

Crypto-Tokens and the Securities Laws – the ICO Phenomenon

Crypto-tokens like Bitcoin and Ethereum are often treated as investments by those who purchase them, who hold or trade them with the hope of these assets increasing in value. The securities laws govern certain types of investments, requiring those who issue or sell securities to provide certain types of disclosures to their investors or to the public at large. The question has arisen as to whether crypto-tokens like Bitcoin or Ethereum are securities, such that their issuance or sale would be covered by the securities laws, and would impose legal requirements and accountability on certain people involved in these systems.

During 2017, people began to create 'tokens' on blockchains and to use them to raise money for various business needs. Tokens did not represent an equity (ownership) interest in a business, but instead, a participation right in a future blockchain system that developers would create. Billions of dollars in cryptocurrencies were raised in 'initial coin offerings' or ICOs, often from retail investors who were provided little disclosure about the investments.

READINGS:

Floyd Mayweather Just Joined the ICO 'Coin' Craze, Fortune, July 27, 2017.

<http://fortune.com/2017/07/27/mayweather-ico/>

Michael Pisa, *Initial Coin Offering (ICO) Mania and Its Implications for Technology-Led Social Enterprise*, Center for Global Development, Jan. 25, 2018.

<https://www.cgdev.org/blog/initial-coin-offering-ico-mania-and-its-implications-technology-led-social-enterprise>

Jonathan Rohr and Aaron Wright, *Blockchain-Based Token Sales, Initial Coin Offerings, and the Democratization of Public Capital Markets*, available at SSRN:

<https://ssrn.com/abstract=3048104>

Helen Gugel & Christopher Koniff, *In the Wake of the DAO Report: A Year in Review*, Big Law Business, July 30, 2018.

<https://biglawbusiness.com/in-the-wake-of-the-dao-report-a-year-in-review/>

Review the SEC's DAO Report from last week's class:

<https://www.sec.gov/litigation/investreport/34-81207.pdf>

REFLECTION QUESTIONS:

What are securities under the US securities laws? Why do we have securities laws?
What is the function they are supposed to perform?

Who is tasked with implementing and enforcing the securities laws in the US?

How do cryptocurrencies / crypto-assets / crypto-tokens implicate the securities laws?
Why do some people argue that they may be securities? What are the implications if
cryptocurrencies like Bitcoin or Ethereum are considered to be securities?

What is a ICO? What happened in 2017 with ICOs?

Who were investors in ICOs? Why was this fundraising method described as
'democratizing investment opportunities'?

How has the SEC recently treated token sales? Is the SEC's stance on them clear or
unclear? Why have some in the crypto sector criticized the SEC's actions related to
cryptocurrencies and token sales?

What, if anything, does the ICO phenomenon tell us about our existing securities laws?
Are our laws about the protections investors need well structured / up to date, or do they
need rethinking in light of technological advances?

Any other big questions you see raised by these materials?