EXECUTIVE SUMMARY

UNDERSTANDING DIGITAL TOKENS:
MARKET OVERVIEWS & PROPOSED GUIDELINES FOR POLICYMAKERS & PRACTITIONERS

BLOCKCHAIN TECHNOLOGY HAS CAPTURED THE ATTENTION AND IMAGINATION OF INDUSTRY AND GOVERNMENTS AROUND THE WORLD.

Much of the innovation we have seen in the ecosystem includes digital tokens that were designed for a variety of uses and industries. These tokens each have their own distinctive functionalities and features. One of the biggest challenges to the adoption of blockchain technology is regulatory uncertainty. Many questions remain about how tokens should or should not be regulated and who is responsible for this oversight.

This report is the first installment of a comprehensive set of guidelines to help shape the responsible growth of tokenized networks and applications, and fundraising through initial coin offerings. This installment addresses “utility tokens,” an aspect of the token economy fighting to be recognized. It is a collaborative report to be used as a resource among industry innovators, investors and policymakers.

FOSTERING BEST PRACTICES AND FRAMEWORKS FOR THE RESPONSIBLE GROWTH OF TOKENIZED NETWORKS AND APPLICATIONS, AND FUNDRAISING THROUGH INITIAL COIN OFFERINGS.

The Token Alliance is an initiative of the Chamber of Digital Commerce with more than 350 global participants, including blockchain and token experts, technologists, economists, former regulators, and practitioners from over 20 law firms.

CO-CHAIRS OF THE TOKEN ALLIANCE

PAUL ATKINS
Chief Executive Officer, Patomak Global Partners
Former Commissioner, U.S. SEC

JIM NEWSOME
Founding Partner, Delta Strategy Group
Former Chairman, U.S. CFTC

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REGULATORY OVERVIEW

The biggest policy debate currently underway in the blockchain industry asks when is a token considered to be a “security” and, perhaps more importantly, when is it not?

WHO HAS JURISDICTION?

MULTIPLE FEDERAL AND STATE AGENCIES MAY HAVE THE POWER TO REGULATE A PARTICULAR DIGITAL TOKEN.

1. Oversight depends on the circumstances surrounding the generation and use of the digital token and the country in which it is issued or transferred.

2. Regulators consider how a token is marketed when applying the law.

IN THE U.S. ALONE...

- **Commodity Futures Trading Commission (CFTC)**
  - Virtual currencies (a subset of digital tokens) are considered to be commodities. The spot markets for virtual currencies are thus subject to CFTC anti-fraud and anti-manipulation powers.

- **Securities and Exchange Commission (SEC)**
  - Many digital tokens are considered to be securities – triggering application of registration and offering rules.

- **Financial Crimes Enforcement Network (FinCEN)**
  - May regulate Token Sponsors as money transmitters, depending on the facts and circumstances surrounding the flow of funds (or the value of funds).

- **Office of Foreign Assets Control (OFAC)**
  - U.S. persons may not transact, deal, or provide financing related to any digital currency or token in which certain prohibited persons or countries have an interest.

- **Internal Revenue Service (IRS)**
  - Some digital tokens may be taxed as property.

- **Federal Trade Commission (FTC)**
  - May bring enforcement actions for unfair and deceptive acts and practices.

- **State Regulators**
  - Token platforms may be subject to money transmitter laws, state attorneys general authority, and “Blue Sky” securities laws.

GLOBALLY...

- **Australian Securities & Investment Commission (ASIC)**
  - In Australia, no jurisprudence clarifies whether a token constitutes a security or financial product; each must be judged independently. If a token constitutes a security, financial product, or managed investment scheme, then ASIC’s regulatory guidelines suggest that the token would be governed by existing securities laws. The ASIC Innovation Hub is available to discuss regulatory compliance.

- **Canadian Securities Administrators (CSA)**
  - In Canada, the CSA originally took the general view that “in many instances” digital tokens associated with ICOs/ITO are securities. Recently published guidance clarifies that whether a digital token is a security depends on the economic realities of the offering with a focus on substance over form.

- **U.K. Financial Conduct Authority (FCA)**
  - In the United Kingdom, digital tokens can be classified as commodities/other forms of physical property, financial instruments, or currency. If classified as a financial instrument (e.g. a security), securities laws apply and digital tokens are subject to examination based on whether they are part of a collective scheme or alternative investment fund.

- **Gilbraltar Financial Services Commission (GFSC)**
  - Tokens that represent securities are subject to Gibraltar’s securities laws. Meanwhile blockchain companies generally are subject to Gibraltar’s current DLT regulatory framework, building out a specific set of laws for businesses using DLT. Gibraltar has proposed new legislation to regulate the promotion, sale, and distribution of tokens; the operation of secondary market platforms; and the provision of digital token investment and ancillary services.
PRINCIPLES AND GUIDELINES FOR UTILITY TOKENS

It is imperative that market participants understand the legal parameters around their activity and act in a fair and responsible manner toward potential purchasers. Principles and guidelines in the paper include those for:

TOKEN SPONSORS: PROMOTING SOUND BUSINESS PRACTICES FOR THOSE SPONSORING TOKENS

- Mitigating risks of having a digital token treated as an investment contract or CFTC regulated Instrument.
- Recommended steps for Token Sponsors distributing digital tokens.
- Whitepapers: Do’s and Don’ts
- Review promotional marketing materials

TOKEN TRADING PLATFORMS: VETTING PROCEDURES FOR TOKENS FOR LISTING ON A TRADING PLATFORM

- Examine digital tokens to determine potential risks related to securities and commodities laws.
- Establish written procedures to evaluate digital tokens for approval for trading on the platform and develop standards to perpetually review whether digital tokens are eligible for trading.
- Adopt policies to ensure that participants are complying with Token Trading Platform’s rules and applicable regulations and laws.

“THE TOKEN ALLIANCE REPRESENTS A SIGNIFICANT STEPPING-STONE TOWARD RESPONSIBLE OVERSIGHT AND SELF-GOVERNANCE FOR THE TOKEN ECONOMY.”

— PERIANNE BORING, FOUNDER AND PRESIDENT, CHAMBER OF DIGITAL COMMERCE

This is not legal advice. Consult a lawyer before issuing or facilitating the trading of digital tokens.
In 2017, startup and business digital token distributions raised more than $7.3 billion, up from $100 million in 2016, and is set to continue rising as adoption becomes more prevalent and reaches the mainstream.

**Total Funding Raised Via Token Sales (Since Inception):**

$14.5 Billion

(As of End Q1 2018)

**Comparative Project Funding**

- **Global Venture Capital Investments, 2017**: $213.6 Billion USD
- **Global IPOs, 2017**: $196 Billion USD
- **Lifetime Token Project Funding**: $11.8 Billion USD
- **Lifetime Global Blockchain Focused Venture Capital**: $2.4 Billion USD

Sources: Smith + Crown Data, CB Insights, Crunchbase, Financial Times

Note that EOS and Telegram are excluded from the upon which these calculations are derived.