

The ICO market heats up as the SEC weighs in on Token offerings; Interview with Michael Terpin, Transform Group



Michael Terpin
Transform Group

August 28, 2017

The Securities and Exchange Commission recently issued an investigative report cautioning market participants that offers and sales of digital assets by "virtual" organizations are subject to the requirements of the federal securities laws. Does this mean that all ICO's are now considered securities offerings by the SEC and thus U.S. securities laws apply? Not so, says ICO expert Michael Terpin. Michael heads up Transform Group, and at last count has been actively involved in 40 ICO's.

Terpin co-founded BitAngels, the world's first angel network for digital currency startups (2013), the Dapps Fund, the first digital currency fund and one of the largest investors in the Ethereum presale (2014), the Bitcoin Syndicate on AngelList (2015), bCommerce Labs, a cryptocurrency incubator fund (2016), and heads up the ICO investment committee for Alphabit Fund (2017). In addition, Terpin is founder and CEO of Transform Group, the world's leading PR and advisory firm for blockchain companies. Previously, he founded and sold Marketwired (now owned by NASDAQ), for which he was a finalist in the Ernst & Young Entrepreneur of the Year Award.

I recently interviewed Michael to get his views on the ICO market and the potential impact of the SEC report. Michael said, "I think that the SEC report is nothing groundbreaking and serves as a clarification of existing SEC law. The 'Howey Test' still applies and therefore utility tokens and related blockchain ICO offerings can still avoid being classified as securities, if not then anyone that bought anything of value with the intention of reselling it for more would be considered securities." The Howey Test was applied to a by the U.S. Supreme Court in a case where the SEC claimed that some Florida farmers that offered investors the opportunity to buy land and then lease it back to them to cultivate citrus was tantamount to offering securities. However, the court ruled in Howey's favor that they were not selling securities. Although over the years various courts have applied different interpretations.

Michael said, "As an example, offering a Wine Token would not be a security, if a vineyard offered the next harvest to wine buyers and someone bought 100 cases, kept one to drink and sold the other 99. Classifying that as a security does not make sense, or arguably antique cars and homes would be considered securities! I founded Direct IPO in 1996 because back then you had to file state by state and the costs were too onerous for most small businesses." He went on to say, "I see a bright future for non-securities based ICO's, but good legal advice is important to differentiate clearly what is a 'Utility' ICO versus a security offering." We have not heard the last from the SEC in regards to ICO public offering with literally millions being raised by some blockchain startups in a matter of hours or days with little or no registration or reporting requirements. We will continue to monitor developments and keep you updated.

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