

Regulators Claiming Jurisdiction over Virtual Currencies

For the first time, the SEC has weighed in on the circumstances under which a virtual currency token will be deemed a security. The SEC recently issued a [Report of Investigation](#) describing its investigation of The DAO, a virtual, unincorporated, for-profit organization that uses distributed ledger or blockchain technology to offer and sell “DAO Tokens” to investors.¹ While noting that whether a particular transaction involves the offer and sale of a security will depend on a facts and circumstances analysis, the SEC undertook a *Howey* test analysis² to conclude that DAO Tokens are securities, and to assert its jurisdiction over virtual organizations that raise capital using similar processes and technologies. The SEC’s application of the traditional securities law framework to virtual currency activities could signal future regulatory and enforcement focus in this space, and follows prior CFTC actions in which the CFTC [has asserted](#) that certain transactions in bitcoin and other virtual currencies are commodities regulated under the Commodity Exchange Act.

In light of the evolving and increasingly regulatory landscape for virtual currencies, sponsors and investors seeking to invest in virtual currencies should consider carefully whether the investments meet the relevant regulatory requirements. Registered investment advisers should also consider whether transactions involving virtual currencies should be subject to the code of ethics preclearance and reporting requirements for securities trading and securities holdings.

1 The DAO is one example of a “decentralized autonomous organization” — a virtual organization that creates and holds a pool of assets through the sale of DAO Tokens to investors, the assets of which are used to fund certain projects.

2 I.e., whether: the DAO Tokens involved the investment of “money”; investors had a reasonable expectation of profits; and profits were to be derived from the managerial efforts of others. *See SEC v. Edwards*, 540 U.S. 389, 393 (2004); *SEC v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946).

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