

WHEN IS A CRYPTO A SECURITY?- THE HOWEY TEST

Does the transaction qualify as an 'investment contract'?

Investment of money

• Is the crypto purchased or otherwise acquired in exchange for value, whether in the form of real (or fiat) currency, another digital asset, or other type of consideration?

Common enterprise

• Are profits of the investor interwoven with those of either the crypto project, a third party or one or more investors?

Expectation of profit

• Does the investor expect a return through participating in distributions or through capital gain via a secondary market?

Efforts of others

• Does a promoter, sponsor or other third party (or affiliated group of third parties) provide essential managerial efforts that affect the success of the project?

Securities are fungible and tradable financial instruments used to raise capital in public and private markets.



SEC v. W. J. Howey Co., 328 U.S. 293 (1946)