Crypto Rating Council's Securities Law Framework

1) Investment of Money

A sale of a digital asset for money or other cryptocurrency is generally viewed as sufficient to be deemed an investment of money. Although not literally "money," the SEC and some case law also views other forms of non-monetary consideration as potentially being an investment of "money." The framework considers factors such as whether the digital asset was sold in a public or private token sale, earned through mining or provision of a service or "airdropped" for providing KYC services or wallet information, in addition to other factors.

Digital Asset Review Questions		Answers	*Howey* Prongs			
			Investment of Money	Common Enterprise	Reasonable Expectation of Profits	Efforts of Others
1.	Did purchasers contribute fiat or digital currency in exchange for tokens, excluding secondary purchases through a platform which are not from the Project Team? If a Project Team both (i) conducted a substantial pre-mine and (ii) sold pre-mined tokens to fund its operations, indicate "Yes".	Yes	+100			
		No	-			
2.	If the answer to #1 is No, did token holders contribute services or other individual efforts that support the system/network (e.g., proof of work mining) in exchange for tokens?	Yes	+50			-20
		No	-			-
3.	If the answers to #1 and #2 are No, were token holders required to provide email addresses, KYC information, wallet information or other non-monetary consideration that could have value to the Project Team in exchange for tokens?	Yes	+50			
		No	-			
4.	If the value of the token is backed by or tied to another asset which is not itself a security (whether fiat or otherwise), is it redeemable on demand 1:1 for that	Yes	-75		-75	
		No	-		-	

	asset? (Answer N/A if not backed by or tied to another asset. Even where the token is redeemable 1:1 for another asset, if the sole purpose of the token is investment or financial return, mark "No.")					

2) Common Enterprise/Reasonable Expectation of Profits

Common enterprise. One common definition is called "horizontal"commonality whereby purchasers pool their money together to invest in a project, but there are a variety of tests and interpretations by different courts. The framework asks questions related to whether holders of the digital asset share increases or decreases in the value of the asset or receive fees as a result of holding the asset, in addition to other factors.

Digital Asset Review Questions		Answers	*Howey* Prongs			
			Investment of Money	Common Enterprise	Reasonable Expectation of Profits	Efforts of Others
5.	Do (i) token holders share in increases or decreases in value of the token, or is any increase in value or return related to the asset linked to outcomes for other holders (e.g. realizing gains or losses through secondary market trading or because the value of the token is connected to a pool of assets but not from price fluctuations resulting *solely* from external market forces such as general inflation or trends of the economy) or (ii) are the fortunes of token holder linked to the success of the Project Team's efforts?. Restrictions on transfer or inability to transfer outside of a network may be indicative of a "No" answer.	Yes		+100	+100	
		No		-	-	
6.	Do token holders receive payments or fees in any form as a result of holding the token (e.g., additional tokens, dividends, interest, profit shares, or similar distributions or equivalents, receiving shares of proceeds or revenues made by the token sponsor or based on the performance of a pool of assets, fees paid by others for using the network, or staking rewards, etc.)? For purposes of this question, a Proof of Work system would not be considered a basis for a "Yes" answer unless there were also some form of token payments unrelated to mining rewards.	Yes		+75	+100	
		No		-	-	

8.	Will the Project Team earn revenues from the system, unrelated to their ownership or sale of the tokens? This includes instances where fees are paid by users to the network for usage of the system and such network is governed primarily by the Project Team, rather than by a decentralized organization, or where the team has a licensing agreement in place and extracts revenue through such agreement.	Yes		-25		
		No		-		
9.	Is there an identifiable Project Team that the public views as the management or development team behind the token, system, or network?	Yes		+15		+20
		No		-75		-75
14.	Does the token provide holders with any voting rights? This would include instances where explicit voting rights and governance mechanisms are built into the protocol or articulated in the whitepaper or other materials, but not including the mere ability for people to fork the blockchain or otherwise move off chain.	Yes		+25		
		No		-		

3) Reasonable Expectation of Profit

This is one of the defining features of a security, but the answer may not always be straightforward, as purchasers can acquire a digital asset for a variety of reasons such as (a) use for a specific intended purpose, (b) out of the belief that the digital asset will grow in value over time, (c) or pure short-term speculation. The framework looks at a variety of factors such as whether the holder of the digital asset receives some type of return (whether through interest, dividends, rewards or buybacks intended to drive appreciation), whether the token was marketed in a way which could create expectations of profits through use of language expressly associated with securities or implicitly suggesting an increase of value by highlighting efforts to increase the value of the projects.

Digital Asset Review Questions		Answers	Howey Prongs			
			Investment of Money	Common Enterprise	Reasonable Expectation of Profits	Efforts of Others
7.	If fees may be received in connection with staking tokens, which one of the following options best describes the actions required of token holders as relating to receiving staking rewards?					
	(a) All token holders have the ability, but not the requirement, to affirmatively elect to stake tokens and act as nodes themselves without any special requirements such as minimum holdings (regardless if the holder also has the ability to elect to delegate).				-50	-
	(b) All token holders have the ability to stake tokens and act as nodes but only if they meet certain minimum holding or additional token requirements that as a practical matter limit the ability of token holders to act as nodes (regardless if the holder also has the ability to elect to delegate).				-40	+30
	(c) The substantial majority of token holders earn rewards only in connection with electing to stake through delegating (or voting to delegate) their tokens toward nodes (e.g. voting for				-30	+50

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	super-delegates), but are not required to delegate.					
	(d) Token holders are required to delegate to third parties to validate transactions				-20	+60
	(e) Staking occurs automatically without any action by the token holder (e.g. token holders are not required to take any action to receive staking rewards such as agreeing to lock-up or encumber their tokens for some period of time)				-10	+70
13.	Token supply economics:					
	(a) Is the token designed to appreciate or be "deflationary," (including through burning) such that supply is reduced over time and, all else being equal, value increases? A token that is burned solely to consume a good or service is not considered deflationary unless intended to create appreciation in value of remaining digital assets.	Yes			+20	
		No			-	
	(b) Is the Project Team involved in supporting the market for, or price of, the token, through taking action to limit the token supply or ensuring scarcity, buybacks, "burning," controlling the creation and issuance of additional tokens in a manner intended to support the token price, or similar activities?	Yes				+20
		No				-
15.	Does the token have *existing* substantive consumptive uses or other utility within a network or system, unrelated to any potential profit that can be earned by holding the token as an investment?	Yes			-50	
		No			+100	
16.	Is the token necessary for the functioning of the network/system (e.g. is it the exclusive token for a	Yes			-15	
		No			+40	

	system and the network possesses distinct or unique technological features)? Mark "No" if (i) the primary purpose of the token was to raise funds for the Project Team rather than to confer utility to token holders, (ii) the only purpose of the token is to generate a return to the holder, or (iii) a token merely provides a discount payment or nominal benefit, but other tokens are also accepted for use on the platform,. "No" may also be appropriate when a token is currently based on an existing protocol (e.g. ERC-20) but is planned to be migrated in the future to a new native chain with additional functionality. Where a migration to a new native chain has begun, indicate "Yes" for either or both of the original token and the new iteration of the token.					
17.	Does the network or other system encourage consumption of the token or discourage holding the tokens for investment, e.g., by devaluing idle tokens or slashing? Where there is a slashing feature that applies to few individuals (like only masternodes), or devaluation efforts that apply only after an overly long time domain (e.g. several years) or to punish bad actors, indicate "No".	Yes			-50	
		No			-	
18.	Were the tokens sold by the Project Team in amounts or at a price that (i) would exceed what a buyer would be expected to be able to consume for its own purposes, or (ii) that is otherwise inconsistent with the reasonable market value of the token's consumptive use (e.g. a greater price than the market price	Yes			+20	
		No			-30	

	for those goods and services)? If an asset has no consumptive use, such that the only reason to purchase the asset is an expected increase in value, mark "Yes."					
19.	Was the token sold in an offering that raised funds well in excess of what would be reasonably necessary for the stated use of the proceeds? Where a project team set an initial hardcap and then exceeded it, where only a limited portion of the proceeds of the token sale were actually used for developing the system, or where the overall size of the fundraise is significantly beyond that needed to produce the system, mark "Yes." Where a Company has already completed development of the platform and/or has not articulated any stated use of the proceeds, mark "N/A". If there is insufficient information to address this question adequately, mark "N/A".	Yes			+20	
		No			-	
20.	Did the Project Team raise traditional venture or other equity capital, unrelated to its sale of tokens (which would suggest proceeds from the token offering were not required for development of the project)?	Yes			-10	
		No			+20	
21.	Did any marketing or public facing materials created by the Project Team use terminology traditionally associated with securities, including but not limited to "investment", "investors", "securities", "interest", "dividend", "buybacks", "repurchase plan" or "ROI" (purchase agreement references to securities and investors or filing of a Form D indicating a token is a security	Yes			+50	
		No			-	

	would also be initially viewed as securities terminology)? Statements that use terms like "investment" that do not relate to the token or the platform (i.e. a statement indicating that the Project Team has completed an investment into another project) would not by themselves constitute a basis for a "Yes" answer.					
22.	Regardless if the answer to Question #21 is "No", was any sale of the token marketed by the Project Team (even if subsequently removed) as an investment or providing the opportunity to earn a profit or other form of investment return (e.g. implying the value of the token would increase, or emphasizing the transferability or liquidity of the token)?	Yes			+50	
		No			-	
23.	Which of the following best characterizes the marketing of the token?					
	(a) The Project Team marketed the token sale (in part or in whole) toward identifiable groups of investors, e.g., by promotion on crypto investment websites or message boards				+20	
	(b) The token sale marketed *exclusively* toward identifiable groups of people who may have an actual interest in using the token for its utility or consumptive use (e.g., residents of developing nations where the network is intended to provide a system for their primary use)				-75	
24.	Did the Project Team use paid promoters to facilitate sales of the token (e.g. paying commissions to celebrities or to finders or to brokers, platforms or others in ICO, IEO sales or the like for endorsements, sales or investments)?	Yes			+25	
		No			-	

25.	Did earlier purchasers of the token receive a discount as compared to later purchasers?	Yes				+25	
		No				-	
26.	In marketing the token, did Project Team indicate that they have or would attempt to have the token listed for trading in the secondary market, or have they otherwise engaged in efforts to encourage secondary market making or liquidity? If announcement is made only after such listing took place or solely for the purpose of informing potential purchasers where they can acquire tokens for use on the platform, mark "No". Also mark "No" if there was no marketing. If a Project Team specified that listing on an exchange was upcoming or that they would generally undertake efforts to be listed on digital asset trading platforms, indicate "Yes".	Yes				+20	
		No				-10	
27.	Can holders of the token earn additional tokens or other consideration through *active* efforts to engage with or improve the system/network (e.g. the token enables holders to earn if and to the extent it provides data or feedback, programming smart contracts or dApps, or acts like a membership which enables the holder to earn revenues dependent on further actions by the holder), such as providing data or feedback, or programming smart contracts or dApps? Such a feature must be currently operational to constitute a "Yes". For purposes of this question, a Proof of Work system would be considered "active efforts". A Proof of Stake system, though "active" in some respects, is already addressed in Questions 6 and 7,	Yes				+20	-20
		No				-	-

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	and should not be considered as an active effort for this question.					

4) Solely from the efforts of others

Just because purchasers expect a profit from acquiring an asset, does not by itself mean it results from the efforts of others. It must also be dependent on the efforts of "others" such as a promoter or third party, which in the context of digital assets may include the issuer and project team behind a digital asset. For example, purchasers of a commodity like gold may expect the value of gold to go up as a result of market forces of supply and demand without relying on the efforts of any person. Similarly, businesses regularly buy assets with an expectation of generating a profit from their active efforts utilizing an asset. The importance of ongoing efforts of an issuer and associated project team vary by digital asset and the stage of a project. The Framework asks a variety of questions to try to determine the extent to which purchasers of a digital asset would be expect to rely on others for increases in value, which includes factors like whether a digital asset and the platform on which it operates have fully developed their utility and are used by a material number of unaffiliated parties in addition to other factors.

Digital Asset Review Questions		Answers	*Howey* Prongs			
			Investment of Money	Common Enterprise	Reasonable Expectation of Profits	Efforts of Others
28.	In marketing the token, did the Project Team indicate that they intended to engage in further development efforts to improve the network or system, play a central managerial role in decision making concerning the network or digital asset, or otherwise enhance the value or operations of the network or system, including by indicating that proceeds from the token sale would, in part, be used for further development or marketing of the network/system? Also, mark "No" if there was no marketing.	Yes				+20
		No				-20
29.	At the time of the initial token sale or sales (including any instrument convertible into or exercisable for the token), was the network or system (including the use of the token in connection with the network or system) (select one):					
	(a) Not yet operational at all?					+50

	(b) Partially, but not fully operational (e.g., being in "beta" or "bronze age", having some key functionality but not all intended key functionality)?					+25
	(c) Fully operational (having all key functionalities, even if there are less critical functions or applications to be developed), with no further development necessary to function as proposed?					-75
30.	If the answer to #29 is either (a) or (b), is the network or system (including the use of the token in connection with the network or system) currently (select one):					
	(a) Not yet operational at all?					-
	(b) Partially, but not fully operational (e.g., being in "beta" or "bronze age", having some key functionality but not all intended key functionality)?					-25
	(c) Fully operational (having all key functionalities, even if there are less critical functions or applications to be developed), with no further development necessary to function substantially as proposed?					-40
31.	If the value of the token or any returns on the token is determined by a pool of assets, (i) is the pool of assets determined or adjusted by the token sponsor, or (ii) does the pool consist of other investments in other ventures made with the proceeds of the sale (e.g., similar to the DAO)?	Yes				+20
		No				-
32.	Does the Project Team own, directly or indirectly, any intellectual property rights relating to the token or the network (expressly open-sourcing all IP would be an indicia of not owning IP, while expressly reserving IP rights or licensing would be an indicia of Project Team ownership)? If there is any IP associated with a project team or system, including trademark, copyright or patent, mark "Yes."	Yes				+15
		No				-
33.	Does the Project Team currently engage in efforts to encourage broader adoption or use of the network/system or token?	Yes				+20
		No				-

34.	Decentralization:						
	(a) Do members of the general public have the ability to suggest changes to the system or network? This may include express mechanisms built into the token or platform to solicit, encourage or reward input from users.	Yes					-10
		No					+20
	(b) If the answer to #34(a) is Yes, can any changes to the system/network suggested by the general public be implemented without the Project Team's consent (or because there is no current Project Team)?	Yes					-10
		No					+10
	(c) If the answer to #34(b) is Yes, have there been any known updates to the network/system code adopted by the network that *were not* supported or by the Project Team (e.g. the project is or has been subject to a fork unsupported by the Project Team, or because there is no current Project Team support)?	Yes					-20
		No					+10
35.	Do a material number of parties unaffiliated with the Project Team actively engage in development of the network/system or performance of essential tasks or responsibilities (e.g. a substantial number of pull requests or unaffiliated contributors on a project's open source development page, like GitHub or GitLab)?	Yes					-30
		No					+10
36.	Is the network/system currently actively used for its intended purpose by a material number of parties unrelated to the Project Team (e.g. a substantial number of dapps or projects building on a chain, or substantial amounts of daily active users engaging with the network/system)?	Yes					-30
		No					+15

Scoring Methodology

Upon undertaking the review of a digital asset the CRC applies the methodology described below rendering a score ranging from 1 (least likely to be deemed a security) to 5 (most likely to be deemed a security). The CRC may modify a score in its sole and absolute discretion, for reasons including, but not limited to, pending regulatory actions or perceptions of harm to the reputation or integrity of the CRC.

1 (least likely to be deemed a security)	3 or more prongs have scores below 100
2	2 prongs have scores below 100 and 2 prongs are 100 or greater
3	1 prong has a score below 100, 3 prongs are 100 or greater and no prong is above 150
3.5	1 prong has a score below 100, 3 prongs are 100 or greater, the sub-100 prong is below 75, and one or more prongs is above 150 but no prong exceeds 200
3.75	1 prong has a score below 100, 3 prongs are 100 or greater, and either (1) the sub-100 prong is 75 or above; or (2) one of the other 3 prongs is 200 or greater
4	All 4 prongs are 100 or greater, but neither Prongs 3 nor 4 is above 150
4.25	All 4 prongs are 100 or greater, and only one (but not both) of Prongs 3 or 4 is above 150
4.5	All 4 prongs are 100 or greater; both Prong 3 and 4 are above 150, or one of Prongs 3 or 4 is above 200
4.75	All 4 prongs are 100 or greater; both Prongs 3 and 4 are above 200, or one of Prongs 3 or 4 (but not both) is above 250
5 (most likely to be deemed a security)	All 4 prongs are 100 or greater; both Prongs 3 and 4 are above 250, or one of Prongs 3 or 4 is above 300