

Canadian Securities Administrators Caution Public & Issuers on Initial Coin Offerings

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August 28, 2017 @ 2:03 pm By [JD Alois](#)

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The Canadian Securities Administrators (CSA) have posted a notice regarding companies that are using Initial Coin Offerings (ICOs) to raise capital online. The CSA published a Staff Notice, 46-307 Cryptocurrency Offerings, noting that issuers may need to comply with existing securities law. Canada is the third country to publicly caution issuers and investors on ICOs. The US Securities and Exchange Commission and Monetary Authority of Singapore have both posted similar notes. The CSA is the council of securities regulators of Canada’s provinces and territories that coordinates and harmonizes regulation for the Canadian capital markets.

Attorney [Joshua Ashley Klayman](#), the chair of Morrison & Foerster’s Blockchain + Smart Contracts Group, commented on the CSA Notice;

“Aspects of the guidance from the Canadian Securities Administrators appear consistent with what we have seen from the US Securities and Exchange Commission and the Monetary Authority of Singapore,” said Klayman.

Klayman described the four-pronged test for the existence of an investment contract, given in CSA’s release, is one example of that consistency. The test asks whether the ICO or ITO [Initial Token Offer] involves: (1) An investment of money; (2) In a common enterprise; (3) With the expectation of profit; (4) To come significantly from the efforts of others.

The notice (embedded below) outlines the factors CSA staff consider in assessing whether prospectus, registration and marketplace requirements apply. It also outlines how the [CSA Regulatory Sandbox](#) can help fintech businesses contemplating such offerings and summarizes key issues that businesses should be prepared to discuss with CSA staff.

“The technology behind cryptocurrency offerings has the potential to generate new capital raising opportunities for businesses and we welcome this type of innovation,” said [Louis Morisset](#), CSA Chair and President and CEO of the Autorité des marchés financiers. “Given the growing activity in this novel area, we are publishing guidance to help fintech businesses understand what obligations may apply under securities laws.”

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Any business that is planning to raise capital through an ICO or ITO, or that is seeking to establish a cryptocurrency investment fund, should consider whether it involves a security. The CSA said that businesses should also contact their local securities regulatory authority to discuss possible approaches to complying with securities laws.

Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 CSA Staff Notice 46-307 Cryptocurrency Offerings

CSAACVM

Canadian Securities Administrators

Autorités canadiennes en valeurs mobilières

CSA Staff Notice 46-307
Cryptocurrency Offerings¹

August 24, 2017

Introduction and purpose

Staff (**we** or **staff**) of the Canadian Securities Administrators (**CSA**) are aware of an increase in the number of cryptocurrency offerings, such as initial coin offerings (**ICO**), initial token offerings (**ITO**)² and sales of securities of cryptocurrency investment funds.

Cryptocurrency offerings can provide new opportunities for businesses to raise capital and for investors to access a broader range of investments. However, they can also raise investor protection concerns, due to issues around volatility, transparency, valuation, custody and liquidity, as well as the use of unregulated cryptocurrency exchanges.³ Also, investors may be harmed by unethical practices or illegal schemes, and may not understand the properties of the investment products that they are purchasing.

Many of these cryptocurrency offerings involve sales of securities. Securities laws in Canada will apply if the person or company selling the securities is conducting business from within Canada or if there are Canadian investors. Given the significant growth in this area and requests for guidance, we are publishing this Staff Notice to help financial technology (**fintech**) businesses understand what obligations may apply under securities laws.⁴

We note that these products may also be derivatives and subject to the derivatives laws adopted by the Canadian securities regulatory authorities, including trade reporting rules.

Businesses should consider if and how prospectus, registration and/or marketplace requirements apply to their cryptocurrency offerings. Specifically and as described in more detail in this Staff Notice:

- Securities may only be sold after a receipt has been received from a securities regulatory authority for a comprehensive disclosure document called a “prospectus”, or pursuant to a private placement in reliance on a prospectus exemption;

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Warning! Singapore tells Consumers to Exercise Due Diligence on Initial Coin Offerings



So You Want to (Legally) Raise an ICO?



When is an ICO a Security? Law Firm Morrison Foerster Responds



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China: WeiyangX Fintech Review



Tramonex and NOW Money Join Central Bank of Bahrain’s Regulatory Sandbox: Ready to Play



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Upcoming Events

‘FINTEGRATION’ – Connecting the Dots – Singapore

August 31 @ 6:00 pm - 9:30 pm SGT

Disruption Summit Europe – London

September 5

Pirate Summit – Cologne

September 6 - September 7

CrowdInvest Summit 2017 – Los Angeles

September 6 - September 7

Marketplace Lending & Crowdfunding 2017 – New York City & Live Stream

September 7 @ 9:00 am - 5:00 pm EDT

ComCap17 – Monterey, California

September 10 - September 13

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September 11 - September 14

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