Cryptocurrency and the Law
(Especially ICOs and Securities Laws)

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What we’re talking about today

Overview

Securities Regulations and ICOs

State Law Reform Efforts
Bitcoin, Blockchain and the Law

- Privacy Laws
- IP Law
- Cyber Security
- Securities Laws
- CFTC Regulation
- AML/KYC
- Tax Law
- Outside the US
ICOs and Security Regulations
A Security?

- Each ICO may or may not be a sale of Securities

The SEC

- If an ICO is a sale of a Security, it must be “registered” …

Private Plaintiffs (Investors)

- Unless the ICO is exempt.

State Securities Laws

The Registration Requirement

- If an ICO is a sale of a Security, it must be “registered” …

Exemption from Registration

- Unless the ICO is exempt.
Securities Law and ICOs – So Far

- The “Howey Test”
- Utility Tokens

A Security

The SEC

Private Plaintiffs (Investors)

State Securities Laws

The Registration Requirement

Exemption from Registration

- The SAFT (or DUSTO, or SAFTE)
ICO Compliance Strategy
The SAFT–Utility Token

- Exempt under 506(c)
The SAFT – Utility Token

A Security?

State Securities Laws

The Registration Requirement

Exemption from Registration

The SEC

Private Plaintiffs (Investors)
ICO Compliance Strategy
The SAFT/CF–A+ Offering

- Exempt under 506(c)
- Registered under Reg CF
The SAFT/CF – A+

A Security?

The Registration Requirement

The SEC

Private Plaintiffs (Investors)

State Securities Laws

Exemption from Registration
The “Exclude the US” Strategy

- Without a clear strategy to prevent resales into the United States, likely to violate securities laws.
What to Watch for Next

- From the Market: Execution of Utility Token Compliance Strategy with use of Airdrops
- From the SEC: Approval of A+ Offerings for Tokens
- From the Industry: More sophisticated blockchain based compliance strategies.
Cryptocurrency and State Law Reform
A Few State Law Issues

- Money Transmitter Licensing
- State “Blue Sky” Securities Laws
- State Broker–Dealer and Investment Advisor Laws
- Corporate Law, Stock Ledgers and Corporate Records
- State Taxes
State Law Reforms
A fix to The ucc problem?

- The Uniform Law Commission Approved and Recommended a “Virtual–Currency Businesses Act” in July 2017
- The ULC approved a “Uniform Supplemental Commercial Law” Amendment to this Act in July 2018.
- The Act provides a partial fix to certain Commercial Law problems and a comprehensive approach to dealing with state regulatory frameworks.
- BUT – the original act so far has only been introduced in 3 states (Connecticut, Hawaii and Nebraska)…
Questions?