Testimony of Jon Potter Regarding SB180
on Behalf of Dapper Labs and Sorare
Colorado Senate Finance Committee
March 28, 2024

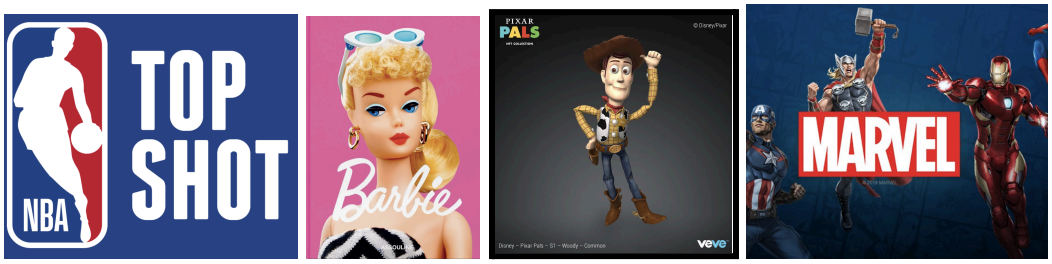
Chair Mullica, Ranking Member Van Winkle, and Committee members,

Thank you for the opportunity to testify in support of SB180, the bipartisan bill introduced by President Fenberg and Senator Smallwood that would repeal the Digital Token Act of 2019. I am Jon Potter, here for Dapper Labs and Sorare, two leading companies in the business of issuing and selling consumer product non-fungible tokens, or NFTs.

In 2019 then-Governor Hickenlooper appointed a council to study blockchain and crypto technologies and business models, and to develop a plan to make Colorado a good place - as it was then and is today - for innovators to start exciting new companies. However, for reasons I cannot explain, the Council recommended one of the most unusual statutes I've come across in 35 years as a law and policy professional.

As background, a non-fungible token, or NFT, is a unique digital identifier that is recorded using distributed ledger technology and may be used to certify the authenticity and ownership of an associated right or asset. These rights may relate to digital or physical assets, such as the right to access digital art, attend a ticketed event, or ownership of a digital good or physical item.

As the Digital Token Act recognizes, NFTs can have consumptive, or non-financial purposes. The underlying digital assets offered by Dapper and Sorare are entertainment products - digital collectibles primarily related to sports but also to Marvel action films and other Disney themes. You may be aware of NBA Topshot or NFL All Day, or perhaps you know of Barbie and Hot Wheels NFTs sold by the iconic American toy company, Mattel.



When proposed, the Digital Token Act was characterized as clarifying the scope of the state's Securities Act - helping to define when a digital token is a security and subject to Securities Division regulation and oversight, and when a token is consumptive or non-financial, and is not subject to the Act and Division oversight. Oddly, however, the legislation did not amend the Securities Act definition of security or otherwise state when a token is or is not a security.

While I'm sure there were good intentions, the Act created a new requirement that digital token sellers alert the Securities Division each time they sell a token that is ***not*** a security. In essence, the Digital Token Act imposed a Securities Act regulatory burden on actors and activities that are otherwise not subject to Securities Act regulation or even of interest to the Securities Division. I don't know of any laws, in Colorado or elsewhere, that impose a regulatory burden on unregulated entities for engaging in unregulated activities with unregulated products.

To be clear, it is quite possible that NFTs can be used to access, distribute, or authenticate securities, and in those cases the Securities Act is implicated and the Division should be informed and engaged. But the Securities Act has always covered those activities and new NFT technology did not require, then or now, that the Act be amended.

To summarize - Barbie and Peyton Manning NFTs have nothing to do with securities, and sellers should not be required to notify the Securities Division that they are not selling securities.

That's why Dapper Labs and Sorare support SB180 to repeal the Digital Token Act.

Thank you, and I'm happy to answer questions.