

# A Tezos Settlement and a Telegram Injunction: Securities Laws Protections Extend to Digital Asset Investors

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Digital assets sit on the cutting edge of investable products, but two recent events can give investors comfort that the US securities laws will still protect them even in these sometimes uncharted waters. First, a securities class action against the Tezos Foundation alleging that the Tezos initial coin offering (ICO) violated the US securities laws as an unregistered offering recently settled for \$25 million. Second, a federal judge granted the United States Securities and Exchange Commission (SEC) a preliminary injunction holding up the Telegram initial coin offering. Judge Castel of the Southern District of New York found that the SEC had made a compelling showing that the “grams” to be issued in the ICO were securities, and that the ICO was thus an unregistered offering under the Securities Act of 1933 and did not fit an exemption. Both events are important to investors, especially when considered together. Some important takeaways are:

- Tezos investors who lost money as a result of the Tezos ICO have valuable claims and should consider their options. While the Tezos class action settlement will result in some recovery for those harmed by the Tezos ICO, an investor's trading pattern may augur for direct action against Tezos. In particular, class actions are bounded by their nature – they are pursued on behalf of a group of investors, including retail investors, foreign investors, those who bought and sold and those who bought and held. These disparate groups may not have the same interests and they certainly may not have interests perfectly aligned with *your* interests as a specific digital asset investor. Anyone who purchased Tezos tokens in the ICO should carefully consider his or her options – whether to participate in the class action settlement or opt out and pursue his or her rights separately. The Tezos motion for settlement is available on PACER: *In re Tezos Securities Litigation*, 17-cv-06779 (N.D. Cal.) Docket No. 246 and [here](#).
- Telegram investors need to carefully consider their rights in light of the SEC injunction. Telegram's intended ICO of “TON” tokens has been halted by a federal judge in New York, leaving those who already invested in Telegram and its ICO in some limbo. Initial purchasers, who have already forked over valuable currencies (whether USD, BTC, ETH or otherwise) for the purchase of TON tokens are left without their tokens and with an unclear road going forward. Judge Castel's ruling on the SEC's preliminary injunction motion lays out in detail the traditional Howey test for whether or not a product is a security. Judge Castel concludes that the SEC has shown a substantial likelihood that it would ultimately succeed on the merits of its arguments that TON tokens are securities. While this is not a final injunction and is, by definition, preliminary, the Court's reasoning is fundamentally based on legal interpretation rather than factual findings likely to be changed via a robust discovery process: Telegram investors should not assume a different outcome is likely to occur but for a possible appeal. Anyone who invested in Telegram or the TON offering should carefully consider his or her options going forward. The Telegram opinion is available at *Securities and Exchange Commission v. Telegram Group Inc. & TON Issuer, Inc.*, No. 19-CV-9439 (PKC), 2020 WL 1430035 (S.D.N.Y. Mar. 24, 2020) and [here](#).
- Both the Tezos settlement and TON preliminary injunction highlight the complex interaction of the US securities laws and digital assets. Court decisions and regulatory guidance have pointed out that each individual digital asset needs to be considered independently as to whether it is a security and whether its offering runs afoul of the US securities laws. There are simply no one-size-fits-all rules for digital assets.
- For investors, the TON ruling highlights the importance of analyzing the risks of being an initial purchaser in any ICO and having an

ongoing analysis of those risks as the ICO develops. Another recent ruling involves the Ripple ICO, wherein a federal court in California held that California's Unfair Competition Law may apply to Ripple transactions, even though (or if) Ripple is not a security. Investors can read the *Ripple* decision [here](#). Professional investors considering an investment in any digital asset should seek pre-investment counsel to help them understand the risks to their investment and to the digital asset itself.

- For investors who have already participated in an ICO or ICOs, such as the Tezos ICO, 2020 is a critical time to review your digital asset portfolio and understand what claims you may have from past investments. While hundreds of ICOs representing millions of dollars occurred in 2017, thousands of ICOs representing billions of dollars occurred in 2018. Most of the relevant securities claims (such as those brought in the Tezos case) have an extremely strict three-year "repose" period – meaning no matter what else has occurred, including the pendency of a class action, an investor has, at very most, three years from the ICO to make direct securities claims. Only a full review of your situation can provide the specific dates by which your specific claims may expire.
- For those considering an ICO or similar digital asset offering, it is critical to seek counsel early in the process and have a fully capable team – including one with knowledge of the litigation

risks you will face – advising you. By issuing tokens in compliance with the US securities laws as well as considering the risks of other federal and state laws, you can protect yourself and your investors.

Recent events confirm that digital asset investors are protected by the US securities laws and may have valuable claims resulting from their digital asset investments. We've [written before](#) about developments in this space and the need for all investors, whether in Tezos, Telegram, or otherwise, to be aware of their rights. This settlement and injunction further show the relevance of getting a full legal understanding of your rights, remedies, and risks.

Lowenstein Sandler's Securities Litigation Group has extensive experience recovering losses and creating value for institutional investors across their full range of investments. Whether bringing direct action securities fraud cases against bad actors, defending investors' rights in debt or appraisal proceedings, or reviewing new investments such as digital assets, Lowenstein Sandler brings immediate value to investors' bottom line.

If you are a professional investor considering or having investments in the digital asset space, contact us for a no-fee review of your digital asset portfolio.

## Contacts

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