

HOW TO HANDLE INITIAL COIN OFFERINGS AND SECURITY TOKEN OFFERINGS

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I. Executive Summary

In 2025, the passage of the Federal GENIUS Act (for “Guiding and Establishing National Innovation for U.S. Stablecoins of 2025”) and policy pronouncements by the Securities and Exchange Commission (“SEC”) and Commodity Futures Trading Commission (“CFTC”), respectively the U.S. Securities and Commodities regulators, gave guidance to how offerings of Cryptocurrency and Digital Tokens will be regulated by those agencies going forward. This guidance allows a new assessment of how to handle Initial Coin Offerings (“ICOs”) and a specific type of ICOs, Security Token Offerings, or “STOs.”

The federal GENIUS Act sets out a legal scheme for regulation of certain “Stablecoins,” a kind of Cryptocurrency in which a Digital Token or Digital Coin is pegged to an underlying asset, whether a fiat currency, like the Dollar or the Euro, or a Commodity such as a precious metal like gold or silver. The peg to an underlying asset is intended to give a derivative-like valuation to the Stablecoin and to reduce volatility compared to non-Stablecoin Cryptocurrencies like Bitcoin and Ethereum, which are not pegged to an underlying asset. Only Stablecoins pegged to the U.S. dollar are covered by the GENIUS Act.

Aside from the GENIUS Act, a few Cryptocurrency bills and Executive Orders have been introduced in Congress and issued by the Biden and Trump administrations. On the state level, several states have stolen the march on the federal government, notably Wyoming, which has pioneered American Cryptocurrency/Digital Asset legislation, and which appears to be the basis for much of the current federal vision. On the regulatory level, the SEC has, in the absence of specific legislation until the GENIUS Act, tried to shoehorn the new technologies into the existing regulatory paradigms, often through enforcement actions, which have at times been self-contradictory and incoherent. We’ll review the existing Securities/Commodities classification in Section II and in Section III review the GENIUS Act and Wyoming statutes as representative of the existing legal/regulatory structure and efforts to date. We’ll review the November 2025 proposed SEC classification or “taxonomy” of Crypto/Digital Assets in Section IV. Finally, in Sections V and VI, we’ll review how to execute an ICO and an STO in light of current and proposed law and regulation. For further information, please see the client advisories and other resources on our website at [Kurtin PLLC Information Technologies, Blockchain & Internet](#) and [Kurtin PLLC Venture Capital & Private Equity](#).

II. Securities and Commodities

Before we dive into the existing and proposed classification of Cryptocurrencies and other Digital Assets, it is necessary to review what Securities and Commodities are and are not. If you are already comfortable with those classifications, feel free to skip this section and go on to Section III.

Securities. Securities are intangible assets and evidence of rights that can be asserted against their issuer company; a stock certificate, though tangible, is evidence of the ownership of an Equity Security, not the Security itself. The same goes for a bond or debenture, evidence of ownership of a Debt Security, not the Security itself. Securities are not tangible assets, like a car, a house or a collection of baseball cards, and the sale of such tangible assets is not the sale of a Security. Nor are all intangible assets Securities. For example, an intellectual property right, like a copyright, patent, or trademark, is intangible but is not a Security, and the sale or licensing of an intellectual property right is not the sale of a Security, just as sale of a baseball card collection or a car is not the sale of a Security.

In the U.S., an offering is of a Security if it exhibits the hallmarks of a Security pursuant to the classic *Howey* test, named after a 1946 U.S. Supreme Court case¹: being an “investment contract” as required by s. 2(a)(1) of the Securities Act of 1933 (the “Securities Act”) by reason of being a contract for the (1) investment of money (2) in a common enterprise (3) with a reasonable expectation of profits (4) to be derived from the efforts of others. If the offering is of a Security, it is regulated in its initial issuance and in resales or exchanges by the SEC.

Five main types of Securities have generally been considered Securities under the *Howey* test: (A) Debt Securities, (B) Equity Securities, (C) Convertible Securities, (D) Derivative Securities, and (E) Asset-Backed Securities. A brief comparative description of each follows.

A. Debt Securities. A Debt Security is a loan, a promise by its issuer to repay the purchaser of the Security, a lender, a fixed amount of borrowed principal plus interest by a set term or maturity date, after which they must be redeemed by the issuer. The Debt Security instrument can take three basic forms: (i) long-term notes (notes with a maturity date of less than 9 months are generally considered commercial paper and not Securities pursuant to a carve-out in s. 3(a)(3) of the Securities Act); (ii) bonds, long-term collateralized Debt Securities that may be issued by corporate or government issuers; and (iii) debentures, long-term Debt Securities not backed by collateral. Bonds and debentures typically have a longer term than notes, usually five years or more. In addition to the Securities Act,

¹ SEC v. W.J. Howey Co., 328 U.S. 293 (1946).

certain Debt Security issuances must also comply with the Trust Indenture Act of 1939, which requires Debt Securities with a value of more than \$50 million to have a trustee appointed to protect Security holders' interest and comply with other provisions. Unlike Equity Securities, Debt Securities do not dilute the issuer's equity ownership by existing shareholders.

B. Equity Securities. Equity Securities, unlike Debt Securities, represent a fractional ownership share in the issuer, the reason Equity Securities are called "shares" or "stock" and their holders "shareholders" or "stockholders." They are an identifiable percentage of ownership of the issuer and grant a right to a share of the proceeds upon sale of the issuer, or residual value upon liquidation of the issuer after payment of creditors. They also confer voting rights, to elect board of directors members, and otherwise. An issuer may pay dividends to its shareholders out of its profits but is not required to do so unless required to do so by its corporate charter. Shareholders may also benefit from an increase in the shares' value if they subsequently resell their shares, a "capital gain." Equity Securities come in two main classes: "Common Shares," and "Preferred Shares," which have various "preferences," or privileged attributes, compared to the Common Shares and which are therefore generally priced higher than Common Shares. For example, a preferred shareholder might be entitled to the preference of being paid back its equity before common shareholders in the event of the issuer's liquidation (but after creditors are paid). Preferred Share attributes may be heavily negotiated, whereas Common Shares are usually simple percentages of the issuer's value. It is more common for an issuer to have multiple classes, or at least series, of Preferred Shares than Common Shares. While Preferred Shares are classified as Equity Securities, they have many attributes of Debt Securities, such as a fixed interest rate, less volatility (owing to the liquidation preference), the afore-mentioned liquidation preference of being paid before Common Shareholders are paid, and others. Preferred Share purchasers generally seek a less risky investment than Common Share purchasers and are in some ways more like debt lenders than equity shareholders.

C. Convertible Securities. Convertible Securities can come in various types but usually mean either a Debt Security that is convertible into an Equity Security at a certain rate upon the occurrence of certain events, or a Preferred Share Equity Security that converts into a Common Share Equity Security, again at a certain rate upon the occurrence of certain events. Like Debt Securities, Convertible Securities issued as debt generally do not dilute the issuer's equity unless or until converted, which is why you will often see corporate capitalization tables calculated with Convertible Securities shown on an "as converted" basis, so that the effects of full potential dilution are shown. Often, for example, a Debt Security will be issued to a lender willing to fund a company's operations until a financing round, when the Debt Security converts into an Equity Security in the financing, usually at a discount to other

investors in the round. As another example, Preferred Shares may be convertible into Common Shares at the time of an IPO or a sale of the issuer. Convertible Securities come with differing attributes that are often heavily negotiated. A conversion feature of a Convertible Security may be convertible at the Security holder's option, or it may be subject to "mandatory conversion," in which case the Security holder does not have an option when the conversion-activating event occurs. A Convertible Security may feature both mandatory and optional conversion features. Securities having both debt and equity attributes like convertible debt or convertible Preferred Shares are sometimes called "hybrid" Securities.

D. Derivative Securities. A Derivative Security derives its value from that of an underlying Security. Common Derivative Securities include "Options" and "Warrants," which give the holder the right, but not the obligation, to buy or sell the Derivative Security for the underlying Security, and therefore play the market with the issuer's shares after acquisition. For example, a Preferred Share might be bundled with a Warrant to buy additional shares at a given price, which the Warrant holder will only exercise if the price, called the "Strike Price" or "Exercise Price," is lower than the security's fair market value at the time of exercise. When different Securities, such as a Common Share and Preferred Share or Warrant, are bundled together in the same offering, they are usually referred to as a "Unit" of those Securities, with the offering circular or prospectus identifying each Security in the offered Units and their respective attributes. Options are usually classified as "call" options, giving the Option holder the right, but not the obligation, to buy more shares from the issuer by a certain date (the Option "Termination" or "Maturity" Date) at the Exercise Price or Strike Price, presumably because the shares to be purchased have become worth more than the Strike Price at which the Option holder is buying them (such Options are called "in the money," while shares worth less than the Strike Price are called "underwater" and presumably won't be exercised by the Option holder). By contrast, "put" Options (less common than calls) give the Option holder the right, but not the obligation, to *sell* its shares to the issuer, and the dynamics are reversed: the Option holder will only want to exercise the put Option if the market value of shares in the issuer has gone down from the Strike Price at which the Option holder has the right to sell them back.

E. Asset-Backed Securities. Asset-backed Securities are the result of a securitization process, whereby a bundle or basket of assets are sold as a single Security, whether as debt or equity. Examples are baskets of mortgages, baskets of insurance policies and similar assets. Investors would not be able to make reasonable investment decisions on the likelihood of a single, or even several, mortgages defaulting or life insurance policies having to pay out, because the sample size is too small, but bundled in large baskets, the "law of large numbers" means that the predictability required for informed

investment decisions can be attained. The securitized assets can even be sliced up in “tranches” (French for “slices”), in which, for example, a tranche from the basket of mortgages deemed at higher risk of default can be sold to investors who have a higher appetite for risk, and who are paid a “Risk Premium” (they pay a lower price or receive more Securities) than investors in a tranche of mortgages with less risk of default. This kind of slicing and dicing of tranches of securitized mortgages is often blamed as a major underlying cause of the 2008 - 2009 financial crisis; purchasers of tranches of securitized baskets of mortgages did not understand the risks they were taking.

Commodities. By comparison to Securities, which are intangible by their nature, Commodities are tangible goods that people can buy or sell, consume or use. Examples are agricultural products, like orange juice, corn and pork bellies; metals, like gold and silver; and energy sources, like crude oil, liquid natural gas, and heating oil. In practice, the buying and selling of Commodities on Commodities exchanges is not done by paying cash and receiving the hard asset; when you purchase gold as a commodity, people do not come to deliver gold ingots that you store in your closet after reinforcing the floor; what are really bought and sold are contracts based on whether the buyer is betting that the price of the Commodity will go up or down by the maturity date of the contract. Because the contract is based on the underlying (and changing) value of the Commodity, it is a derivative, just as an Option or Warrant is a derivative of an underlying Security. In the case of Commodities, however, the derivative contracts are called “Futures” – bets on future price movements of the underlying Commodity.

Commodities in interstate commerce in the U.S. are regulated by the CFTC pursuant to the Commodity Exchange Act of 1936 (the “CEA”), which excludes from its definition of Commodities currency, interest rates, and Securities. The CFTC commodities regulatory regime is generally considered less onerous for issuers than the SEC’s securities regulatory regime, in part because the CFTC has as its mission statement protection of the integrity of the U.S. Derivatives markets, not the SEC’s specific mission of investor protection, which is why the Crypto lobby has sought to have Cryptocurrency regulated as Commodities rather than as Securities, or not at all.

III. Existing Legal/Regulatory Structure and Prior Legal/Regulatory Efforts

Prior to the SEC’s not-yet-enacted Project Crypto, there have been several federal and state initiatives to regulate Cryptocurrencies and Digital Assets. We’ll review two of them here for insight as to how they might ultimately influence Project Crypto legislation and regulation: the federal GENIUS Act of 2025, and the Wyoming Digital Asset Laws. Importantly, since 2017, the SEC has treated offerings of Cryptocurrencies and other Digital Assets as being presumptively offerings of Securities and subject to Securities Act regulation; i.e., made pursuant to public registration or an exemption from it.

A. The GENIUS Act. In July 2025, the first U.S. federal cryptocurrency legislation, the “GENIUS Act of 2025” (for Guiding and Establishing National Innovation for U.S. Stablecoins of 2025”) was enacted. The GENIUS Act is intended for the regulation of Stablecoins pegged to the U.S. dollar. In brief, the GENIUS Act sets out a definition of “Payment Stablecoins” as Digital Assets issued for payment or settlement (including as margin or collateral) and redeemable at a predetermined fixed amount (for example, 1 Stablecoin for 1 U.S. dollar). Stablecoin issuers will be required to hold at least 1 U.S. dollar as liquid capital reserves for every U.S. dollar Stablecoin issued, and the reserve assets may only be used to redeem Stablecoins and other specified purposes. Issuers must apply to state or federal regulators for authorization to issue Stablecoins, and non-U.S. issuers may qualify, if operating under a comparable regulatory authority in their own jurisdiction. Auditing, periodic reporting and disclosure standards are also specified. Issuers are also subject to the Bank Secrecy Act and will be subject to tailored anti-money laundering rules. Finally, the GENIUS Act provides that payment Stablecoins, as defined in the Act, are not Securities and therefore can be traded on Cryptocurrency exchanges without Securities registration and are not federally insured, which issuers are prohibited from misrepresenting. The GENIUS Act will take effect 18 months after passage or 120 days after publication of final regulations in the Federal Register. Our client advisory on the GENIUS Act with greater detail and a link to the Act’s text can be found [Here](#).

B. Wyoming Cryptocurrency and Digital Asset Legislation.

Since 2019, Wyoming has developed a cutting-edge regime for investment in Crypto/Digital Assets and Decentralized Autonomous Organizations (“DAOs”), Blockchain-based decentralized entities that make and implement decisions using “smart contracts,” software code that executes programmed actions when data inputs are given and which can record the DAO’s ownership interests, governance structure and voting rights on the Blockchain. See our “Forming Crypto/Digital Asset Funds,” available at [Kurtin PLLC Information Technologies, Blockchain & Internet](#).

The 2019 Wyoming Digital Asset Statute (W.S. 34-29-101 *et seq.*) (the “WY Digital Asset Law”), as amended, defines an umbrella category of all Digital Assets, and then sets out subcategories:

- “Digital Asset” is “a representation of economic, proprietary or access rights that is stored in a computer readable format and is either a digital consumer asset, digital security or virtual currency;”

- “Digital Consumer Asset” is a Digital Asset “used or bought primarily for consumptive, personal or household purposes,” including open Blockchain tokens constituting intangible personal property and any other Digital Asset not constituting a Digital Security or a Virtual Currency;
- “Digital Security” is a Digital Asset that constitutes a security, as defined in the WY Statutes, but excluding Digital Consumer Assets and Virtual Currency; and
- “Virtual Currency” is a Digital Asset “used as a medium of exchange, unit of account or store of value” AND not recognized as legal tender by the United States.

The WY Digital Asset Law makes clear that the definitions of “Digital Consumer Asset,” “Digital Security” and “Virtual Currency” are mutually exclusive; all are “Digital Assets,” but none are more than one of the subcategories at a time, with Digital Consumer Assets forming the residue category for Digital Assets not fitting into the Digital Security or Virtual Currency categories. The WY Digital Asset Statute was amended by adding a new section 106, called the “WY Utility Token Act,” classifying open Blockchain tokens whose primary purpose was consumptive (i.e., not as a currency or medium of exchange, etc.) as intangible personal property and therefore a Digital Asset.

IV. The SEC Proposals

On November 12, 2025, SEC Chairman Paul Atkins gave a speech outlining a comprehensive cryptocurrency/digital asset legal and regulatory scheme that he recommends Congress and the SEC to adopt. The Atkins speech on “Project Crypto” followed the passage of the GENIUS Act, the SEC’s establishment of a Crypto Task Force, the SEC Division of Corporate Finance April 4, 2025 “Statement on Stablecoins,” and, before that, those years of inconclusive efforts at the federal level to classify whether Cryptocurrencies and other Digital Assets are Securities, Commodities or something else entirely, and how (and if) to regulate them accordingly to protect investors while not throttling the development of new technologies and products that promise to transform the financial world, with the possibility of fewer barriers to entry, greater liquidity and the overall democratizing and decentralizing of finance.

In his November 12, 2025 speech, a copy of which can be found [Here](#), Chairman Atkins outlined a proposed comprehensive classification of Cryptocurrencies and other Digital Assets for federal regulatory purposes that he calls a “Token Taxonomy.” The speech does not represent SEC action, but an outline for the results that Atkins would like to achieve, both by Congressional legislative and SEC regulatory action, in coordination with that of the CFTC. At the outset, Atkins states that he believes that most

Digital Tokens trading today are not in and of themselves Securities, although they may be sold as part of an investment contract that is a Securities offering or sale and thereby become a Security. Atkins makes the point that the U.S. Supreme Court has insisted that in assessing what is a Security, and what is a Securities offering or sale, the substance and not the form of a transaction must be examined.

The Token Taxonomy Atkins proposed is as follows:

- “Digital Commodities,” alternatively called “Network Tokens,” should not be considered Securities. These Digital Commodities/Network Tokens, sometimes called “Algorithmic Tokens,” are linked to and derive their value from the operation of a decentralized Blockchain network, rather than from an underlying asset or the expectation of profits based on the managerial efforts of others (see discussion of *Howey* test of what a Security is in Section II). Digital Commodities/Network Tokens under the Atkins Token Taxonomy should include Cryptocurrencies like Bitcoin and Ethereum’s Ether that are traded on the Blockchain, but which are not pegged to any underlying fiat currency or hard asset like a precious metal. Bitcoin and Ether have been treated as Commodities by the SEC and are subject to CFTC regulation.
- “Digital Collectibles,” according to Chairman Atkins, also should not be considered securities. These Digital Collectables are often things like artwork, music, memes, videos, and tokens conveying property rights to them. As with Digital Commodities, Digital Collectables do not derive their value from the expectation of profits based on the managerial efforts of others. Digital Collectables have commonly been called “Non-Fungible Tokens,” or “NFTs,” and are probably the Digital Asset class least like either a Security or a Commodity, and not suitable for regulation as either.
- “Digital Tools,” according to Atkins, also should not be considered Securities. Digital Tools are tokens that evidence a membership, identification, ticket, credential or title instrument. Purchasers of Digital Tools are also not expecting profits from the managerial efforts of others. Digital Tools have commonly been called “Utility Tokens,” and function as a kind of scrip to gain access to a particular platform and proprietary asset but are not generally useable as a currency or fungible. A non-digital example might be an gift card or a library card.
- Tokenized Securities, aka Security Tokens, the fourth and final category in the Atkins Token Taxonomy, are and should continue to be considered Securities. Tokenized Securities are representations of ownership in a financial instrument maintained on a Blockchain that fall

squarely into the definition of Securities, such as equity in another company or fund, debt, real estate or other Securities. Stablecoins subject to the GENIUS Act are not Securities, which, as stated, applies only to Stablecoins pegged to the U.S. dollar. However, under Chairman Atkins' substance over form criteria, an individual Stablecoin could have the attributes of a Security, such as one pegged to the value of another Security or functioning as fractional ownership in a securitized asset and in that case should be treated as a Tokenized Security, distinct from Digital Commodities. Additionally, Digital Tokens bundled as a Unit for sale with another Security, such as an issuer's equity, would be a Tokenized Security.

Importantly, Chairman Atkins emphasized that although the first three categories in his Token Taxonomy are not in and of themselves Securities, they can be offered and sold as part of an investment contract in which the buyer's expected profit is based on the managerial efforts of others, thereby satisfy the *Howey* test, and become Securities in a process of digital securitization.

Atkins concludes by stating that he hopes that, in addition to legislation pending before Congress, the SEC will promulgate tailored Securities regulations for digital Token offerings, containing specific exemptions for them. He also expresses his support for non-SEC-regulated Crypto exchanges, even for trading of Digital Tokens that are Securities and which have been offered in accordance with Securities regulations, noting that anti-fraud provisions will continue to apply to investment contracts, even when the underlying Digital Token is not itself a Security, and further that to the extent that Digital Tokens are Commodities in interstate commerce, they will also be subject to CFTC regulation.

V. Handling an ICO

ICOs are offerings of Digital Coins, Digital Tokens and other Digital Assets that are not presumptively Securities and historically have been made without strict compliance with the Securities laws and regulations. However, that said, it is important to bear a few things in mind when launching an ICO to the public or in a type of private placement: first, current law is that only Stablecoins under the GENIUS Act are not Securities; after the early frauds associated with ICOs, the SEC started to treat them more like Securities offerings and has done so since; the Atkins Token Taxonomy is not current law or regulation. Second, the fact that most Digital Tokens may not be Securities and therefore do not require Securities law compliance does not mean that potential purchasers of an ICO will not want and expect meaningful disclosure of quantitative and qualitative information relating to the asset being sold; after all, even a contract for the sale of goods, such as a piece of industrial equipment, which is definitely not a sale of Securities or an investment contract, ordinarily contains representations, warranties, covenants and other

information on what is being sold, and which, if not included, may cause potential buyers to say no and buy the item from another seller. Of course, what information ought to be furnished to potential buyers to entice them to buy differs on a case-by-case basis. Third, just as with Securities sold under an exemption to public registration under the Securities Act, although it may not be required to furnish certain information in a specific format, it is never acceptable to commit fraud in selling goods and services, and acts of fraud by misrepresentation or omission to state a material fact may be subject to civil and criminal liability under state and federal law. In general, more disclosure and more Securities offering-like treatment in an ICO to the extent possible should be viewed as both protection for the issuer against investor claims and encouragement for investors to invest in the first place.

That said, the process of an ICO typically follows a paradigm like the following:

Initially the Promoter must create the Digital Coin or Token to be offered in the ICO, developing its intended attributes and behavior. ICOs usually use a published “White Paper” to explain the Promoter’s project to investors. The White Paper should include the “Tokenomics,” an explanation of the Token’s attributes and how it is to function, the “Soft Cap” (the minimum number of Tokens the Issuer hopes to sell), the “Hard Cap” (the maximum number of tokens available), “static” versus “dynamic” price and supply attributes, number of sales rounds, duration of offer, the number of coins or tokens reserved for Promoters, and so on. The White Paper usually does not contain all the kinds of disclosure that would protect investors from fraud (and ultimately protect the Promoter from fraud lawsuits by disgruntled investors). For that reason, we recommend including the kinds of disclosure materials expected in an SEC-regulated offering circular: explanation of the Token, its use and function; use of the ICO proceeds, risk factors, Promoters’ management team, and so on. These materials can be incorporated into the body of the White Paper or pitched out to a separate offering circular. Doing so can protect the issuer and encourage prospective investors to invest.

After issuance of the White Paper (with or without offering circular), the Promoters engage in a marketing campaign for the ICO, similar to an IPO roadshow. The marketing campaign generally includes social media outreach, email outreach, community building, ICO influencers and other digital marketing. Then, the ICO is listed on the Blockchain. ICOs are most frequently offered on the Ethereum Blockchain, which uses the ERC-20 standard for token development. Tokens are generally sold in the ICO at a discount to expected market price, mimicking standard IPO technique, to ensure as much as possible that the ICO coins are “in the money” upon issuance and sale and that the price rises after listing.

VI. Handling an STO

In the case of an STO, or a Security Token Offering, subject to eventual regulatory adoption of the Atkins Token Taxonomy or something like it, but also according to SEC current treatment, a Security is being sold, and pursuant to the Securities Act must be sold pursuant to a publicly filed registration statement pursuant to the Securities Act, unless an exemption from registration is available. Any Cryptocurrency or other Digital Asset can be offered and sold to STO standards, and doing so is a good idea for the reasons already stated. However, a Security Token is presumptively a Security and *must* be offered and sold in an STO, whether in a public registration pursuant to Section 5 and Regulation C of the Securities Act, essentially an IPO, or using an exemption to the public registration requirement. By far the most popular exemption from the registration requirement for any business enterprise or investment fund is Securities Act Regulation D and its Rule 506. A deep dive into using Reg. D, Rule 506 and the advantages and disadvantages of its two subsections, Rule 506(b), which restricts public solicitation of potential investors by issuers, and Rule 506(c), which allows public solicitation, is described in our advisory “Raising Capital through Private Placements: Deal Points (available, with discussion of other Securities Act exemptions and other resources, at [Kurtin PLLC Raising Capital](#)). An abbreviated description follows.

Rule 506 has no aggregate offering limitation; if the other requirements of the Rule are met, an unlimited dollar amount of Security Tokens or Tokenized Securities may be offered in a single Rule 506 offering. There are no qualifications on the kind of business enterprise or investment fund issuer that may issue securities under Rule 506. Issuers may be U.S. or non-U.S. private or public companies. Any of those entities, as well as more typical early-stage private company or fund Issuers, may use Rule 506, which accounts for the nearly universal use of Rule 506 in Mergers & Acquisitions, or “M&A”; “PIPE,” or “Private Investment in Public Equity,” transactions; financings of public companies; and Special Purpose Acquisition Companies, or “SPACs,” during or after their IPOs.

The antifraud provisions of the securities laws and regulations apply, notably Securities Act section 17 and Exchange Act Rule 10(b) and Rule 10(b)(5). Use of a private placement memorandum (“PPM”) or offering circular is a good practice in most cases as both an “insurance policy” and as a “prospectus” for prospective investors, but if any investors with less than certain net worth, income and other qualifications are sold to, the requirements for the PPM under Reg. D are mandatory and stringent, whereas they are relaxed if only investors exceeding those metrics, called “Accredited Investors,” are sold to, meaning the antifraud provisions, which always apply, are the principal legal/regulatory concern.

Some of the private placement/exempt from public registration methods to raise capital in the U.S. securities market require only very limited financial and other information to be disclosed to prospective

investors, tempting the issuing company to dispense with a PPM or offering circular. That's especially the case for Accredited Investors. But even when a PPM is not strictly required by the securities regulations, it's usually a bad and penny-wise mistake to dispense with one, *unless* selling securities only to institutional investors like private equity and venture capital firms, hedge funds and others that are not only Accredited Investors, but professional institutional investors used to doing their own due diligence and for whom a stock purchase agreement in lieu of a PPM will suffice.

With the PPM circulated to prospective investors, the issuer and its investment banker, placement agent or broker-dealer A PPM can accept investments, usually through a type of subscription agreement, issue the Security Token to the Blockchain to the purchaser's account.

VII. Conclusion

The yield from this should be that although substantial advances have been made, the regulatory posture of Cryptocurrencies and other Digital Assets is not yet settled. If the Atkins Token Taxonomy or something like it becomes legislative and regulatory reality, then issuers may feel confident in offerings that are clearly not Securities under that regime to the public or in a private placement without compliance with the rules for issuing Securities in an IPO or private placement. Until that time, an issuer would be wise to make its offering as much as practicable in accordance with the Securities Act regime, and of course, the more like a Security under the *Howey* test a Crypto/Digital Offering asset is, the more imperative it is to comply.

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