

SEC Director William Hinman: “Current offers and sales of Ether are not securities transactions”

Article By:

Trevor M. Dodge

At last week’s Yahoo! All Markets Summit in Palo Alto, SEC Division of Corporation Finance Director William Hinman delivered a [speech](#) sure to send shockwaves through the crypto world. Applying the *Howey* test (which sets forth the elements necessary for determining whether a transaction involves the offer or sale of an “investment contract” and thus, a security, under the federal securities laws) to cryptoasset transactions, Director Hinman concluded that:

1. To determine whether a token sale satisfies *Howey*, market participants should “primarily” consider whether the network on which the token operates is “sufficiently decentralized.”
2. Alternatively it is possible, through technological or contractual means, to design cryptoassets so that they function more like a consumer item and less like a security; however, the economic realities of a given token transaction (specifically the manner in which the token is offered and sold and the reasonable expectations of purchasers) controls any such determination.
3. Cryptoassets originally offered in a securities offering can later be sold in a manner that does not constitute an offering of a security.
4. Current offers and sales of Ether are not securities transactions.

Although in no way officially binding as a matter of SEC policy or federal securities law, Director Hinman’s comments are tremendously important to the evolving cryptoasset marketplace in the United States. They provide guidance on a number of critical questions that exist at the margins of SEC Chairman Jay Clayton’s [position](#) that he has not seen a single token issued through an ICO that is not a security, and warrant deep and careful consideration.

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