



## Digital assets, investment contracts and securities.

### Digital accounting in action

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In March 2017, I presented some comments entitled [Blockchain: ¿adiós a los auditores?](#) [Blockchain: Goodbye to the auditors?], where I asked:

*Is emerging digital accounting the new competitor of professional accounting?*

Since then, our accounting is increasingly normative and tax oriented, and increasingly less globalized and digital.

Following a recently published document, it is convenient to re-address these things.

On April 3, 2019 the US-SEC published a document entitled [“Framework for “Investment Contract” Analysis of Digital Assets.”](#)

It is aimed at those who are considering an Initial Coin Offering, sometimes referred to as an "ICO," or otherwise engaging in the offer, sale, or distribution of a digital asset.

It adds that this involves considering whether: (1) the U.S. federal securities laws apply; and (2) the digital asset is a "security" according to those laws, this being the threshold for the decision.

For those of us who are in different latitudes than those of the United States, it is essential to understand the clarifications that such a document makes:

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*“The term "security" includes an "investment contract," as well as other instruments such as stocks, bonds, and transferable shares. A digital asset should be analyzed to determine whether it has the characteristics of any product that meets the definition of "security" under the federal securities laws. In this guidance, we provide a framework for analyzing whether a digital asset has the characteristics of one particular type of security – an "investment contract." Both the Commission and the federal courts frequently use the "investment contract" analysis to determine whether unique or novel instruments or arrangements, such as digital assets, are securities subject to the federal securities laws.”*

Therefore, the analysis revolves around the understanding of the term '**security**' that we translate here as '**value**,' but which is actually more associated with security, guaranty, safeguard and as a noun is associated with the state of being free of danger or threat.

This brings to mind an old discussion that took place in the country about whether 'value' is the same as 'title value,' a discussion that took place before a bill that sought university degrees to be assimilated as 'values' and they will be listed on the stock exchange. Fortunately, this project did not become law of the republic.

Because those who seek to find unwary to accept their proposals, an erroneous definition of value can become an ally.

So I emphasize that the document in mention highlight that digital assets are securities and more specifically, investment contracts. A very useful precision to avoid wrong understandings.

Like those that abound among us as a result of having rejected the adoption of international standards for the sake of an adaptation that, although it was widely accepted, is already showing worrying signs that things are not going well: such convergence is increasingly far away. And the regulators and normalizers do not blush.

The document in question directs the analysis to whether the U.S. federal securities laws of the apply, that is, whether the investor is duly protected or not.

Based on this, it proposes a framework based on the application of the so-called "Howey test," which is derived from a decision of the U.S. Supreme Court.

It clearly states that the “Howey test” applies to any contract, scheme, or transaction, regardless of whether it has any of the characteristics of the typical securities:

*“The focus of the Howey illsis is not only on the form and terms of the instrument itself (in this case, the digital asset) but also on the circumstances surrounding the digital asset and the manner in which it is offered, sold, or resold (which includes secondary market sales). Therefore, issuers and other persons and entities engaged in the marketing, offer, sale, resale, or distribution of any digital asset ill need to analyze the relevant transactions to determine if the federal securities laws apply.”*

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Certainly it is a dense document, which is necessary to analyze carefully and on which these lines will not be sufficient. Less when in our malls are appearing machines that sell different types of digital assets, but that only receive cash and give the feeling that they can be involved activities that adapt the different standards to their conveniences.

Digital accounting is a clear horizon, provided it does not allow cheating and does not use legal conveniences to satisfy their adaptations.

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