

Lawsuit Alleging that LATX Tokens are Securities Survives Motion to Dismiss

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On December 10th, 2018, a U.S. District Judge for the District of New Jersey denied Latium Network, Inc. (“Latium”) and its co-founders’ motion to dismiss a class action alleging violations of Section 5 of the Securities Act of 1933 (the “Act”) for offering and selling unregistered securities in the form of Latium X (“LATX”) tokens.

According to its [whitepaper](#), Latium sought to develop a blockchain-based tasking platform that would enable users to create tasks, select desired applicants, verify that the tasks are completed to standard and pay for those services using LATX. The LATX initial coin offering (“ICO”) was carried out in multiple stages between July 2017 and March 2018 and raised approximately \$17 million. Lead plaintiff Joevannie Solis purchased \$25,000 worth of LATX in the ICO in January 2018. The following June, Solis filed a two-count putative class action.

In denying defendants’ motion to dismiss, the court applied the [Howey](#) test to find that, accepting all facts alleged in the complaint as true and giving the plaintiff the benefit of all reasonable inferences in the light most favorable to him, Solis established a plausible claim that Latium’s ICO constituted the unregistered, non-exempt offer and sale of a “security” within the meaning of the federal securities laws and thus, a violation of Section 5 of the Act. Of particular importance to the court’s analysis were the measures Latium took to promote the LATX ICO as a “unique investment opportunity,” the limited functionality of LATX tokens at the time of the ICO, and the passive relationship of purchasers vis-à-vis Latium and its ongoing development.

The court also refused to dismiss Solis’ claim to hold Latium’s co-founders jointly and severally liable for Latium’s violations as “controlling persons” under Section 15 of the Act. This finding was based primarily on the co-founders’ executive positions, together with their public statements during the LATX ICO.

The court noted that certain of defendants' arguments in the motion to dismiss would be more appropriate in a motion for summary judgment. Whereas at dismissal the court must accept all alleged facts in the complaint as true, at summary judgment—assuming there is no genuine dispute of material facts—the court must apply the law to the facts. At summary judgment, therefore, defendants could reassert their arguments about the utility of the tokens and other key factors.

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