enough Tokens from their Wallet to TKJ, a Broker or Carrier for redemption into air charter services. The terms stated in the Program membership agreement, Token sales agreement and each smart contract corresponding to each Token obligate TKJ to disburse the escrow funds for the payment of air charter services upon redemption and TKJ has no discretion contractually to do anything else with the escrow funds.

**Step 5** – TKJ, as Program Manager, will destroy the Tokens that the Consumer, Broker or Carrier redeems. Upon redemption, TKJ, as Program Manager, remits the redeemed escrow funds to itself as

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<sup>1</sup> While the funds will be held in accounts at FDIC-insured banks, the funds in the bank escrow accounts may not be FDIC-insured in full.

Broker or Carrier, or to another Broker or Carrier. Either TKJ, via its own fleet of aircraft, or the other Broker or Carrier, supplies air charter services in the equivalent value amount of the redeemed Tokens.

TKJ plans to hold continuous, open-ended Token sales to meet demand. If a Consumer such as a corporation goes out of business, its Tokens will be assets of that corporation. Consumers may redeem their Tokens at any time of their choosing in the future. There will be no time constraints within which period the Consumers must redeem their Tokens after purchase or acquisition. Consumers will be able to receive offers and select the best offer, whether it is from TKJ directly or from one of the other verified and authorized Brokers and Carriers who are also members of the Network. At no time will Token sales include a rebate program, rewards program, or similar or otherwise allow for the monetization of an economic benefit or bonus for buying Tokens. TKJ does not expect resales of Tokens in a large amount. If TKJ offers to repurchase Tokens, it will only do so at a discount to the face value of the Tokens that the holder looks to resell to TKJ, unless a court within the United States orders TKJ to liquidate the Tokens per a forced liquidation. There should not be Token sales to others at a discount because a purchaser may buy Tokens from TKJ at 1 USD per Token, which will cause the market price to stabilize at one dollar. As a result, Consumers will not have an incentive to buy from other Token holders at a premium above one dollar per Token. In theory, a Consumer may be required to sell their Tokens at a significant discount below face value in order to liquidate its holdings, but TKJ does not anticipate that this will occur frequently because of market forces stabilizing the price near one dollar per Token, contractual and technical restrictions on transfer, and timing of purchase and use not requiring advance purchase since the Tokens are immediately redeemable after purchase.

The Tokens will be nonrefundable. Consumers will only be able to redeem their Tokens for air charter services. They will not be able to redeem their Tokens for USD. When a Consumer remits cash payment for Tokens, TKJ will follow the Patriot Act and report such purchases that are more than \$10,000 per occurrence. TKJ will use its regulatory tools to identify bad actors and will reserve the right to refuse a Token sale to any such person who looks to become a Consumer as part of illegal activities such as money laundering. For international transactions, TKJ will adhere to all applicable laws and regulations for the jurisdictions that govern the transaction. Consumers who buy Tokens will be protected and will have minimal risk because TKJ will hold their prepaid funds always in escrow until the Tokens are redeemed. The United States government strictly regulates TKJ via the DOT and FAA, among others, and TKJ will hold the funds received from Token sales in bank escrow accounts at United States FDIC-insured depository banks. Hence, TKJ will hold sales proceeds in escrow as collateral to guarantee TKJ's obligation to supply air charter services in the future.

The Tokens will be distributed to Consumers as purchasers such that they meet their on-demand air charter needs as users of the TKJ Platform. They will receive their Tokens at once after purchase and will be able to redeem their Tokens once received with no delay. Consumers will be able to transfer their Tokens in the amount needed to pay for the offered air charter services corresponding to their expected use.

**C. Proof of Reserves and TKJ's Obligations to Consumers, Brokers and Carriers as Token Holders**

At all times, the total number of Tokens in circulation, being TKJ liabilities, will be fully backed by an equal amount of USD held in reserve in FDIC-insured financial institution escrow accounts located in the United States. Each Token in circulation will represent one United States Dollar held in TKJ escrow reserves in a one-to-one ratio. To complement disclosure and transparency, TKJ will publish regularly in a private forum to Consumers, Brokers and Carriers an independent professional audit of the total amount of USD held in its escrow account reserves and the total number of Tokens then outstanding.

**D. Representations Regarding TKJ Program Memberships and Token Sales**

- TKJ will offer Program memberships and Tokens to Consumers solely as an opportunity to obtain prepaid on-demand air charter services. All marketing materials will say clearly that Consumers should buy the TKJ Program memberships and Tokens solely for the purpose of obtaining prepaid on-demand air charter services and not for investment purposes or with an expectation to earn a profit.
- The TKJ Program membership agreement, TKJ Token sale agreement and Platform terms of service will require each Consumer or later transferee holder to agree to represent, warrant and acknowledge the following prior to purchasing the Tokens:
  - The Consumer is not acquiring the membership or Tokens as an investment and has no expectation of economic benefit or profit as a TKJ Program Member or TKJ Token holder;
  - The Consumer is solely acquiring the TKJ Program membership and Tokens for the right to obtain prepaid on-demand air charter services;
  - The Consumer is acquiring the TKJ Program membership and Tokens for the Consumer's own use and not with a view to sell or otherwise distribute the Tokens to anyone else in a secondary market;
  - All funds paid to TKJ to buy TKJ Program memberships or TKJ Tokens are nonrefundable;
  - The Consumer will not have any equity or other ownership interest in TKJ or any affiliated entities; will not have any rights to dividends, distribution rights, or interest from TKJ or any affiliated entities at any time as a result of being a TKJ Program Member and TKJ Token holder; and will not have any voting rights regarding any matters relating to TKJ or any affiliated entities;
  - All transfers of TKJ Tokens will be subject to membership restrictions, TKJ Program memberships will be nontransferable, and there is no guarantee that there will exist in the future a market for the resale of TKJ Tokens, and neither TKJ nor anyone else is



obligated to create such a market. When a TKJ Token holder transfers their Tokens to another TKJ Program member, they will not represent to such prospective transferee that the Tokens or membership is an investment opportunity or an opportunity to obtain an economic benefit or profit; and

- The Consumer and subsequent Token holder will not pledge or hypothecate their Tokens.
- All TKJ Program members must execute the membership agreement providing their personal identity with proof and TKJ Token sale agreement with express terms and provisions substantially similar to the above-stated terms and conditions.

TKJ, its agents and employees will not make statements in the sales process that are in any way inconsistent with the statements and representations above, or otherwise mention profits or an investment opportunity.

### **III. LEGAL DISCUSSION**

For the reasons set forth below, it is my opinion that the proposed sale of Tokens under the TKJ Program will not involve the sale of a “security” within the meaning of Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act, and, therefore, that registration under the Securities Acts is not required. Rather, the interest represented by a Token will be a consumptive right to redeem the escrowed funds to pay for air charter services. As such, neither an “investment contract,” a “note,” an “evidence of indebtedness” nor another form of security is present. There is no reasonable expectation of profit derived from the efforts of others, and the Consumer’s expectation will be to enter into a consumer transaction for prepayment of air charter services.

#### **A. Howey and Forman Analyses: The Proposed TKJ Jet Card Program Tokens Fail to Satisfy the Howey Test and Thus Are Not Investment Contracts**

It is my opinion that the Tokens will not be not “investment contracts,” see SEC v. W.J. Howey Co., 328 U.S. 293 (1946). The United States Supreme Court in S.E.C. v. W.J. Howey Co., 328 U.S. 293 (1946) articulated the Howey test for determining whether an economic transaction is an investment contract that as such implicates the Securities Acts. The Howey test provides that an “investment contract” is present where there is: (i) an investment of money; (ii) in a common enterprise; (iii) with an expectation of profits to be derived solely from the efforts of the promoters or third parties. All elements of the Howey test must be satisfied for an instrument to be deemed a “contract, transaction or scheme” that is a security. Howey at 298–99. The focus of the Howey analysis here is on how and why the proposed Tokens fail to satisfy the third element regarding expectations of profit.

##### **(i) Investment of Money**

Since the purchase of Tokens will require the payment of funds, an investment of money under the Howey test exists here.

(ii) **Common Enterprise**

Since TKJ will run the Platform and Network for managing the creation and redemption of Tokens and allow for Brokers or Carriers to transfer and redeem Tokens to collectively supply air charter services in addition to TKJ as part of the Network, a common enterprise may exist here as well. Consumers, however, will not be invested in the success or failure of the TKJ Program and Platform. Rather, they are buying as consumers prepaid air charter services. As such, they are relying on TKJ to deliver the services as obligated, not to deliver a capital return or other profit on an investment.

(iii) **Expectation of Profits to Be Derived Solely from the Efforts of the Promoters or Third Parties**

Regarding “profit” under the Howey test, the Supreme Court means “capital appreciation” resulting from an investment of money or “participation in earnings” resulting from the usage of the investor’s funds. See United Housing Foundation v. Forman, 421 U.S. at 852. While the Howey test is flexible, there must be a reasonable of expectation of profit for there to be a security.

The characteristics of the Tokens and terms and conditions of the Program demonstrate that there is no reasonable expectation of any profit that Howey recognizes on the part of any Member.<sup>2</sup> This is because Consumers will have no right to share in any income generated by the operation of TKJ (or any other affiliated entity). TKJ will not pay dividends, rebates, rewards, interest or other distributions to Consumers from the operation of TKJ. TKJ will make no distribution of any kind to any Consumers, other than the non-monetary provision of the air charter services using the prepaid Token sales funds held in escrow corresponding to the specific Consumers. Further, Consumers will have no reasonable expectation of profit based on capital appreciation as explained below.

A Consumer will be motivated to buy Tokens by a desire to obtain on-demand air charter services in a more efficient and faster manner than they are able to do so currently. As in Forman, the characteristics of the instrument and the manner in which they are sold indicate that Members will not buy Tokens with an expectation of profit, but rather solely with a view to use them for air charter services. In Forman, the purchasers were screened and qualified, similar to how the Consumers are

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<sup>2</sup> In the Tuition Plan Consortium, LLP no-action letter, the Staff said that it will not recommend enforcement action where the proposed instruments represented prepaid tuition certificates, and demonstrated similar characteristics to those in Forman (purchaser received right to fixed amount of prepaid future services; provision of services not dependent on third party efforts of others to offer returns; limited transferability; the return on funds was limited to principal plus treasury rate of accrued interest). In earlier no-action letters the Staff agreed that prepayment was motivated by a desire to obtain future services for consumption and not by a desire for profit where pre-need funeral services contracts were offered. See Fleet National Bank (September 5, 1990); Michigan Funeral Directors Association (September 28, 1987). Similarly, since the TKJ memberships and Tokens do not meet the definition of a security pursuant to the Securities Acts and they will not be marketed to the public as an investment opportunity, but rather are prepayment for future air charter services, have limited transferability, and there will be no refunds, granting the requested no-action relief would be consistent with Tuition Plan Consortium, LLP and the related prepaid tuition and prepaid funeral services no-action letters.

qualified when they apply for membership in the Program (via the KYC/AML background check and TSA anti-terrorism travel ban watch list check) and subsequently execute the membership agreement and Token purchase agreement wherein, they agree to abide by Program rules and acknowledge that they are not purchasing Tokens for financial gain. Further, in Forman a purchaser could not redeem the purchase for more than the sales price, while here TKJ will not provide refunds to Consumers, and the Tokens must be consumed for air charter services within the closed Program environment.

Consumers will be motivated to purchase the Tokens in order to prepay for and consume on-demand air charter services, based on the following attributes of the Program: (i) there will be contractual and technical restrictions on transferability of Tokens, because such transfers will be subject to terms of the Token sales agreement, TKJ Program membership agreement and smart contracts that only Consumers, Brokers or Carriers may acquire and hold Tokens; (ii) the Consumers, Brokers and Carriers as Token holders will be advised that they should not acquire Tokens as an investment for profit; (iii) each prospective Consumer as buyer or holder (including transferees) will be required to represent that they are not acquiring the Tokens as an investment and has no expectation of economic benefit or profit as a Consumer; (iv) the Consumers will acknowledge and agree that they are acquiring the TKJ membership and Tokens for their own use and not with a view to sell or otherwise distribute the Tokens to anyone else in a secondary market; and (v) the Consumers will acknowledge and agree that there is no market for the Tokens, and neither TKJ nor any other person will create such a market. Hence, reasonable Consumers of the TKJ Program memberships and Tokens will not expect and TKJ will not promise any “return” on their payment, or any other “profit” from TKJ Program membership or ownership of Tokens. Similarly, Carriers’ and Brokers’ expectations are to receive Tokens as compensation for services rendered through the Program and not to earn “profits” for such work.

The attributes of the Program further include: (i) all marketing materials will state clearly that the TKJ Members should acquire the Tokens solely for the purpose of prepaying for and consuming prepaid on-demand air charter services; (ii) the Token and TKJ membership agreements will require each Consumer or subsequent transferee holder to agree to represent, warrant and acknowledge transfer and redemption restrictions; (iii) TKJ will hold all prepaid funds for the corresponding sold Tokens in escrow accounts; and (iv) upon redemption of Tokens, TKJ will utilize the funds held in escrow to pay for the delivery of air charter services directly to Brokers or Carriers as obligated pursuant to the Token sales agreement, smart contract embedded in each Token and Program membership agreement. Based on these attributes and the others discussed here, there would be no reasonable expectation of profit.

In the LA Fan Club, Inc. Membership Program (June 28, 2017) no-action letter, the Staff provided no-action relief relating to memberships involving personal seat licenses and ticket-related member benefits for a professional sports franchise. The terms of the memberships, among other things, provided that they had significant transfer restrictions, purchasers represented that they were obtaining the memberships for their own use and not as an investment or to profit, and they were not marketed to

the public as investments.<sup>3</sup> The crux of these letters is that the primary motivation of the purchasers of the seat licenses was to attend events and consume entertainment, not to profit or resell. In each case, this was demonstrated by various characteristics of the asset and the manner in which the assets were sold. This also is the case with the Tokens and the Program.

Here, TKJ has an even stronger argument since the sole purpose of buying the Tokens is to prepay for and consume air charter services. It will not be technically possible to trade and transfer Tokens from the Platform in a non-Platform secondary market at a premium. Further, it will be economically impractical to trade Tokens within the Platform in a secondary market since TKJ will offer continuous, ongoing Token sales at one USD per Token which should cause the market price of Tokens not to exceed one USD per Token. These restrictions on transfer are indicative of the consumptive nature of the Tokens. The TKJ Program memberships are non-equity memberships and will be non-transferable. The Consumers will represent that they are obtaining the TKJ memberships and Tokens for their own use and not as an investment or to profit. The TKJ memberships and Tokens will not be marketed to the public as investments. The funds that the Consumers prepay for the on-demand air charter services will be nonrefundable and will be immediately redeemable for air charter services, so no Consumer will have a reasonable expectation of profit. Thus, granting the requested no-action relief to TurnKey Jet, Inc. would be consistent with the Staff's earlier position in LA Fan Club, Inc. Membership Program and the related personal seat license no-action letters.

As explained above, it is highly unlikely that a Member would be able to buy Tokens and resell them for a financial gain. While such a financial gain is theoretically possible, it is highly unlikely, given the Program's structure, particularly that Members will be able to purchase Tokens from TKJ at the 1 USD fixed price throughout the life of the Program. Any such gain, however, would not result from the entrepreneurial or managerial efforts of TKJ and, accordingly, would not be "profit" under Howey.<sup>4</sup>

**B. Reves Analysis: The Proposed Tokens Are Not Notes or Other Evidence of Indebtedness Because They Simply Formalize Using Blockchain Technology Open-Account Debts Incurred in the Ordinary Course of Business of TKJ**

It is my opinion that the Tokens should not be viewed as a "note," as such term is used in Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act, or other "evidence of indebtedness" as such term is used in Section 2(a)(1) of the Securities Act, because they will bear a strong resemblance to those instruments traditionally excluded from the definition of a security pursuant to Reves v. Ernst & Young, 494 U.S. 56 (1990). The Tokens will simply formalize using blockchain technology an open-account debt incurred in the ordinary course of business of TKJ, that is, the obligation to provide air charter services in exchange for the prepayment of those services. Such an

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<sup>3</sup> Earlier Staff no-action letters exist involving similar circumstances involving personal seat licenses and member benefits, and non-equity memberships. See San Francisco Baseball Assocs. L.P. (February 24, 2006); Ticket Reserve, Inc. (September 11, 2003); Erica Enders Racing, LLC (November 21, 2006).

<sup>4</sup> See, e.g., Community Sun, LLC (August 29, 2011) (no-action recommended where solar panel condominium units could be resold by original purchasers for potential profit based on fluctuations in energy markets).

open-account debt is one of the Reves enumerated categories of instruments which are not securities.<sup>5</sup> Here, since the funds paid for Tokens are held in escrow, and each Token has a corresponding 1 USD in an account at an FDIC-insured financial institution available for payment for services upon redemption by the Member, they represent an open-account debt of TKJ. Further, the TKJ Program memberships and Tokens will not be marketed to the public as investments that will earn a profit. Thus, under these circumstances, granting the requested no-action relief to TurnKey Jet, Inc. would be consistent with federal case law and Staff guidance.<sup>6</sup>

#### IV. CONCLUSION

It is my opinion that the Tokens are not securities within the meaning of Section 2(a)(1) of the Securities Act or Section 3(a)(10) of the Exchange Act and the Tokens should not be viewed as the equivalent of an “investment contract,” a “note,” an “evidence of indebtedness” or another form of security under the analyses described in Howey, 328 U.S. 293 (1946), Forman, 421 U.S. 837 (1975) and Reves, 494 U.S. 56 (1990). For the above-mentioned reasons, I respectfully request your confirmation that the Staff will not recommend that the Commission take any enforcement action against TKJ if TKJ offers and sells Tokens in the manner and under the circumstances described above without registration under the Securities Acts.

TurnKey Jet, Inc. plans to begin offering the TKJ jet card membership Program and Tokens as soon as practical after receiving a response from the Division that grants this request. If you need more information to prepare a response, please call me at (561) 972-8222 to discuss this matter. Thank you for your assistance.

Sincerely,



James P. Curry, Esquire

cc: Paul Schoen, TurnKey Jet, Inc.

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<sup>5</sup> See generally S.E.C. v. Thompson, 732 F.3d 1151, 1159 (10th Cir. 2013); Tr. Co. of Louisiana v. N.N.P. Inc., 104 F.3d 1478, 1489 (5th Cir. 1997)

<sup>6</sup> See also Poplogix, LLC (November 5, 2010) no-action letter where the Staff provided a favorable no-action response to a request arguing that certain loans and notes were not securities because, among other things, the terms of the loans and notes provided no possibility of profit or capital appreciation, and they were not marketed to the public as investments.