

Client Alert

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SEC Breaks Silence on Certain Cryptocurrency Exchanges

By Susan I. Gault-Brown and Amanda J. Mollo

On March 7, 2018, the staff of the Divisions of Enforcement and Trading and Markets of the Securities and Exchange Commission (SEC) issued a public statement regarding exchanges and other secondary trading platforms that list and/or facilitate the trading of coins and tokens online. The statement emphasizes that platforms offering the trading of digital assets that are securities, including many (if not all) coins and tokens issued through initial coin offerings (ICOs), must register with the SEC as a national securities exchange or operate under an exemption from such registration. The SEC statement addresses an apparently widespread misunderstanding that industry participants could operate such online coin or token exchanges without registering as an exchange, alternative trading system (ATS), or broker-dealer.

We expect the SEC statement to impact primarily coin and token exchanges. The SEC statement specifically mentions “coins and tokens offered and sold in so-called [ICOs]” as digital assets for “investors” and the platforms where those assets may be exchanged as providing “a mechanism for trading assets that meet the definition of a ‘security’ under the federal securities laws.”

In light of the SEC staff’s statement, we believe industry participants should expect to see the SEC begin to bring enforcement actions against coin and token exchanges that do not register with the SEC or otherwise come into compliance with the federal securities laws. We note that the SEC staff in the statement “encourages market participants who are employing new technologies to develop trading platforms to consult with legal counsel to aid in their analysis of federal securities law issues and to contact SEC staff, as needed, for assistance in analyzing the application of the federal securities laws.” In light of the SEC’s increasing focus on coin and token issues, we likewise advise clients to carefully consider the securities law implications of their activities in this area, and to engage with the SEC staff when appropriate to discuss those activities. We will continue to monitor developments in this space.

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