

Token Sale basics

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What do lawyers do?



Structure the token sale

Ensure that the token functions as advertised and as required by regulations

Ensure that adequate disclosures to purchasers are in place

Among many other things!

Regulatory Structure

Regulators

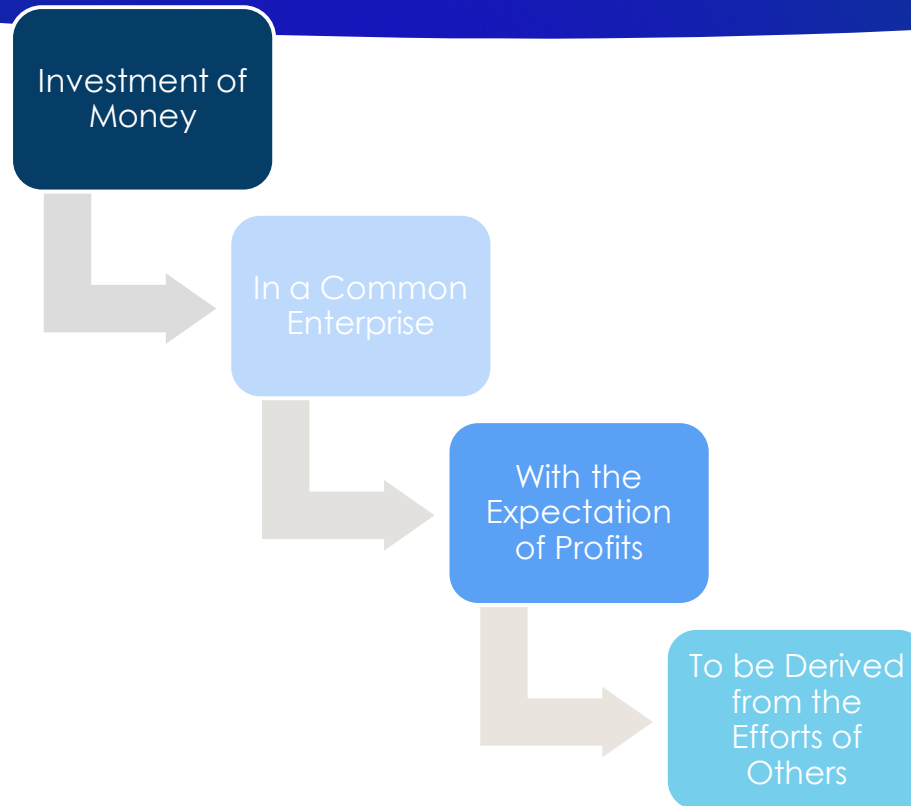
- Federal: SEC, CFTC, IRS
- State: WA DFI, NYDFS, etc.

Key Regulations

- Securities and Exchange Act of 1933 and Exchange Act of 1934
- Commodity Exchanges Act
- Tax Laws
- Case Law
- Official literature of the SEC, CFTC, and IRS

SEC v Howey

The *Howey Test* defines an investment contract as an:



Risk Capital Test

Precise definition differs from state to state, but generally requires that the purchasers offset risk by having *actual and practical control over the managerial operations of the enterprise*.

Why do ICOs exist?

Fixing areas that are broken within the VC scheme by providing the following:

- Faster access to capital
- Don't have to lower ownership interests
- Up-front lump sum amounts
- More time to focus on developing the product
- Decentralized power and control

IPO v. ICO



Company Stage

Level of Regulation

Listing requirements - the underwriters (aka the middlemen). ICOs so far have managed to cut out these middlemen and hence cut the fat margins they earn. Indeed in the equity market brokers will typically earn less than 0.1% on a trade, but up to 4% for an IPO. This is why there is much more enthusiasm amongst brokers to be part of the deal team.

Allocation

Investor type

- <https://www.quora.com/What-is-the-difference-between-an-IPO-and-an-ICO>

Why not securities?



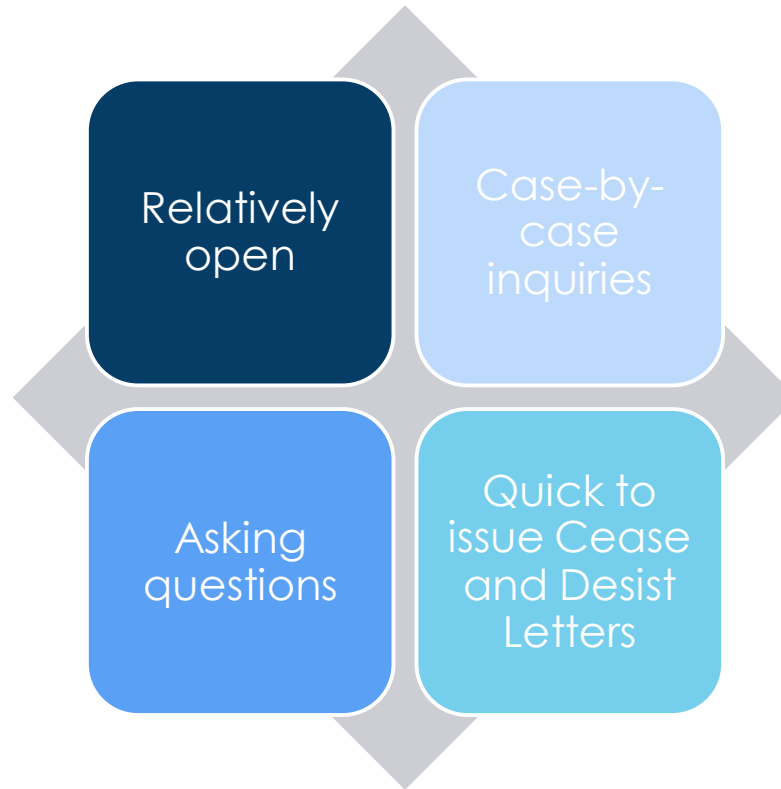
Costly and slow

Long process

Maintenance process

Unnecessary middlemen

Regulatory Trends



Issues contested within the Legal community

Who is allowed to participate?

- Accredited investors
- Sophisticated purchasers

How much information is disclosed?

- PPM equivalent

Try to fit an securities exemption?

- KYC
- Accredited Investors
- No intent for resale; holding restrictions (Exchanges and secondary trading)

Who CONDUCTS an ICO?

Companies of all sizes

- Newer companies who would otherwise be unable to secure VC funds
- Larger companies trying to make a crypto play

How do ICO's differ from Each other?

Amount raised

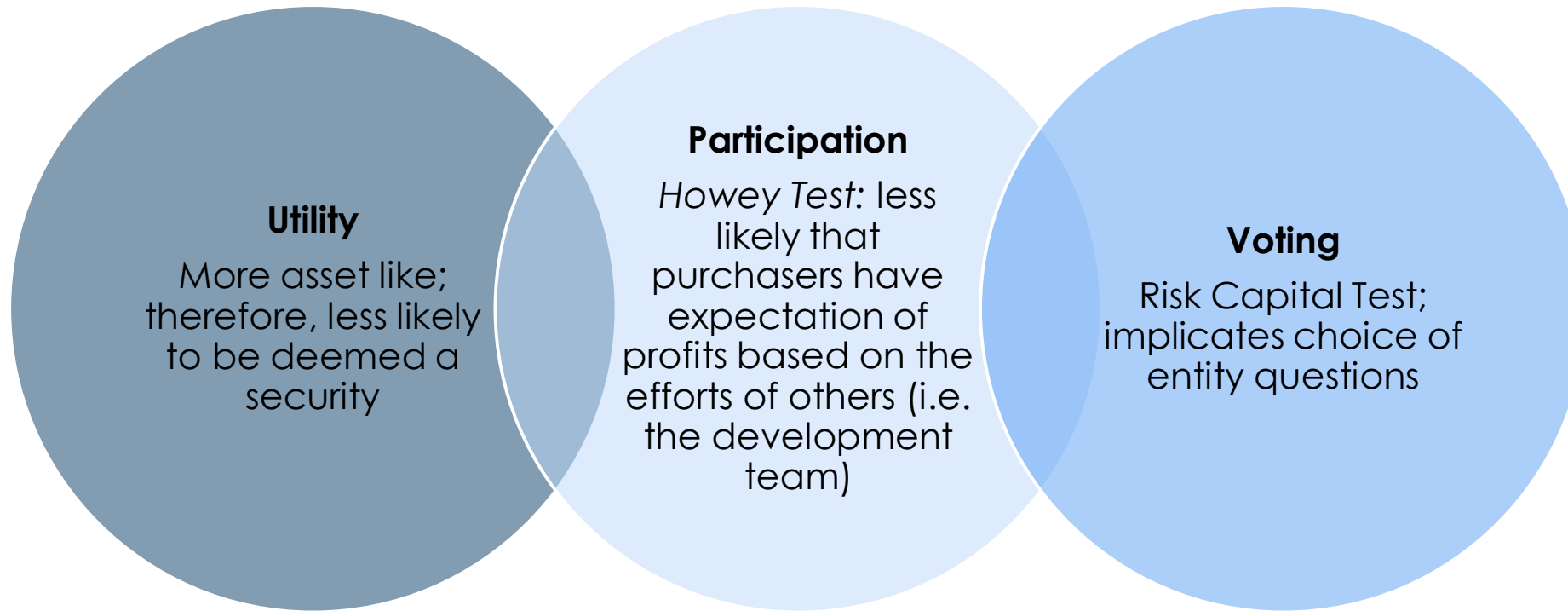
Structure of sale (Dutch auction, gradual release over a year, etc)

Presales/public sales

Traditional reasons (team experience, location, etc)

The rights granted to the purchaser as a result of owning tokens

What does the token Need to provide?



What happens if things go awry?

Fraud and Other Criminal Activity

- Cease and Desist
- Rescission

Token Deemed to be a Security

- File for an exemption (if you can!)
- Pay fines and late filing fees



Thanks for Listening!

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