

Abstract

Initial Coin Offerings (ICOs) and the Blockchain: Trends in U.S. Securities Law

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In 2017, a flurry of Initial Coin Offerings (ICOs) representing many blockchain related projects hit the international scene, including the U.S. These ICOs raised billions of dollars from investors and speculators, both sophisticated and unsophisticated, who placed their bets in exchange for digital representation of ownership by way of tokens (digital coins). Companies offering these tokens most often issued these coins without federal or state registration under United States securities laws. In the U.S., investments that are offered to the public must be either exempt from securities registration, part of an exempt transaction, or be registered as securities at the federal and/or state levels. Additionally, certain information must accompany investment offerings in order to provide some level of investor protection. Failure to properly register such securities and provide the proper disclosure information, when required, may result in both civil and criminal sanctions and court orders of restitution levied against such issuers. With billions of dollars in value now lost from failed token-based projects by hundreds of thousands of investors, the issue of proper securities registration is heating up in the U.S. Whether a digital token is a security or not, requiring registration, is determined by reference to a famous 1946 case, *SEC v. W.J. Howey Co. (Howey)*. This paper will explore application of *Howey* to several of these offerings and will review a few key challenges by U.S. securities regulators to some of the more noteworthy ICOs.