

SEC Releases Public Statement on Registration of Cryptocurrency Exchanges

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On March 7, 2018, the U.S. Securities and Exchange Commission (the “SEC”) issued a [public statement](#) addressing the fact that many online trading platforms for cryptocurrencies and other digital assets are “potentially unlawful” and should be registered with the SEC.

In its public statement, the SEC voiced its concern that many of these platforms identify themselves as “exchanges”, which may cause investors to mistakenly perceive these platforms as SEC-registered and regulated marketplaces. While many of these platforms claim to have strict standards, the SEC reinforced that it does not review the standards, trading protocols or assets traded on these unregistered marketplaces.

The SEC additionally outlined that any platform that allows for the trading of digital assets that meet the definition of “security” under federal securities laws must register with the SEC as a national securities exchange or rely on an exemption from registration, such as through registration as an alternative trading system (“ATS”). However, despite the growing number of online platforms that offer these trading services for digital assets, news agency Reuters was only able to identify [one online trading platform](#) that had registered as an ATS with the SEC. As a means of protecting potential investors in the interim, the SEC provided a list of questions that investors should consider before trading on any of these unregulated “exchanges”.

In recognition of the growing number of market participants that are operating online trading platforms, the SEC provided compliance guidance for nationally registered securities exchanges, as well as guidance for those operators looking to claim exempt status as an ATS. As a self-regulatory organization (“SRO”), SEC-registered exchanges must establish rules and procedures that govern its users, and mechanisms to enforce compliance with applicable regulatory bodies. SEC-registered exchanges must have measures in place to counteract fraudulent and manipulative acts, and must also comply with federal securities laws and submit its rules with the SEC. For ATS entities, the SEC states that they must similarly register as a broker-dealer – and as such, comply with regulations governing broker-dealers, and become a member of an SRO. These requirements include implementing procedures to prevent the misuse of non-public information, financial responsibility rules and books and records maintenance.

Furthermore, the SEC outlined that other online platforms that do not necessarily meet the SEC’s definition of an “exchanges”, but do provide related services, such as holding and storing digital assets through digital

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wallets, may trigger other registration requirements, including broker-dealer, transfer agent or clearing agent registration.

This public statement expands and reinforces the SEC's cautious approach towards the regulation of cryptocurrencies and other digital assets, with the goal of protecting retail investors from non-regulated exchanges. For example, Chairman Jay Clayton of the SEC had previously outlined in his [written testimony](#) before the U.S. Senate that the opportunities of these emerging technologies and digital currencies cannot come at the expense of investor and market protection. In particular, the Chairman Clayton urged market professionals to act responsibly when advising parties in this new market and outlined that many, if not all, Initial Coin Offerings should be regulated by federal securities laws.

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