

SEC Settles Charges Against Enigma MPC for its Unregistered ICO

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On February 19, 2020, the U.S. Securities and Exchange Commission (SEC) [settled charges](#) against Enigma MPC (Enigma) related to Enigma's 2017 issuance of "ENG Tokens". The SEC found Enigma engaged in an unregistered initial coin offering (ICO), in which it offered and sold securities in violation of Sections 5(a) and 5(c) of the Securities Act of 1933 (Securities Act).

Under the settlement, Enigma is required to pay a \$500,000 civil penalty. Additionally, Enigma agreed to return funds to investors who purchased ENG Tokens in the ICO and who timely assert a claim via the specified claims process, to register ENG Tokens as a class of securities, and to file periodic reports with the SEC. While Enigma agreed to the terms of the settlement, it did not admit nor deny the SEC's findings. In a [blog post](#), Enigma stated the "settlement clears the way for our development team to focus fully on our original and continued vision: building groundbreaking privacy solutions that improve the adoption and usability of decentralized technologies, for the benefit of all."

According to the SEC's order, Enigma conducted its ICO to raise funds to develop a platform for digital asset traders to test trading strategies, and to build a data marketplace for cryptocurrency-related, and other, data. From June to September 2017, Enigma issued 75 million ENG Tokens and raised digital assets (*i.e.*, Bitcoin and Ether) valued at approximately \$45 million.

The SEC determined the ENG Tokens were offered and sold as securities, applying its [framework](#) for evaluating whether the offer and sale of a digital asset is an "investment contract" (and therefore a security subject to regulation and whose offer and sale must be registered or qualify for an exemption). As might be expected, the SEC focused on the purchasers' reasonable expectation of profit. Specifically, the SEC cited various representations Enigma made to investors in connection with the ICO, about the use of the raised capital to develop its products, and the potential success of such products and its business.

Further, the SEC's order detailed that Enigma, as part of the offering, sold ENG Tokens both (1) in a "Pre-Sale," at around a 10% discount, pursuant to purchase agreements (specifically, Simple Agreements for Future Tokens (SAFTs)), which were supposed to only be sold to accredited investors and (2) in a one-day "Crowd Sale" to general public investors. Though Enigma [filed](#) a Form D claiming an offering exemption under Rule 506(c) (the "general solicitation" exemption), the SEC did not agree that the offering satisfied this exemption.

Ultimately, the SEC determined Enigma was required, and failed, to register its ICO in accordance with the Securities Act. "All investors are entitled to receive certain information from issuers in connection with a securities offering, whether it involves more traditional assets or novel ones," [stated](#) John T. Dugan, Associate Director for Enforcement in the SEC's Boston Regional Office. "The remedies in [the SEC's] order provide ICO investors with an opportunity to obtain compensation and provide investors with the information to which they are entitled as they make investment decisions."

This is one of the SEC's latest actions against the once popular ICO, which was used by entities to raise significant amounts of money without complying with U.S. securities laws. As the SEC continues to bring [actions](#) against ICOs, we expect to see more fundraising in the distributed ledger world conducted in compliance with the Securities Act, including, for example, through security token offerings (often referred to as STOs).

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