Securities Regulation 101

It is unlawful to offer or sell a security unless:

- **The security is registered or exempt;**
- **The persons selling the security are licensed or exempt; and**
- **There is full disclosure of all material facts to all offerees and purchasers.**

What is a “security”?

- **Stocks**
- **Bonds**
- **Notes**
- **Mutual Funds**
- **Investment Contract**

Investment Contract

***Howey* test:**

- ***Investment of money,***
- ***In a common enterprise,***
- ***With a reasonable expectation of profits to be derived from the efforts of others.***

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

Howey continued

- **Substance over form. Applies to any contract, transaction or scheme even if not a typical security.**
- **Focus not only the instrument itself, but also on the manner in which it is offered and sold.**

Initial Coin Offerings (ICOs)

- **Tokens or coins are sold to develop networks on which digital assets will operate.**
- **Purchasers are told that once the network is built, the enterprise will be more valuable and they can sell their coins or tokens at a profit.**

Regulatory Guidance

- **The *DAO Report,* SEC Release No. 34-81207, July 25, 2017**
- ***Digital Asset Transactions: When Howey Met Gary (Plastic).* Speech by William Hinman, SEC Director of Corporation Finance, June 14, 2018**
- ***Framework for "investment Contract" Analysis of Digital Assets*, SEC Staff, April 3, 2019**