

Venture Capitalists Seek “Safe Harbor” for Virtual Currencies

By Jimena Rubio, LL.M. Candidate 2018 | May 10, 2018

In the wake of further developments by the SEC, many key players in the industry are currently combining efforts to petition federal authorities to see certain virtual currencies in a “different light.” The [Venture Capital Working Group](#) is led by Andreessen Horowitz, which includes another significant VC firm, Union Square Ventures, and lawyers from Cooley LLP, McDermott Will & Emery LLP, and Perkins Coie LLP.

The primary purpose of the Group is to deter regulators from categorizing cryptocurrencies, such as Bitcoin and Ether, as securities. On March 28th, the Group met with the U.S. Securities Exchange and proposed a “safe harbor” for some cryptocurrencies.

The proposal suggests that digital tokens should generally be exempt from securities laws if they achieve “full decentralization” or “full functionality.” It adds that full decentralization could occur under several conditions, including when the token creator no longer has control of the network based on its ability to make unilateral changes to the functionality of the tokens. It can also be used, not just as a speculative investment, but for its intended purpose on a computer network.

The group notes that these definitions are only suggestions, but the “proposed [safe harbor](#) has been vetted by, and has the support of, many of the key players in the industry.” People briefed on the meeting said that regulators did not immediately embrace the safe harbor proposal.

Many entrepreneurs and law firms have been creating new ways for virtual currency projects to issue their tokens as securities and some exchanges have talked about getting registered as official securities exchanges. It is still unclear what will happen to tokens that did not register as securities but are later categorized as securities.

Furthermore, on April 26, a [congressional hearing](#) with testimony from the SECs Division of Corporation Finance took place to develop more reasonable approaches toward token sales and their classifications. The discussion marked a new attitude amongst SEC members and addressed how certain utility tokens could not be securities if purchased with no investment intention.

In the hearing, the SEC division head, William Hinman, [stated](#):

“They can certainly imagine a token where the holder is buying a token for its utility, not as an investment; especially if it’s a decentralized network where it’s used, and not central actors where there would be information asymmetries where they would know more than token investors.”



Hinman — likely referring to the Venture Capital Working Group — replied that one of the steps that the SEC was taking was “meeting with participants that have these ideas of a token that shouldn’t be regulated as a security” and working with them on how they should be structured. Hinman pointed out that the SEC is heavily engaged with academics and other departments to better explore how everything might work, and that in the long run, the U.S. is “pragmatic” in its support of new technology.