

Open Learning Forum

FinTech in the United States

Michael Nonaka; Christopher DeCresce; Reid S. Hooper; and Jenny Scott Konko
Covington & Burling LLP
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Introduction

The financial services industry is regulated by a number of federal and state authorities. The most important agencies with regard to blockchain and digital assets are the Securities and Exchange Commission ([SEC](#)), the Commodity Futures Trading Commission ([CFTC](#)), and the Financial Crimes Enforcement Network ([FinCEN](#)).

Securities

One of the most pressing regulatory issues is whether tokens offered in an initial coin offering (ICO) qualify as securities under the Securities Act of 1933 ([Securities Act](#)) and the Securities Exchange Act of 1934 ([Exchange Act](#)). Regulators use the [Howey Test](#), a set of standards for securities that was created by the Supreme Court in *SEC v. W.J. Howey Co.*, to determine whether a token is a security. It is the current opinion of the SEC that most ICOs are securities offerings, with a notable exception for “utility tokens,” or tokens that can only be used to purchase goods or services on a certain platform [see: SEC’s [No Action Letter](#) regarding TurnKey Jet, Inc.].

If a token is deemed to be a security, the ICO sponsor must comply with relevant regulations; they can either offer tokens to U.S. investors in a [registered offering](#) or conduct a [private offering](#). Tokens deemed to be securities can only be traded on registered exchanges and may only use registered broker-dealers or registered investment advisers as intermediaries. Currently there are no U.S.-registered cryptocurrency exchanges, meaning the exchanges can only accept non-securities tokens for trading.

Blockchain Regulations

There are currently no blockchain-specific federal laws and regulations; the technology can fall under a wide range of regulations depending on the application. Some states (Wyoming, Montana, Colorado, Vermont) have made efforts to become more blockchain-friendly, whereas New York has increased its regulation of the industry. While there are no federal blockchain regulations, federal agencies are making efforts to better understand the technology and work with companies seeking to innovate. Amongst these newly created fintech offshoots are the Consumer Financial Protection Bureau’s [Office of Innovation](#), the CFTC’s [LabCFTC](#), and the SEC’s [FinHub](#). All are seeking engagement from stakeholders in order to better understand and regulate the industry.