

A Securities Law Framework for Blockchain Tokens

To estimate how likely a particular blockchain token is to be a security under US federal securities law

[Refer to: full legal analysis](#)

Instructions

Step 1: Copy to a new google sheet (File > Make a copy) or download as .xls

Step 2: Review each characteristic and determine whether or not it applies to the token

Step 3: Select Y or N for each characteristic from the drop down menu

Step 4: Review results at the bottom of this page

Element 1: Investment of Money

Is there an investment of money?				
Characteristic	Points	Explanation	Examples	Y or N
There is no crowdsale. New tokens are given away for free, or are earned through mining	0	<p>Tokens which are not sold for value do not involve an investment of money.</p> <p>For example, if all tokens are distributed for free, or are only produced through mining, then there is no sale for value.</p>	<p>Ŵ will be given initially to the public at large for free, while a pool of Ŵ will be kept by the company and held for 1-4 years.</p>	Y
Tokens are sold for value (crowdsale)	100	<p>Tokens which are sold in a crowdsale, at any time, regardless of whether sold for fiat or digital currency (or anything else of value) involve an investment of money</p>	<p>Ŵ at a later date will be sold by WON INC to the public at large after 1-4 years from GENESIS event. Users are able to use, buy and sell Ŵ that was given for free initially on multiple apps.</p>	Y

Total for Element 1 **100**

Element 2: Common Enterprise

What is the timing of the sale?

Characteristic	Points	Explanation	Examples	Y or N
Pre-deployment	70	A sale of tokens before any code has been deployed on a blockchain is more likely to result in a common enterprise where the profits arise from the efforts of others. This is because the buyers are completely dependent on the actions of the developers, and the buyers cannot actually participate in the network until a later time.	WON INC will not do a pre-sale.	N
The protocol is operational on a test network	60	If there is a functioning network there is less likely there is to be a common enterprise where the profits arise from the efforts of others. The closer the sale is to launch of the network, the less likely there is to be a common enterprise.	WON INC will ensure that it is a live network.	N
Live network is operational	50	If the token is sold once there is an operational network using the token, or sold immediately before the network goes live, it is again less likely to result in a common enterprise	W will be distributed via the GENESIS event free to the public at large, which at the same time the WON will be live and operational to use W within applications.	Y

What do token holders have to do in order to get economic benefits from the network?

Characteristic	Points	Explanation	Examples	Y or N
All token holders will always receive the same returns	25	If returns are paid to all token holders equally (or in proportion to their token holdings) regardless of any action on the part of the token holder, then their interests are more likely aligned in a common enterprise	At GENESIS, W will be distributed to the public at large for free, however the end user determines based on their actions as to the return, if any at all.	N
There is a possibility of varying returns between token holders, based on their participation or use of the network	-20	If token holders' returns depend on their own efforts, and can vary depending on the amount of effort they each put in, then there is less likely to be a common enterprise	W will be able to be used on various applications within the WON. W can be bought, sold and traded between end users as they desire, or spend W within applications.	Y

Total for Element 2 **30**

Element 3: Expectation of Profit

What function does the token have?				
Characteristic	Points	Explanation	Examples	Y or N
Ownership or equity interest in a legal entity, including a general partnership	100	Tokens which give, or purport to give, traditional equity, debt or other investor rights are almost certainly securities.	At no time do holders of \hat{W} have any ownership, equity interest, entitlement to a share of profits/losses, assets or liabilities. Holding \hat{W} gives the holder no entitlement as a creditor or lender, or claim in bankruptcy as an equity interest holder or creditor. There is no right at all for repayment of purchase price or payment of interest as WON INC has given away for free the initial \hat{W} pool to end users.	N
Entitlement to a share of profits and/or losses, or assets and/or liabilities	100	<i>If one or more of these characteristics apply, the token is almost certainly a security, notwithstanding the results of the other elements</i>		N
Gives holder status as a creditor or lender	100			N
A claim in bankruptcy as equity interest holder or creditor	100			N
A right to repayment of purchase price and/or payment of interest	100			N
No function other than mere existence	100		A token which does not have any real function, or is used in a network with no real function, is very likely to be bought with an expectation of profit from the efforts of others, because no real use or participation by token holders is possible. Voting rights alone do not constitute real functionality.	N
Specific functionality that is only available to token holders	0	A token which has a specific function that is only available to token holders is more likely to be purchased in order to access that function and less likely to be purchased with an expectation of profit.	\hat{W} has immediate functionality, allows end users to use it to purchase products and services within applications on the WON.	Y

Does the holder rely on manual, off-blockchain action to realize the benefit of the token?				
Characteristic	Points	Explanation	Examples	Y or N
Manual action is required outside of the network (e.g. off-blockchain) in order for the holder to get the benefit of the token	80	A token whose value depends on someone taking specific manual action outside of the network means that the token is not functional in and of itself. Instead, the token relies on a level of trust in a third party taking action off-blockchain. This sort of token is more likely to be bought for speculation - i.e. the expectation of profits.	There are no actions required outside the network to obtain benefit of \hat{W} once users pass their mandatory KYC/AML written in the WOB.	N
All functionality is inherent in the token and occurs programmatically	0	A token which is built with all the necessary technical permissions means that the token holder does not rely on manual actions of any third party. This means that the buyers are more likely to purchase the token for use rather than with the expectation of profit from the efforts of others.	\hat{W} has immediate functionality, allows end users to use it to purchase products and services within applications on the WON. Its functionality is inherent in the coin and will occur programmatically after end users pass their mandatory KYC/AML.	Y

What is the timing of the sale?				
Characteristic	Points	Explanation	Examples	Y or N
Pre-deployment	20	A sale of tokens before any code has been deployed on a blockchain is more likely to result in buyers purchasing for speculative reasons with the expectation of profit, rather than practical use cases.	There will be no pre-deployments/pre-sales of \hat{W} .	N
The protocol is operational on a test network	10	If the sale occurs after code has been deployed and tested, the token is closer to being able to be used	There will be no pre-deployments/pre-sales of \hat{W} .	N
Live network is operational	0	If the token is sold once there is an operational network using the token, or immediately before the network goes live, it is more likely to be purchased with the intention of use rather than profit.	The live network will be operational before any sale, and at the GENESIS event when \hat{W} is distributed for free to end users, all functionality and operational aspects of network will exist.	Y

Can the token holders exercise real and significant control via voting?

Characteristic	Points	Explanation	Examples	Y or N
Token holders as a whole are able to control the development team's access to funds	-20	If the collective approval of token holders is required in order for the development team to access the funds raised in the crowdsale, then any value realized by the token holders is more closely tied to their own decisions, and less reliant on the efforts of others.	There is no ability for approval/review activity by \hat{W} holders. WON INC will dictate when, where and how any further \hat{W} held by WON INC is released.	N
Token holders as a whole are able to vote on significant decisions for the protocol	-10	If the collective approval of token holders is required in order to make significant changes to the protocol, then any value realized by the token holders is more closely tied to their own decisions, and less reliant on the efforts of others.	There will be the ability for \hat{W} holders to vote to accept new KYC/AML third party service providers as the network grows.	Y

Note: Voting rights must be in addition to functionality. A token with voting rights alone and no other real functionality is very likely to satisfy element 3

How is the token sale marketed?

Characteristic	Points	Explanation	Examples	Y or N
Marketed as an 'Initial Coin Offering' or similar	50	It is not possible to prevent some buyers from buying a token purely for speculation. However, marketing the token as an investment leads buyers to believe they can profit from holding or trading the token, rather than from using the token in the network. Using terms like 'Initial Coin Offering' or 'ICO', and investment-related language like 'returns' and 'profits' encourages buyers to buy a token for speculation, rather than use.	At no time will \hat{W} be marketed as an investment. These are coins that can be utilized within applications worldwide for services and/or products. The focus is on mass market usability, not speculative or investment vehicles.	N
Marketed as a Token Sale	0	Marketed as a sale of tokens which give the right to access and use the network	Having \hat{W} will allow the end user to use \hat{W} to purchase services and/or products within the WON.	Y
There is no economic return possible from using the network	-100	If there is genuinely no economic return possible for the token holders, then there is unlikely to be a common enterprise. This will be rare.	There is the possibility that \hat{W} holders sell/trade their \hat{W} to other users if they desire on the WOX. It is possible that there could be economic return if they sold or traded at a value higher than which they acquired the \hat{W} . However, WON INC is incentivizing developers to make great applications so that \hat{W} users will spend the \hat{W} in those applications.	N

Results

Guide		Your results
Total Points	How likely is the element to be satisfied?	
0 or less	Very unlikely	Total for Element 1 100
1 - 33	Unlikely	Total for Element 2 30
34 - 66	Equally likely and unlikely	Total for Element 3 -10
67 - 99	Likely	
100 or more	Very likely	Overall Risk Score 0

A token will only be a security if it satisfies all three elements. The higher the point score for each element, the more likely the element is to be satisfied.

For many blockchain tokens, the first two elements of the Howey test are likely to be met. The third element has the most variables and the most different

Important notes

Please remember that this methodology produces nothing more than an estimate. The Overall Risk Score and the categories of likelihood are a guide only.

The Howey test has not yet been directly applied by the courts to any digital currency or blockchain token. The Howey test as applied by the courts does not involve any points-based calculation. The points system is intended as a guide - to highlight the characteristics of a token which are relevant to the securities law

Last updated December 7, 2016



[This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License.](https://creativecommons.org/licenses/by-sa/4.0/)