

NEWS ALERT**SECURITIES GROUP****2017: Spotlight On Initial Coin Offerings**

By Edward B. Whittemore | November 7, 2017

During the past year, the United States has seen an increasing number of a novel form of capital raising conducted by businesses or developers – known as an “initial coin offering,” or “ICO.” As often seen with other new trends in our culture, a number of prominent celebrities – such as boxer Floyd Mayweather and hotel heiress Paris Hilton – have become involved in promotional efforts (largely conducted via social media outlets) related to ICOs. The efforts of these celebrities are reported to have increased exposure for, and added momentum to the success of, some of these offerings. In a typical “coin” or “token” offering, investors are able to purchase the coins with fiat currencies (such as U.S. dollars) or virtual currencies, such as Bitcoin and Ether (the currency inside Ethereum). Many coin or token offerings are being conducted directly, bypassing the need for traditional venture capital or private equity firms as sources of start-up capital.

After the publishing of a number of recent reports (including a story in the Oct. 27th edition of the [New York Times](#)) describing the involvement of sports and entertainment celebrities with ICOs, the SEC, on Nov. 1, 2017 issued an additional statement of the Division of Enforcement and an “Investor Alert” about ICOs. In its [Statement](#), the SEC cautioned market participants – specifically directed to celebrities and other individuals who are actively endorsing ICOs and the companies issuing the coins or tokens – that their promotional efforts may violate the federal securities laws.

The SEC explained that “any celebrity or other individual who promotes a virtual token or coin that is a security must disclose the nature, scope, and amount of compensation received in exchange for the promotion. A failure to disclose this information is a violation of the anti-touting provisions of the federal securities laws. Persons making these endorsements may also be liable for potential violations of the anti-fraud provisions of the federal securities laws, for participating in an unregistered offer and sale of securities, and for acting as unregistered brokers. The SEC will continue to focus on these types of promotions to protect investors and to ensure compliance with the securities laws.”

In the [Investor Alert](#), the SEC stated “a celebrity endorsement does not mean that an investment is legitimate or that it is appropriate for all investors. It is never a good idea to make an investment decision just because someone famous says a product or service is a good investment.” The SEC also bluntly advised that “celebrities who endorse an investment often do not have sufficient expertise to ensure that the investment is appropriate and in compliance with federal securities laws.”

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The SEC's warnings about celebrity endorsements follows the SEC's [Report of Investigation](#) issued in late July 2017 that clarifies the view of the SEC that some offers and sales of digital assets by "virtual" organizations are subject to the requirements of the federal securities laws. The SEC observed that whether a particular ICO investment transaction involves the offer or sale of a security – regardless of the terminology or technology used – will depend on the facts and circumstances, including the economic realities of the transaction.

The SEC's Report found that tokens offered and sold by a "decentralized autonomous organization" (or "DAO") in 2016 to establish the Ethereum platform – were securities and therefore subject to the federal securities laws. The Report confirms that issuers of distributed ledger or blockchain technology-based securities must register offers and sales of such securities with the SEC, unless a valid exemption applies. Those participating in unregistered offerings can also face liabilities and remedies under the federal securities laws. The SEC also issued an [Investor Bulletin](#) on July 25, 2017 with additional information for investors.

The SEC's most recent pronouncements demonstrate the tensions that are arising between the rapidly accelerating marketplace for ICOs and the requirements of the federal securities laws, which have been on the federal statute books for decades. The application of the federal securities laws to ICOs and blockchain technologies – like the marketplace itself – will likely continue to evolve in the coming months.

If you have questions about this evolving technique for fundraising, and how the federal securities laws apply to these new fundraising techniques, please contact:

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