

# Extra Legal

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## *Is “The Wild West of Financing” Coming to an End? Cryptocurrency and ICO Risk and Regulation*

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The startup world may only have a few more moments in the sun when it comes to taking advantage of the unregulated terrain of Initial Coin Offerings (“ICO”).<sup>1</sup> While this type of crowdfunding<sup>2</sup> continues to gain popularity with startups, software developers, and venture capitalists,<sup>3</sup> the evil twin of massive sales – massive losses – may finally bring ICO transactions into the regulatory purview of the Internal Revenue Service (“IRS”),<sup>4</sup> Securities and Exchange Commission (“SEC”),<sup>5</sup>

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<sup>1</sup> See David Z. Morris, *The Rise of Cryptocurrency Ponzi Schemes*, THE ATLANTIC (May 31, 2017), <https://www.theatlantic.com/technology/archive/2017/05/cryptocurrency-ponzi-schemes/528624/>.

<sup>2</sup> See Jason W. Parsont, *Crowdfunding: The Real and Illusory Exemption*, 4 HARV. BUS. L. REV. 281, 283 (2014) (defining “crowdfunding” as “a financing method used primarily by startups and small businesses to raise small amounts of capital from a large number of people over the Internet.”).

<sup>3</sup> See Erin Griffith, *Why Startups Are Trading IPOs for ICOs*, FORTUNE (May 5, 2017), <http://fortune.com/2017/05/05/ico-initial-coin-offering/>.

<sup>4</sup> I.R.S. Notice 2014-21 (2014) [hereinafter *IRS Notice*].

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and the Financial Crimes Enforcement Network (“FinCEN”).<sup>6</sup> The SEC may start classifying digital assets, such as Bitcoin, as “financial securities” subject to agency regulation because of their increasing use in Ponzi schemes and fraudulent lending practices.<sup>7</sup> There is also evidence that FinCEN has begun regulating digital assets under various sections of the Bank Secrecy Act (“BSA”).<sup>8</sup> This article explores the increasing awareness of issues surrounding digital assets and reviews developments within each of these agencies that indicate ICOs are likely to soon be regulated.

## I. Virtual Currency and ICOs

Money has transformed throughout the years, from the barter system, to physical coins, to paper money, and finally to digital currency.<sup>9</sup> Today, businesses and individuals can choose to transact in real currency,

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<sup>5</sup> *What We Do*, U.S. SEC. & EXCH. COMM’N, <http://www.sec.gov/about/whatwedo.shtml> (last modified June 10, 2013) [hereinafter *SEC Homepage*]; see, e.g., U.S. SEC. & EXCH. COMM’N, SEC PUB. NO. 153 (7/13), INVESTOR ALERT: PONZI SCHEMES USING VIRTUAL CURRENCIES, [http://www.sec.gov/investor/alerts/ia\\_virtualcurrencies.pdf](http://www.sec.gov/investor/alerts/ia_virtualcurrencies.pdf) (last visited Oct. 2017); *Investor Alert: Bitcoin and Other Virtual Currency related Investments*, U.S. SEC. & EXCH. COMM’N, OFF. INV. EDUC. & ADVOC. (May 7, 2014), [https://www.sec.gov/oiea/investor-alerts-bulletins/investoralertsia\\_bitcoin.html](https://www.sec.gov/oiea/investor-alerts-bulletins/investoralertsia_bitcoin.html) [hereinafter *Investor Alert: Bitcoin and Other Virtual Currency-Related Investments*]; see also *Bitcoin: More Than a Bit Risky*, U.S. DEP’T OF TREASURY, FIN. CRIMES ENFORCEMENT NETWORK, <http://www.finra.org/investors/alerts/bitcoin-more-bit-risky> (last updated May 7, 2014); CONSUMER ADVISORY: RISKS TO CONSUMERS POSED BY VIRTUAL CURRENCIES, CONSUMER FIN. PROT. BD., [http://files.consumerfinance.gov/f/201408\\_cfpb\\_consumer-advisory\\_virtual-currencies.pdf](http://files.consumerfinance.gov/f/201408_cfpb_consumer-advisory_virtual-currencies.pdf) (last visited Aug. 14, 2017) [collectively, *SEC Alerts*].

<sup>6</sup> See MODEL STATE CONSUMER AND INVESTOR GUIDANCE ON VIRTUAL CURRENCY, CONF. OF ST. BANK SUPERVISORS & N. AM. SEC. ADMIN. ASSOC. (Apr. 23, 2014), <http://www.dob.texas.gov/public/uploads/files/consumer-information/csbsvirtualcurrency.pdf>; see also Peter Van Valkenburgh, *The Bank Secrecy Act, Cryptocurrencies, and New Tokens: What is Known and What Remains Ambiguous*, COIN CENTER (May 2017), <https://coincenter.org/files/2017-05/report-bsa-crypto-token1.pdf>.

<sup>7</sup> See Elliot Feeny & Brandon Green, *Welcome to the Age of ICOs*, BITCOIN MAG. (June 2, 2017), <https://bitcoinmagazine.com/articles/welcome-age-icos/> (explaining how the characterization of cryptocurrencies as “securities” or “currencies” will determine whether these assets are required to comply with SEC’s requirements).

<sup>8</sup> *Id.*

<sup>9</sup> See FED. RES. BANK OF CHI., NO. 317, BITCOIN: A PRIMER 2-3 (Dec. 2013).

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which is regulated by elaborate and invariably consumer-friendly laws, or in virtual currency, which exists in a gray decentralized area that is neither authorized by a bank nor associated with a government.<sup>10</sup> “Cryptocurrency” is a form of virtual currency that is based on “cryptography.”<sup>11</sup> Cryptocurrency-based transactions utilize peer-to-peer technology platforms, where independent individuals or entities verify the credentials of other users and the authenticity of transactions by way of a public ledger.<sup>12</sup> “Blockchain” is the shared public ledger technology that facilitates these digital payment systems by processing and publishing records of transactions for the public to view.<sup>13</sup> Unlike traditional financial systems which use financial institutions to authenticate transactions, cryptocurrency-based transactions occur on the “block chain,” i.e. on the public ledger, and the transactions are verified by “miners.”<sup>14</sup> “Miners” are simply individuals who compile transactions into “blocks” by verifying or solving transactions.<sup>15</sup> In return for

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<sup>10</sup> See Reuben Grinberg, *Bitcoin: An Innovative Alternative Digital Currency*, 4 HASTINGS SCI. & TECH. L.J. 159, 160 (2012) (commenting on the anonymity of Bitcoin).

<sup>11</sup> *Frequently Asked Questions*, BITCOIN, [www.bitcoin.org/en/faq#what-is-bitcoin](http://www.bitcoin.org/en/faq#what-is-bitcoin) (last visited June 29, 2017); A. Michael Froomkin, *The Metaphor is the Key: Cryptography, The Clipper Chip, and The Constitution*, 143 U. PA. L. REV. 709, 713 (explaining, “Cryptography is the art of creating and using methods of disguising messages, using codes, ciphers, and other methods, so that only certain people can see the real message.”).

<sup>12</sup> See HANDBOOK OF DIGITAL CURRENCY: BITCOIN, INNOVATION, FINANCIAL INSTRUMENTS, AND BIG DATA 14-16 (David Lee Kuo Chuen ed., 2015); see also Kavid Singh, *The New Wild West: Preventing Money Laundering in the Bitcoin Network*, 13 NW. J. TECH. & INTELL. PROP. 37, 41 (2015) (defining a “public ledger” as “a publically available chronological list of all past transactions in the network.”).

<sup>13</sup> Bruno Campenon, *Fintech and the future of securities services*, 8 J. SEC. OPERATIONS & CUSTODY 107, 111 (2016) (“[B]itcoin acts as a decentrali[z]ed depository, messaging system and settlement platform rolled into one.”).

<sup>14</sup> JERRY BRITO & ANDREA CASTILLO, BITCOIN: A PRIMER FOR POLICYMAKERS 6-8 (2d ed. 2016); see also Matthew Kien-Meng Ly, *Coining Bitcoin’s “Legal-Bits”: Examining The Regulatory Framework For Bitcoin and Virtual Currencies*, 27 HARV. J. L. & TECH. 587, 590 (2014).

<sup>15</sup> See generally Satoshi Nakamoto, *Bitcoin: A Peer-To-Peer Electronic Cash System*, BITCOIN (2008), <https://bitcoin.org/bitcoin.pdf> (referring to “miners” as “nodes” and explaining peer-to-peer verification process); see also Nicolas T. Courtois & Lear

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processing and logging transactions, “miners” earn fees in the form of virtual currency.<sup>16</sup> While these transactions are publicly recorded on the blockchain, users can only be identified by their “addresses,” which cannot be traced back to a users’ real-world identity.<sup>17</sup>

An ICO is a type of crowdfunding based on cryptocurrency, rather than on traditional coin and paper currency.<sup>18</sup> ICO transactions have recently gained popularity within the startup community as a way to avoid the formally regulated capital-raising process associated with banks and venture-capitalists.<sup>19</sup> Much like crowdfunding using traditional currency, in an ICO, a company can fund a project by having individuals purchase “tokens” in exchange for a cryptocurrency.<sup>20</sup> However, tokens purchased in exchange for cryptocurrency do not represent an ownership interest in a project.<sup>21</sup> Rather, they are simply investment instruments that can accrue – or lose – value depending on the success of a project and the tokens can be traded.<sup>22</sup> Much like traditional crowdfunding, an ICO often involves a whitepaper drafted by the entrepreneurs describing the project

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Bahack, *On Subversive Miner Strategies and Block Withholding Attack in Bitcoin Digital Currency*, ARXIV (2014), <https://arxiv.org/pdf/1402.1718.pdf>.

<sup>16</sup> Kien-Meng Ly, *supra* note 14, at 590.

<sup>17</sup> INT’L MONETARY FUND STAFF TEAM, SDN/16/03, VIRTUAL CURRENCIES AND BEYOND: INITIAL CONSIDERATIONS 9 (Jan. 2016), <https://www.imf.org/external/pubs/ft/sdn/2016/sdn1603.pdf>.

<sup>18</sup> See Ramis Jamali, Sherwin Li & Rodrigo Pantoja, *Cryptocurrency: Digital Asset Class of The Future – bitcoin vs ethereum?*, THE ECONOMIST, [http://www.economist.com/sites/default/files/economist\\_case\\_comp\\_ivey.pdf](http://www.economist.com/sites/default/files/economist_case_comp_ivey.pdf) (last visited Oct. 2017); see also Sid Kalla, *What is a Token Sale (ICO)?*, SMITH AND CROWN (June 21, 2016, 7:39 PM), <https://www.smithandcrown.com/what-is-an-ico/>.

<sup>19</sup> See Jeff John Roberts, *Why Tech Investors Love ICOs – and Lawyers Don’t*, FORTUNE (June 26, 2017, 6:30 AM), <http://fortune.com/2017/06/26/ico-initial-coin-offering-investing/>; see also Michael del Castillo, *ICOs Are Changing the Way VCs Deal With Startups*, COINDESK (May 11, 2017), <https://www.coindesk.com/icos-changing-way-vcs-deal-startups/>.

<sup>20</sup> See Kalla, *supra* note 18.

<sup>21</sup> Richard Kastelein, *What Initial Coin Offerings Are, and Why VC Firms Care*, HARV. BUS. REV. (Mar. 24, 2017), <https://hbr.org/2017/03/what-initial-coin-offerings-are-and-why-vc-firms-care>.

<sup>22</sup> *Id.* (“[I]nvestors can opt to cash out to a fiat-backed currency, or wait for the cryptocurrency to continue to rise (or fall).”).

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and the team involved.<sup>23</sup> If a project is able to raise the requisite amount of funds within the specified time, the tokens can represent a significant investment tool because they are then traded against other cryptocurrencies.<sup>24</sup> ICOs are often identified as “software presale tokens’ [which is] akin to giving early access to an online game to early supporters” in order to avoid the legal scrutiny that comes with regulated securities sales.<sup>25</sup> There is currently no regulatory entity associated with ICOs, which means there are no official investor protections currently in place. This is one key difference between an ICO and an Initial Public Offering (“IPO”).<sup>26</sup>

## II. Virtual Currency Investment Risks

Despite the appeal of an affordable but unregulated financing tool, investment in virtual currency has been marred by issues such as money laundering, Ponzi schemes, and securities fraud.<sup>27</sup> The SEC’s Office of Investor Education and Advocacy and the Financial Industry Regulatory Authority have both issued “Investor Alerts” to educate investors about such issues, and the North American Securities Administrators Association identified digital currency as a top threat to investors.<sup>28</sup>

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<sup>23</sup> See Kalla, *supra* note 18.

<sup>24</sup> Alex Wilhelm, *WTF is an ICO?*, TECHCRUNCH (May 23, 2017), <https://techcrunch.com/2017/05/23/wtf-is-an-ico/>.

<sup>25</sup> See Kalla, *supra* note 18.

<sup>26</sup> See Kevin Helms, *Scammy Waters: The Differences Between an IPO and an ICO*, BITCOIN (Jan. 9, 2017), <https://news.bitcoin.com/scammy-waters-the-differences-between-an-ipo-and-an-ico/> (detailing the rigorous requirements for IPOs compared to ICOs).

<sup>27</sup> Cyril Bertrand, *Are ICOs the new Venture Capital?*, MEDIUM (Sept. 5, 2017), <https://medium.com/xangevc/are-icos-the-new-venture-capital-8f9bcc5c3220> (explaining how ICOs eliminate overhead costs associated with financing); see Kien-Meng Ly, *supra* note 14; see also Ryan A. Brown, Esq. & David J. Barton, *Initial Coin Offerings: The Wave of the Future or a Regulatory Headache?*, ARLINGTON L. GROUP (June 1, 2017), <https://www.arlingtonlawgroup.com/initial-coin-offerings-for-blockchain-cryptocurrencies.html>.

<sup>28</sup> *Investor Alert: Bitcoin and Other Virtual Currency-Related Investments*, *supra* note 5.

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In *SEC v. Shavers*, Trendon T. Shavers, the founder and operator of an investment service, was charged with operating a Ponzi scheme and defrauding Bitcoin investors.<sup>29</sup> Shavers promised investors high returns by selling Bitcoin to individuals who wanted to buy the virtual currency “off the radar,” but he instead used investors’ Bitcoin to pay off his own investments and expenses.<sup>30</sup> Shavers made a net total of \$164,758 from sales of 86,202 Bitcoin, and was charged with violations of various anti-fraud and registration provisions.<sup>31</sup> The SEC later noted that “any investment in securities in the United States remains subject to the jurisdiction of the SEC regardless of whether the investment is made in U.S. dollars or a virtual currency.”<sup>32</sup> Similarly, in a recent complaint, the SEC charged Homero Joshua Garza with defrauding “mining” investors.<sup>33</sup> Garza “sold – to over 10,000 investors – investment contracts representing shares in the profits they claimed would be generated from using their purported computing power to ‘mine’ for virtual currency,” but subsequently neglected to pay investors.<sup>34</sup>

### **III. Current Regulation of Virtual Currency**

Regulatory agencies have signaled a shift from the treatment of virtual currency as “the Wild West of financing,”<sup>35</sup> to formal regulation of investment in virtual currency such as ICOs. This shift is evidenced by the SEC’s enforcement actions against individuals who defraud investors, the IRS’s stance on the taxation of convertible virtual currency, and FinCEN’s guidance on the administration of the BSA. The IRS issued guidelines

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<sup>29</sup> Complaint, Securities and Exchange Commission v. Shavers, No. 13-00416, 2013 WL 3810441 (E.D. Tex. Jul. 23, 2013).

<sup>30</sup> *Id.* at 2.

<sup>31</sup> *Id.* at 7.

<sup>32</sup> See SEC Homepage, *supra* note 5.

<sup>33</sup> Complaint, Securities and Exchange Commission v. Garza, No. 15-cv-01760, 2015 WL 7732649 (D. Conn. Dec. 1, 2015).

<sup>34</sup> *Id.*

<sup>35</sup> See Kastelein, *supra* note 21.

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explaining its treatment of virtual currency as property for U.S. federal tax purposes.<sup>36</sup> Per its notice, “a taxpayer who receives [convertible] virtual currency as payment for goods or services must, in computing gross income, include the fair market value of the virtual currency, measured in U.S. dollars, as of the date that the virtual currency was received.”<sup>37</sup>

FinCEN has also started shifting toward regulation of digital assets.<sup>38</sup> FinCEN is a bureau of the U.S. Department of the Treasury dedicated to regulation of the Federal anti-money laundering and counter-terrorism financing statute known as the BSA.<sup>39</sup> If, under the BSA, an institution is deemed to be a “money service business” (“MSB”), it is subject to FinCEN’s registration, reporting, and recordkeeping requirements.<sup>40</sup> The agency has clarified that entities that mine, purchase, issue, or exchange virtual currency may be deemed an MSB.<sup>41</sup> The agency, in an earlier letter, decided “an administrator or exchanger that (1) accepts and transmits a convertible virtual currency or (2) buys or sells convertible virtual currency for any reason is a[n MSB] under FinCEN's regulations, unless a limitation to or exemption from the definition applies.”<sup>42</sup>

In 2015, FinCEN and the U.S. Attorney’s Office for the Northern District of California imposed a civil money penalty in the amount of

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<sup>36</sup> *IRS Notice, supra* note 4, at 2.

<sup>37</sup> *IRS Notice, supra* note 4, at 2-3.

<sup>38</sup> *What We Do*, U.S. DEP’T OF TREASURY, FIN. CRIMES ENFORCEMENT NETWORK, <https://www.fincen.gov/what-we-do> (last visited Oct. 8, 2017).

<sup>39</sup> *Id.*

<sup>40</sup> U.S. DEP’T OF TREASURY, FIN. CRIMES ENFORCEMENT NETWORK, GUIDANCE TO MONEY SERVICES BUSINESSES ON OBTAINING AND MAINTAINING BANKING SERVICES (Apr. 26, 2005), <https://www.fincen.gov/sites/default/files/guidance/fincenadv04262005.pdf>.

<sup>41</sup> U.S. DEP’T OF TREASURY, FIN. CRIMES ENFORCEMENT NETWORK, FIN-2014-R001, APPLICATION OF FINCEN’S REGULATIONS TO VIRTUAL CURRENCY MINING OPERATIONS (Jan. 30, 2014), <https://www.fincen.gov/sites/default/files/shared/FIN-2014-R001.pdf>.

<sup>42</sup> U.S. DEP’T OF TREASURY, FIN. CRIMES ENFORCEMENT NETWORK, FIN-2013-G001, APPLICATION OF FINCEN’S REGULATIONS TO PERSONS ADMINISTERING, EXCHANGING, OR USING VIRTUAL CURRENCIES (Mar. 18, 2013), <https://www.fincen.gov/resources/statutes-regulations/guidance/application-fincens-regulations-persons-administering>.

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\$700,000 against Ripple Labs Inc. for failure to register as an MSB.<sup>43</sup> Ripple Labs Inc. was an online platform that engaged in exchanging virtual currency by way of its own cryptocurrency, XRP, which was “the second-largest cryptocurrency by market capitalization, after Bitcoin.”<sup>44</sup> As a response to this action, experts warned that “the nascent virtual currency industry is ripe for remedial enforcement actions, as businesses find themselves grappling with unfamiliar FinCEN regulations.”<sup>45</sup>

As the SEC’s mission is “to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation,”<sup>46</sup> one would think the virtual currency market is well within the agency’s jurisdiction. The SEC has issued many Alerts to inform investors about the high risk associated with investing in cryptocurrencies, but no regulations have thus far been promulgated.<sup>47</sup> In *Shavers*, Judge Amos Mazzant of the U.S. District Court in the Eastern Division of Texas found the SEC had authority to regulate Bitcoin. Since the SEC correctly treated the virtual currency as money and Shavers’ offerings of investments in virtual currency met the definition of investment contracts, Judge Mazzant found that Bitcoin fit within the definition of a security.<sup>48</sup> Recently, a financial technology (“FinTech”) company that plans to operate blockchain systems

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<sup>43</sup> Assessment of Civil Money Penalty, Ripple Labs Inc., No. 2015-05, U.S. Dep’t of Treasury (May 5, 2015), [https://www.fincen.gov/sites/default/files/shared/Ripple\\_Assessment.pdf](https://www.fincen.gov/sites/default/files/shared/Ripple_Assessment.pdf).

<sup>44</sup> U.S. DEP’T OF TREASURY, FIN. CRIMES ENFORCEMENT NETWORK, FINCEN FINES RIPPLE LABS INC. IN FIRST CIVIL ENFORCEMENT ACTION AGAINST A VIRTUAL CURRENCY EXCHANGER (May 5, 2015), <https://www.fincen.gov/sites/default/files/2016-08/20150505.pdf>.

<sup>45</sup> Michael Mancusi, *Virtual Currencies: FinCEN’s Next Enforcement Wave?*, LAW360 (June 3, 2015, 10:28 AM), <https://www.law360.com/articles/662917>.

<sup>46</sup> See *SEC Homepage*, *supra* note 5.

<sup>47</sup> Nathaniel Popper, *Despite S.E.C. Warning, Wave of Initial Coin Offerings Grows*, N.Y. TIMES (Aug. 7, 2017), <https://www.nytimes.com/2017/08/07/business/dealbook/initial-coin-offerings-sec-virtual-currency.html>; see also *SEC Alerts*, *supra* note 5.

<sup>48</sup> *Securities and Exchange Commission v. Shavers*, No. 4:13-CV-416, 2014 U.S. Dist. LEXIS 130781 (E.D. Tex. Sep. 18, 2014).

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filed a rulemaking petition with the SEC requesting the agency promulgate regulations for the trading and issuing of digital assets.<sup>49</sup> The FinTech company, Ouisa Capital, argues that digital assets should be treated as securities, and firms selling investment contracts in these instruments should be subject to securities laws.<sup>50</sup> Ouisa Capital's petition describes various SEC enforcement actions that evidence the agency's current treatment of virtual currency as securities, and criticized the SEC's decision to "engage[] in enforcement actions against FinTech firm[s] that did not know they were operating in contravention of existing statutes," instead of actually engaging in rulemaking.<sup>51</sup>

Although the regulatory schemes described in this section exist, none are currently robust enough to truly protect investors in the cryptocurrency market. This issue is even more prominent in the ICO context.

#### IV. Significant Risks in the ICO Context

ICOs pose significant risks to investors and inventors alike as an increasingly popular and unregulated way to raise money and invest. Although the crowdfunding tool has provided companies and individuals with cost effective fundraising opportunities, the ambiguous structure has left gaping traps for the unwary. When an ICO is launched, the entrepreneurs publish a whitepaper describing the project. Due to the lack of a regulatory scheme, anyone can issue tokens for ICOs at any time during the existence of a project and entrepreneurs can provide investors

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<sup>49</sup> Letter from Vincent Molinari, CEO & President of Ouisa, to Hon. Michael S. Piwowar, Acting Chair of U.S. Sec. & Exch. Comm'n, *Petition for Rulemaking Submitted to the Sec. & Exch. Comm'n* (Mar. 13, 2017), <https://www.sec.gov/rules/petitions/2017/petn4-710.pdf>.

<sup>50</sup> *Id.* at 4.

<sup>51</sup> *Id.*

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with a whitepaper containing only a short, unaudited description.<sup>52</sup> ICO investors can be inexperienced and, without due diligence or disclosure obligations similar to that of IPOs, investors may not be able to make informed investment decisions.<sup>53</sup> Furthermore, cryptocurrency-based transactions have no identifiable “signatures,” which means the ultimate culprit behind an illegal transaction is unidentifiable.<sup>54</sup> Today, blockchain-based evidence may be considered in court, but expensive expert witnesses are required to explain what the evidence means.<sup>55</sup> Experts warn of the risk associated with the overpricing of tokens and overvaluing of projects.<sup>56</sup> For example, the Gnosis application raised \$12.5 million in twelve minutes on a blockchain, even though it has generated no revenue and its whitepaper merely describes what the application intends to accomplish.<sup>57</sup> In 2016, a putative class action lawsuit was submitted to the U.S. District Court for the District of Connecticut, claiming “miners”

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<sup>52</sup> Jeffrey K. Berns, David C. Berns & Poonam D. Mehta, *ICO Issuers Must Self-Regulate While Regulators Get Up to Speed*, BERNsWEISS LLP (Dec. 21, 2016, 7:10 PM), <https://www.law111.com/ico-issuers-must-self-regulate-while-regulators-get-up-to-speed>.

<sup>53</sup> *Id.* (explaining how the SEC requires various disclosures for IPOs, such a “[a] description of your company’s business, properties, and competition; [and] [a] description of the risks of investing in your company.”).

<sup>54</sup> See Nakamoto, *supra* note 15, at 6 (explaining that when public keys are kept anonymous, “the public can see that someone is sending an amount to someone else, but without information linking the transaction to anyone.”); see also Rebekah Mercer, *Privacy on The Blockchain: Unique Ring Signatures*, ARXIV (Dec. 25, 2016), <https://arxiv.org/pdf/1612.01188.pdf>.

<sup>55</sup> Greg McMullen & Florian Glatz, *Blockchain & Law in 2017: Finally friends or still foes?*, MEDIUM (Jan. 20, 2017), <https://medium.com/ipdb-blog/blockchain-and-law-in-2017-f535cb0e06c4>.

<sup>56</sup> See Travis Scher, *ICOs and Appcoins: A Blockchain VC’s View*, COINDESK (Nov. 4, 2016), <https://www.coindesk.com/icos-appcoins-blockchain-vcs-view/>; see also Charles Dearing, *Rule of Thumb for ICO Investor: Explore Risks Involved*, COINDESK (June 9, 2017), <https://cointelegraph.com/news/rule-of-thumb-for-ico-investor-explore-risks-involved>; Julian Moncada, *What’s an ICO and what does it mean for investors in 2017?*, MEDIUM (Jan. 3, 2017), <https://medium.com/@julianmoncada/whats-an-ico-and-what-does-it-mean-for-investors-in-2017-772b77c82a9a>.

<sup>57</sup> Camilla Russo, *The Hottest New Way of Investing in Silicon Valley Comes With a Big Catch*, BLOOMBERG (May 24, 2017, 6:00 PM), <https://www.bloomberg.com/news/articles/2017-05-24/digital-tokens-unlock-stakes-in-blockchain-as-icos-proliferate>.

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defrauded investors by, *inter alia*, misrepresenting the estimated value of an ICO.<sup>58</sup>

## V. Conclusion

Startups and investors want cryptocurrencies and ICOs to be regulated.<sup>59</sup> Agencies and lawmakers want to protect investors from the ills to which an unregulated ICO might subject even the most sophisticated of investors.<sup>60</sup> Considering the similarities between ICOs and IPOs, along with the clear and consistent evidence of investor fraud, it is likely the year 2017 will finally mark a shift in policy toward the regulation of virtual currency.<sup>61</sup>

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<sup>58</sup> First Amended Complaint, *Audet v. Fraser*, Case No. 3:16-cv-00940 (D. Conn. Nov. 4, 2016) (describing the potential significant risks for investors looking at ICOs).

<sup>59</sup> See McMullen & Glatz, *supra* note 55.

<sup>60</sup> See Helms, *supra* note 26.

<sup>61</sup> Anthony Coggine, *SEC is Still Eyeing to Regulate the ICO Market*, COINTELEGRAPH (June 27, 2017), <https://cointelegraph.com/news/sec-is-still-eyeing-to-regulate-the-ico-market>.

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