



## SEC Issues Framework for Digital Assets and Grants First No-Action Relief to Token Issuer

### IN SHORT

**The Situation:** The U.S. Securities and Exchange Commission ("SEC") issued a framework for market participants in assessing whether their digital assets-related activities involve the offer, sale, or distribution of investment contracts and are therefore subject to the U.S. securities laws and the SEC's oversight. Concurrently, the SEC issued a response to a no-action request regarding one such digital asset.

**The Result:** The SEC continues to show a willingness to engage with market participants in support of technological innovations that are offered consistent with the protections afforded investors under the U.S. securities laws.

**Looking Ahead:** The framework provides a starting point for market participants to analyze their digital assets but does not replace the role of securities counsel.

On December 11, 2017, SEC Chairman Jay Clayton [noted that](#) whether a digital asset is a security "will depend on the characteristics and use of that particular asset." On April 3, 2019, the SEC issued a "[Framework for 'Investment Contract' Analysis of Digital Assets](#)," which explains the analysis provided in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) in [plain English](#) and provides market participants with some key considerations about whether a digital asset is offered or sold as an "investment contract" and is therefore a security subject to SEC's jurisdiction. While the framework covers each *Howey* factor, it singles out "reliance on the efforts of others" and "reasonable expectation of profits" as being "especially relevant" to digital assets. Like previous SEC [guidance](#), the framework represents views of the SEC staff and is not a rule, regulation, or statement of the Commission itself.



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Concurrently with the issuance of the framework, the Division of Corporation Finance ("CorpFin") granted [no-action relief](#) to TurnKey Jet, Inc. ("TKJ"), and its offer and sale of "tokenized jet cards," which would operate on a platform designed to facilitate prepaid chartered airfare services through a private, permissioned, centralized blockchain network and smart contract infrastructure operated by TKJ. This is the first no-action relief granted to an issuer of a blockchain-based digital token. CorpFin highlighted several aspects of the TKJ tokens that differentiate them from investment contracts:

- TKJ will not use funds from token sales to develop its platform, which will be fully operational when the tokens are sold;
- The tokens will be immediately usable to purchase air charter services when they are sold;
- TKJ will restrict transfers of tokens to TKJ platform members only;
- TKJ will only sell tokens for \$1 per token, and each token will represent a TKJ obligation to supply air charter services at \$1 per token;

- If TKJ offers to repurchase tokens, it will only do so at a discount to the face value of the tokens; and
- The token will be marketed in a manner that emphasizes the functionality of the token, not the potential for capital appreciation.

## THREE KEY TAKEAWAYS

1. The framework represents a good starting point for issuers of digital tokens to analyze whether the characteristics of their tokens will likely cause them to be considered a security and therefore subject to the SEC's jurisdiction and the consequent registration and reporting obligations.
2. The framework is not, however, an official SEC statement; rather, it represents the views of the SEC's Strategic Hub for Innovation and Financial Technology. Accordingly, reliance on the framework should not replace consultation with securities counsel.
3. The TKJ no-action letter, the first of its kind, continues the trend set out in multiple SEC speeches that the SEC is willing to engage with market participants in an effort to encourage innovation so long as the protections afforded to investors are met.



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