

Financial Services

FinTech Alert: SEC’s New Cyber Unit Brings First Enforcement Action in Connection with an Initial Coin Offering

Action Item: The U.S. Securities and Exchange Commission (“SEC”) announced that its newly formed cyber unit has filed its first charges in connection with an Initial Coin Offering (“ICO”). This development is an important step in protecting ICO investors and in enforcing against fraudulent ICO scams. It is also a signal to companies contemplating ICOs that they must ensure compliance with applicable securities regulations.

On December 1, 2017, the [newly formed cyber unit of the U.S. Securities and Exchange Commission](#) filed its first charges in connection with an ICO for the token PlexCoin. It also obtained an emergency asset freeze to halt the ICO, which had already raised approximately \$15 million and had promised investors a 13-fold profit. The SEC has formed the cyber unit and promised to pursue enforcement efforts in connection with ICOs in the wake of its [July 2017 DAO Investigative Report](#). The SEC has warned companies offering ICOs that federal securities laws may apply to their offerings, and published a subsequent [investor alert](#) warning investors about potential ICO scams.

The SEC’s complaint, which was filed in the U.S. District Court for the Eastern District of New York, sued PlexCorps, a privately-held company, and Dominic Lacroix and Sabrina Paradis-Royer, the individuals responsible for launching the ICO for

investments in the PlexCoin token. The complaint charged the defendants with violations of the securities laws for fraudulently marketing and selling securities through the Internet and in an ICO “whitepaper,” on the principal grounds that the defendants falsely promised investors—in the United States and elsewhere—a return of over 1,300 percent in under 30 days on their investment in PlexCoin tokens. Among other things, the SEC also alleged that the defendants made a series of materially false and misleading statements, hid the identity of one of PlexCorp’s executives because he was a known recidivist securities violator in Canada, and promised that the proceeds of the PlexCoin ICO would be used to develop other PlexCorps products, but instead were intended to fund the individual defendants’ home décor projects.

The SEC’s enforcement action against PlexCorps is a strong indication that its cyber unit will act assertively with respect to enforcement of securities laws in connection with ICOs. The SEC has not provided further guidance since the July 2017 DAO Investigative Report. Therefore, such guidance must be gleaned from enforcement actions the SEC has brought, and will undoubtedly continue to bring, as more ICOs are launched. Players in the digital currency space had hoped that additional guidance on ICOs would be forthcoming when representatives

from the SEC presented at the recent Blockchain at Berkeley ICO Financing Conference. However, SEC representatives did not elaborate beyond the guidance offered in the July 2017 DAO Investigative Report or on the agency's website.

Conclusion: It is critically important for companies contemplating ICOs to consider how best to ensure compliance with applicable securities regulations by reviewing the July 2017 DAO Investigative Report, gleaned lessons from recent ICO enforcement actions and speaking with counsel experienced in these issues. It is also vital that investors who are considering purchasing tokens in ICOs undertake proper due diligence to avoid fraudulent schemes.

For more information, please contact:

Michelle Ann Gitlitz
212.885.5068 | MGitlitz@BlankRome.com

Ariel S. Glasner
202.772.5963 | AGlasner@BlankRome.com