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SEC Extends Registration Requirements for Investment Companies and Broker Dealers to ICOs and other Digital Assets

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Fund managers take note – after over a year of warning, this month the SEC announced a pair of settlement orders with respect to registration requirements for a fund and broker dealer operating in the crypto and digital assets space. It was the agency's first ever enforcement actions applying the investment company and broker-dealer registration provisions of the securities laws to businesses involved in digital securities. As we've written on Proskauer's Blockchain and the Law blog, we expect to see the SEC continue to expand its oversight of digital assets as securities.

In *In the Matter of Crypto Asset Management,* a crypto-focused hedge fund manager, Crypto Asset Management LP ("CAM"), held out its fund as the "first regulated crypto asset fund in the United States." Per the settlement order, CAM's statements were incorrect because neither CAM nor the fund were registered with the SEC. Finding that the fund invested more than 40% of its assets in securities (*i.e.,* certain crypto/digital assets), the SEC concluded that it was an "investment company" and thus subject to the Investment Company Act. Because the fund was not registered as an investment company and did not qualify for any of the Investment Company Act's statutory exemptions or exclusions, the SEC charged CAM with causing violations of the registration provisions of the Investment Company Act. Furthermore, the SEC alleged that CAM made negligent misrepresentations in violation of the Securities Act and the Advisers Act by stating that it was "regulated." CAM and its principal agreed to make rescission offerings to all its affected investors in addition to paying a penalty.

In *In the Matter of TokenLot, LLC*, the SEC alleged that a self-described "ICO Superstore" operated as an unregistered broker-dealer by offering customers the ability to buy, sell and trade digital assets connected with ICOs. Finding that digital assets issued and traded by TokenLot were securities, the SEC charged TokenLot and its owners with violating broker-dealer registration requirements under the Exchange Act and also alleged that they engaged in unregistered offers and sales of securities in violation of Section 5 of the Securities Act. Per the SEC's order, TokenLot's principals agreed to destroy TokenLot's remaining inventory of digital assets with the help of a qualified third party, in addition to paying disgorgement and penalties. The SEC also imposed industry bars against the principals, with the right to reapply after three years.

TokenLot and *CAM* are the SEC's first ever enforcement actions expanding these provisions of the securities laws to digital assets and cryptocurrencies, following the SEC's issuance of the DAO Report on July 25, 2017, its request to lawyers to knock it off with the unregistered coin offerings, and various other enforcement proceedings over the past year. This pair of orders signals that the SEC believes any grace period with respect to securities law compliance in connection with digital assets is over.

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