

Securities Litigation

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Cryptocurrency Class Actions - Relevance to Institutional Investors

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What You Need To Know:

- Recent SEC actions and class actions have put cryptoassets in focus.
- Some cryptoassets may be securities while others may not be.
- Buyers of cryptoassets that are securities may be entitled to a recovery if they suffered damages.

Institutional investors who made cryptoasset investments in the past year, or those considering such investments, should take note of the multiple class actions filed in the United States regarding certain cryptoassets and their Initial Coin Offerings (ICOs). Throughout 2017, hundreds of new cryptoassets engaged in an ICO process, offering coins or tokens, or some other asset to investors in exchange for, usually, contributions in bitcoin or Ethereum. In a lightly regulated environment, ICOs raised tens of billions of dollars for various cryptoasset projects.

In the wake of these ICOs, throughout last year and into 2018, class actions have been filed alleging that the ICOs, and the coins or tokens they issued, were unregistered offerings of securities subject to U.S. securities laws. Some of these class actions have been settled, some have been dismissed, and others continue. These cases have generally been brought on behalf of all purchasers in the ICO, seeking remedies under Sections 12 and 15 of the U.S. securities laws, which generally cover sales of unregistered securities. Class actions have been brought against cryptoassets such as Tezos (XTZ), CentraTech (CTR), Bitconnect (BCC), ATBCoin (ATB), and Paragon Coin (PRG).

The status of cryptoassets vis-à-vis the securities laws is unsettled, but the most recent guidance from the United States Securities and Exchange Commission (SEC) regarding the DAO token, makes one thing clear: For each cryptoasset, it is a fact-intensive analysis to determine whether it may be a security and one size does not fit all. SEC Chairman Jay Clayton has observed that some cryptoassets have the hallmarks of a security, but others do not—whether a particular coin or token is a security [“depends on the facts.”](#)

With the market for coins and tokens having cooled, some institutional investors may have found that the cryptoassets they invested in may not be what they appeared to be. For example, Bitconnect, a cryptoasset tied to a cryptocurrency exchange and lending platform, ICOd in December 2016. In early 2018, Bitconnect received cease and desist orders from multiple state regulators, and promptly shut down the asset exchange that was the core product tied to the cryptoasset. The result? A 90 percent drop in the value of Bitconnect’s cryptoasset, BCC, in a day. The asset has not appreciably recovered, and investors lost well over \$1 billion in “market cap.”

For institutional investors who have already invested in cryptoassets, it is a critical time to review those investments and consider whether they may have been sold in violation of the securities laws. If so, an institutional investor may have a variety of remedies to recover their losses. Section 12(a)(1) of the securities laws, for example, provides a rescission remedy. But state blue sky laws, common law fraud causes of action, and other claims can also allow for damages, depending on the facts of the case.

For institutional investors who participated in ICOs or purchased cryptoassets and suffered losses, time is of the essence. Actions under 12(a)(1), i.e., lawsuits alleging that an ICO sold an investor unregistered securities, allowing for the possibility of rescission, must be brought within one year of the offering. While certain tolling rules can extend this time in select cases, investors cannot afford to sit on their hands.

If you are considering an investment in an ICO, whether as an initial sponsor or as a purchaser, we

recommend you consider seeking counsel either before the investment or as soon thereafter as practicable. By analyzing the facts of the token or coin at issue, we can assist you in protecting the full gamut of your rights.

Lowenstein Sandler's Securities Litigation Group has extensive experience recovering losses, and creating value, for institutional investors across their full range of investments. Whether bringing direct action securities fraud cases against bad actors, defending investors' rights in debt or appraisal proceedings, or reviewing new investments such as cryptoassets, Lowenstein Sandler always seeks to bring immediate value to investors' bottom line.

For more information, and for a no-fee review of your cryptoasset portfolio, please contact the authors of this alert.

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