

ICO & Cryptocurrency Alert

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Digital Tokens - Broker-Dealers, ATS's, Trusts or MSB's ?

- At the end of 2017 alone, the SEC filed six Securities Class Actions related to either unregistered sales of securities in ICOs, or high stock volatility due to a firm's involvement in the crypto-market while CFTC has won more than 5 fraud and misappropriation cases against crypto-firms.
- The U.S. Securities and Exchange Commission (SEC) will review any firm involved in the offer or sale of cryptocurrencies that are also securities. ICOs are enforcement priority for 2018. Similarly, the SEC has stated that many online platforms for trading cryptocurrencies function, in fact, as securities exchanges and must therefore be registered as a broker-dealer and as an ATS.
- SEC Reg ATS will apply to firms using automated cryptocurrency bots for trading.
- Institutions that are licensed to engage in virtual currency activity through a NY trust must also comply with BitLicense requirements.
- The National Futures Association (NFA) requires all member commodity pool operators (CPO's) and trading advisors (CTA's) notify the regulatory of any new activity involving virtual currencies.
- AML programs under any of the three US registrations (FINRA, SEC and NYDFS) and the FCA in U.K. will have to meet either FinCEN or FATF guidelines.

Key Considerations for Cryptocurrency Firms:

- Marketing a token as a "utility" token or structuring it to provide some utility does not prevent the token from being a security. Tokens and offerings that incorporate features and marketing efforts that emphasize the potential for profits based on the entrepreneurial or managerial efforts of others will be considered security token and hence regulated by the SEC.
- Firms operating certain types of virtual currency businesses can be licensed under NYDFS BitLicense; these firms will likely find it easier to establish banking relationships.
- Virtual currencies offered as "equity tokens" will be regulated as securities by the SEC while derivative contracts on an underlying fiat currency or commodity come under the CFTC regulation.
- Financial Crimes Enforcement Network (FinCEN) has stated that its regulations apply to all types of digital tokens, which range from those that are explicitly designed to represent securities (**security tokens**), to those structured to provide holders with access to or use of a network or product (**utility tokens**), to those that are designed to, or do, function as a medium of exchange or store of value or have other currency-like functions (**cryptocurrencies**).
- Registrations with the SEC or the CFTC will require prominent disclosures for transparency of reporting and risk exposure, including fair value, capital, and liquidity disclosures.
- Special considerations apply to securities tokens when it comes to clearing and settlement.

How can Accordo help Cryptocurrency and ICO Firms?

- Register with FINRA as a Broker-Dealer
- Register with SEC/FINRA as an ATS
- License under NYDFS BitLicense
- Register with CFTC as any of the following:
 - Swap Execution Facility (SEF)
 - Designated Contract Market (DCM)
 - Derivatives Clearing Organization (DCO)
 - Futures Commission Merchant (FCM)
 - Commodity Trading Advisor (CTA)
- Establish a robust Compliance Program
- Develop Policies and Procedures
- Design a tailored AML Program
- Institute Cybersecurity Program
- Create Blockchain Audit Framework
- Define Fraud Management Program
- Perform Operational Risk Assessment
- Assess and/or enhance Internal Controls
- Assess Data Privacy and Security Procedures