

SEC Confirms That Some Initial Coin Offerings Are Illegal Unregistered Securities Offerings

July 27, 2017 | Client Update

In a much-anticipated action, on July 25 the SEC issued a [Section 21\(a\) report](#) of its investigation into an offering of digital tokens by “The DAO,” an unincorporated virtual organization. Though declining to take enforcement action against The DAO, the SEC used the opportunity to warn others engaged in similar activities that an unregistered sale of blockchain tokens can, depending on the circumstances, be an illegal public offering of securities. Simultaneously, the SEC issued a [bulletin](#) warning investors about such sales, often called “initial coin offerings” or ICOs. The DAO 21(a) report focused on a fact-pattern where the classic test for a “security” under federal law, announced in the Supreme Court’s 1946 case *SEC v. W.J. Howey Co.*, was easily met: the tokens were sold for value and represented ownership interests in a common enterprise, and the purchasers had an expectation of profit from the efforts of others. And the tokens were distributed in a manner that bore the hallmarks of a traditional securities offering.

We see the DAO 21(a) report as a clear announcement to the ICO market that new ICOs will be closely scrutinized.

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