

A Securities Law Framework for Blockchain Tokens

To estimate how likely a particular blockchain token is to be a security under US federal securities law

Refer to: full legal analysis

Instructions

Step 1: Copy to a new google sheet (File > Make a copy) or download as .xls

Step 2: Review each characteristic and determine whether or not it applies to the token

Step 3: Select Y or N for each characteristic from the drop down menu

Step 4: Review results at the bottom of this page

Element 1: Investment of Money

Is there an investment of money?

Characteristic	Points	Explanation	Examples	Y or N
There is no crowdsale. New tokens are given away for free, or are earned through mining	0	Tokens which are not sold for value do not involve an investment of money. For example, if all tokens are distributed for free, or are only produced through mining, then there is no sale for value.	There was never any token sale for Bitcoin. The only way to acquire new bitcoin is via mining. A token which is randomly distributed	N
Tokens are sold for value (crowdsale)	100	Tokens which are sold in a crowdsale, at any time, regardless of whether sold for fiat or digital currency (or anything else of value) involve an investment of money	A token which is sold for bitcoin in a crowdsale. A token which is sold for ether in a crowdsale.	Y

Total for Element 1

100

Element 2: Common Enterprise

What is the timing of the sale?

Characteristic	Points	Explanation	Examples	Y or N
Pre-deployment	70	A sale of tokens before any code has been deployed on a blockchain is more likely to result in a common enterprise where the profits arise from the efforts of others. This is because the buyers are completely	A developer has an idea for a new protocol, writes a white paper and does a crowdsale.	Y

Characteristic	Points	Explanation	Examples
		dependent on the actions of the developers, and the buyers cannot actually participate in the network until a later time.	
The protocol is operational on a test network	60	If there is a functioning network there is less likely there is to be a common enterprise where the profits arise from the efforts of others. The closer the sale is to launch of the network, the less likely there is to be a common enterprise.	A developer has an idea for a new protocol, writes a white paper and deploys a working test network before doing a crowdsale.
Live network is operational	50	If the token is sold once there is an operational network using the token, or sold immediately before the network goes live, it is again less likely to result in a common enterprise	The crowdsale is done at the same time the network is launched.

N

Y

What do token holders have to do in order to get economic benefits from the network?

Characteristic	Points	Explanation	Examples
All token holders will always receive the same returns	25	If returns are paid to all token holders equally (or in proportion to their token holdings) regardless of any action on the part of the token holder, then their interests are more likely aligned in a common enterprise	Participants network accrued tokens AMM depending on the provision of information in the network, timely payment of obligations or provide access to the database in the presence of a certain amount of AMM.

Y or N

N

Characteristic	Points	Explanation	Examples	
There is a possibility of varying returns between token holders, based on their participation or use of the network	-20	If token holders' returns depend on their own efforts, and can vary depending on the amount of effort they each put in, then there is less likely to be a common enterprise	Owners of AMM can get tokens, using the services of network providing information in the network, as well as can spend AMM for the preparation of access to information. owners AMM that do not provide information and do not use the services, not get tokens.	Y
Total for Element 2				100

Element 3: Expectation of Profit

What function does the token have?

Characteristic	Points	Explanation	Examples	Y or N
Ownership or equity interest in a legal entity, including a general partnership	100	Tokens which give, or purport to give, traditional equity, debt or other investor rights are almost certainly securities.	Developer produces and sells 45 000 000 tokens AMM. Holders token provides only access to services platform MicroMoney.	N
Entitlement to a share of profits and/or losses, or assets and/or liabilities	100	If one or more of these characteristics apply, the token is almost certainly a security, notwithstanding the results of the other elements		Y or N N

Gives holder status as a creditor or lender	100			N
A claim in bankruptcy as equity interest holder or creditor	100			N
A right to repayment of purchase price and/or payment of interest	100		Each token provides access to services network and databases. the more AMM you have, the higher your credit rating in the ecosystem MicroMoney. each individual or client will be rewarded AMM every time after the return of the loan. all members of ecosystems MicroMoney can accumulate AMM tokens to improve the credit history.	N
No function other than mere existence	100	A token which does not have any real function, or is used in a network with no real function, is very likely to be bought with an expectation of profit from the efforts of others, because no real use or participation by token holders is possible. Voting rights alone do not constitute real functionality.	Developer produces and sells 45 000 000 AMM for deployment platform. Function token AMM is to provide and receive a large amounts of data and credit stories, and related services over the open source protocol storage that allows users to transmit and distribute large volumes of data and credit stories on the decentralized basis.	N
Specific functionality that is only available to token holders	0	A token which has a specific function that is only available to token holders is more likely to be purchased in order to access that function and less likely to be purchased with an expectation of profit.	AMM token - is the only way access and use of decentralized network storage and data transmission in the ecosystem MicroMoney.	Y

Does the holder rely on manual, off-blockchain action to realize the benefit of the token?

Characteristic	Points	Explanation	Examples	Y or N
Manual action is required outside of the network (e.g. off-blockchain) in order for the holder to get the benefit of the token	80	A token whose value depends on someone taking specific manual action outside of the network means that the token is not functional in and of itself. Instead, the token relies on a level of trust in a third party taking action off-blockchain. This sort of token is more likely to be bought for speculation - i.e. the expectation of profits.	Developer produces and sells AMM to access the holder it has network. AMM you can pay for access to the big data. The network based on the legal contractual relationships and activities including is blockchain , but it does not AMM token security.	N
All functionality is inherent in the token and occurs programmatically	0	A token which is built with all the necessary technical permissions means that the token holder does not rely on manual actions of any third party. This means that the buyers are more likely to purchase the token for use rather than with the expectation of profit from the efforts of others.	The company provides data as a services (or daas), and helps users to build tools and application program interfaces (API) for users to be able to interface with its new decentralized big data and credit histories storage. Holders AMM can acquire data and producing transaction inside network.	Y

What is the timing of the sale?

Characteristic	Points	Explanation	Examples	Y or N
Pre-deployment	20	A sale of tokens before any code has been deployed on a blockchain is more likely to result in buyers purchasing for speculative reasons with the expectation of profit, rather than practical use cases.	A developer has an idea for a new protocol, writes a white paper and does a crowdsale.	Y
The protocol is operational on a test network	10	If the sale occurs after code has been deployed and tested, the token is closer to being able to be used	A developer has an idea for a new protocol, writes a white paper and develops a working test network before doing a crowdsale.	Y
Live network is operational	0	If the token is sold once there is an operational network using the token, or immediately before the network goes live, it is more likely to be purchased with the intention of use rather than profit.	The live network is launched before the crowdsale.	N

Can the token holders exercise real and significant control via voting?

Characteristic	Points	Explanation	Examples	Y or N
Token holders as a whole are able to control the development team's access to funds	-20	If the collective approval of token holders is required in order for the development team to access the funds raised in the crowdsale, then any value realized by the token holders is more closely tied to their own decisions, and less reliant on the efforts of others.	Developer produces and sells AMM to access the holder it has network. AMM you can pay for access to the big data. The network based on the legal contractual relationships and activities including is blockchain , but it does not AMM token security.	N

Characteristic	Points	Explanation	Examples
Token holders as a whole are able to vote on significant decisions for the protocol	-10	If the collective approval of token holders is required in order to make significant changes to the protocol, then any value realized by the token holders is more closely tied to their own decisions, and less reliant on the efforts of others.	The company provides data as a services (or daas), and helps users to build tools and application program interfaces (API) for users to be able to interface with its new decentralized big data and credit histories storage. Holders AMM can acquire data and producing transaction inside network.

N

Note: Voting rights must be in addition to functionality.

A token with voting rights alone and no other real functionality is very likely to satisfy element 3

How is the token sale marketed?

Characteristic	Points	Explanation	Examples
Marketed as an 'Initial Coin Offering' or similar	50	It is not possible to prevent some buyers from buying a token purely for speculation. However, marketing the token as an investment leads buyers to believe they can profit from holding or trading the token, rather than from using the token in the network. Using terms like 'Initial Coin Offering' or 'ICO', and investment-related language like 'returns' and 'profits' encourages buyers to buy a token for speculation, rather than use.	The company involves the use of token AMM only in the ecosystem MicroMoney, according to its functional. Company allows possible risks trade AMM to secondary market.
Marketed as a Token Sale	0	Marketed as a sale of tokens which give the right to access and use the network	
There is no economic return possible from using the network	-100	If there is genuinely no economic return possible for the token holders, then there is unlikely to be a common enterprise. This will be rare.	Backers contribute to a cause and receive a 'thank you' token which has no economic value.

Y or N

N

Y

N

Results

Guide

Total Points	How likely is the element to be satisfied?		Your results
0 or less	Very unlikely	Total for Element 1	100
1 - 33	Unlikely	Total for Element 2	100
34 - 66	Equally likely and unlikely	Total for Element 3	30
67 - 99	Likely		
100 or more	Very likely	Overall Risk Score	40

A token will only be a security if it satisfies all three elements. The higher the point score for each element, the more likely the element is to be satisfied.

For many blockchain tokens, the first two elements of the Howey test are likely to be met. The third element has the most variables and the most different outcomes depending on the characteristics of the particular token.

Important notes

Please remember that this methodology produces nothing more than an estimate. The Overall Risk Score and the categories of likelihood are a guide only.

The Howey test has not yet been directly applied by the courts to any digital currency or blockchain token. The Howey test as applied by the courts does not involve any points-based calculation. The points system is intended as a guide - to highlight the characteristics of a token which are relevant to the securities law analysis.