



## Statement on Potentially Unlawful Online Platforms for Trading Digital Assets

*March 2018*

The SEC recently released a statement on potentially unlawful online platforms for trading digital assets. Hedge fund managers and private equity firms that trade in cryptocurrencies or Initial Coin Offerings (ICOs) should pay attention to this statement when evaluating their trading strategy in the coming year. Specific issues raised by the SEC include:

- Do you trade securities on this platform? If so, is the platform registered as a national securities exchange?
- Does the platform operate as an Alternative Trading System (ATS)? If so, is the ATS registered as a broker-dealer and has it filed a Form ATS with the SEC?
- Is there information in FINRA's BrokerCheck about any individuals or firms operating the platform?
- How does the platform select digital assets for trading?
- Who can trade on the platform?
- What are the trading protocols?
- How are prices set on the platform?
- Are platform users treated equally?
- What are the platform's fees?
- How does the platform safeguard users' trading and personally identifiable information?
- What are the platform's protections against cybersecurity threats, such as hacking or intrusions?
- What other services does the platform provide? Is the platform registered with the SEC for these services?
- Does the platform hold users' assets? If so, how are these assets safeguarded?

**The experts at Richey May believe that the following considerations are of particular importance to Registered Investment Advisors managing pooled investment vehicles and separately managed accounts to prevent against fraudulent and manipulative trading practices.**

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### **PRIORITY: Protect Retail Investors**

#### **Areas of focus:**

- 1. Do you trade securities on this platform? If so, is the platform registered as a national securities exchange?**

If a platform offers trading of digital assets that are securities and operates as an "exchange," as defined by the federal securities laws, then the platform must register with the SEC as a national securities exchange or be exempt from registration.

- 2. Does the platform operate as an ATS? If so, is the ATS registered as a broker-dealer and has it filed a Form ATS with the SEC?**

To get the protections offered by the federal securities laws and SEC oversight when trading digital assets that are securities, investors should use a platform or entity registered with the SEC, such as a national securities exchange, alternative trading system (ATS), or broker-dealer.

**3. How does the platform select digital assets for trading?**

Although some of these platforms claim to use strict standards to pick only high-quality digital assets to trade, the SEC does not review these standards or the digital assets that the platforms select, and the so-called standards should not be equated to the listing standards of national securities exchanges.

**4. Who can trade on the platform and what are the trading protocols?**

The SEC does not review the trading protocols used by these platforms, which determine how orders interact and execute, and access to a platform's trading services may not be the same for all users. Again, investors should not assume the trading protocols meet the standards of an SEC-registered national securities exchange.

**5. How are prices set on the platform and are all users treated equally?**

Many of these platforms give the impression that they perform exchange-like functions by offering order books with updated bid and ask pricing and data about executions on the system, but there is no reason to believe that such information has the same integrity as that provided by national securities exchanges.

**To read the SEC's statement in its entirety, please visit:**

<https://www.sec.gov/news/public-statement/enforcement-tm-statement-potentially-unlawful-online-platforms-trading>

As the published priorities are not exhaustive and may change as the year progresses, our Alternative Investment industry experts at Richey May will continue to monitor the SEC for updates. Should you have any questions, please contact [Stephen Vlasak](#) or visit our website at [www.richeymay.com](http://www.richeymay.com).