

Exhibit 277

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[When does a security stop being a security 03 May 2018.docx](#)

Interested in your thoughts

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When does a security stop being a security?

Courts examine the economic reality of the transaction when determining whether something is a security (see, e.g., Forman and Howey)

Courts consider whether the purposes of the securities laws would be advanced by application of the securities laws to the transaction

Informational asymmetries: investors do not have access to information about the promoter's activities; when the significance of the promoter's activities declines or there is no centralized authority to provide information, the rationale recedes.

Liability for offering statements: especially acute where no other law would apply to protect purchasers

Legal tests for whether something is a security include examination of legal rights, investor expectations and promoter representations

"Stock" – Landreth Timber: whether "stock" should be treated as a security depends on whether it has characteristics typically associated with stock

Right to dividends

Transferability

Ability to use as collateral

Voting rights commensurate with shares held

Potential to increase in value

"Note" – Reves: distinguish commercial purpose from investment purpose

Motivation of buyer and seller

Plan of distribution

Reasonable expectations of investing public

"Investment Contract" – Howey:

Expectation of profits (not consumption)

Efforts of others ("the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise")

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Particular instrument may or may not be security, depending on circumstances

CDs – compare Gary Plastics with Marine Bank

Condominiums – compare 1970s SEC releases with Forman

Application of tests often depends on the relationship of the participants in each particular transaction and may not necessarily inhere to nature of instrument. Compare:

Initial digital asset distribution to investors to finance development of concept

Investor re-sales to other investors

Investor re-sales to potential users

Developer “airdrops” to potential ecosystem partners

Assuming the digital assets has no hallmarks of “stock” or “note,” a digital asset is more likely to be a security when

Centralized authority:

investors remain passive; few if any other significant players

Developing infrastructure/limited current functionality

Marketed to “investors” for a return

Price reflects expectations of future operations

Less likely to be a security when

Decentralized operation

Functioning infrastructure

Marketed to potential users based on current ability

Price reflects current utility

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[Application to SAFT

Assumptions:

Non-users invest in instrument to help finance development of ecosystem

Ecosystem not currently functioning

Investor receives right to obtain digital assets at future date

Securities analysis

Current agreement is a security

Howey – investment of money in enterprise, expectation of profits based on development of ecosystem by others

At time of purchase, digital assets may be a security

To the extent they are worth analyzing at time of sale, the assets are not consumer items.

At time of delivery, would have to re-analyze attributes of assets, promotional efforts, functionality of ecosystem, and role of promoters/developers to determine whether they are securities

[Application to Ether

Clearly began as a securities offering

Based on currently available information, Ether may [now/soon] reflect current utility of Ethereum network and not a bet on founders' efforts to develop the network

Decentralized operation: Unclear the current importance of core programmers, Ethereum Foundation (particularly with regard to solving scalability and other problems /limitations) and others

Functioning infrastructure: as infrastructure currently is functional, becoming more and more likely purchasers will purchase Ether to use it as "fuel"; but note level of speculation reflected in volume of trading

Sales to potential users based on current ability: functionality is driving some sales, but speculation abounds

Price may reflect current utility: when does market price simply serve as "dynamic pricing" for a product or service?]

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[Possible indicia of a non-security digital asset

Mechanism to discourage hoarding and speculative trading

Identity/role of purchasers and sellers knowable – limits on anonymized trading

Limits on number/percentage of digital assets by holders

Fungibility/commodity-like features

Lock-ups for developers/promoters

Representations by purchasers of intent to consume]