

## Ricardo Davidovich Talks With ThinkAdvisor, Law360 About SEC's Moves Regarding Initial Coin Offerings

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**PRACTICES** Capital Markets and Securities, Corporate, Investment Management

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Haynes Boone Partner [Ricardo Davidovich](#) talked with *ThinkAdvisor* and *Law360* about the U.S. Securities and Exchange Commission's (SEC's) guidance this week about whether digital assets can be considered securities, a development with significant implications for Initial Coin Offerings (ICOs).

Here are excerpts of the *ThinkAdvisor* article, titled "SEC Releases Digital Assets Framework:"

Ricardo Davidovich, a partner in the Investment Management and Private Equity Practice Groups in the New York office of Haynes Boone, adds that the framework is "targeted for the public and for those looking to issue an ICO."

The proceedings against ICOs, "where the SEC has alleged that the offering was an unregistered security, has hinged on the SEC's finding or allegation that there was an investment contract, which is a specific type of security," Davidovich said in an email message.

"The criteria for determining if something is an investment contract were first set forth by the Supreme Court in *SEC v. W. J. Howey Co.*, commonly referred to as *Howey*, and refined by some cases which followed. Interestingly, *Howey* involved the sale of orange groves and was decided in 1946: the same principles are now being applied to determine if something as modern as a crypto assets are securities," he continued. "The resulting case law is that something is an investment contract when there is the investment of money in a common enterprise with the reasonable expectation of profits derived from the efforts of others."

The framework "discusses the *Howey* elements and gives examples of the last one, which is the hardest to understand/deal with. The case law is more complicated than the release implies — there are many factors to consider when determining whether there is an expectation of profits and whether such expectation is to be derived from the efforts of others."

To read the full *ThinkAdvisor* article, click [here](#).

Here are excerpts of the *Law360* article, titled "SEC Says ICO Doesn't Need To Register As Security:"

"This is an interesting no-action letter because I'm not sure that they've really done this before — where they have looked at a set of facts and basically agreed that this is not expectations of profits from the efforts of others, meaning this is not a security," said Ricardo Davidovich, a partner in Haynes Boone's investment management and private equity practice groups.

Overall, though, the guidance isn't groundbreaking. The document largely consolidates the SEC's stance on digital tokens, which until now has been spread across a number of cases and speeches.

The framework seems to be meant for the general public rather than practitioners or other experts in the field, Davidovich said.

"I think that the commission over the last several years has been more engaged in public outreach — reaching out to people and giving them a little peek under the tent as to the process," he said. "I think that this is part of it."

To read the full *Law360* article, click [here](#).