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## Security Token Offerings: Old Wine in a New Bottle?

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If you keep an ear tuned to recent developments in digital currency and blockchain, you've almost certainly heard the term "Security Token Offering" (or "STO") bandied about. But what exactly is an STO? Is it legally, functionally, or technologically different than an ICO? Or is this simply old wine in a new bottle?

Over the past several years, myriad companies and other organizations raised capital by selling new digital tokens. Often the tokens conferred upon the holder some right such as (just by way of example) access to a software service ("utility tokens"), a payment stream from a debt instrument, or equity in the issuer. These tokens then typically traded on public markets. The initial sale of a new token came to be known as an "Initial Coin Offering" or "ICO" (a modification of the standard securities term "Initial Public Offering" or "IPO"). Issuers generally did not believe these tokens to constitute securities and thus did not register these offerings with securities regulators in the various jurisdictions in which they were sold.

Quickly, however, many securities regulators disagreed. For example, in early 2018 the U.S. Securities Exchange Commission Chairman [stated](#) he believes nearly all ICOs to constitute securities. Various national regulators began taking action against token issuers, seeking monetary penalties and blockade of further sales (see, for example, my prior post [here](#)). Likely as a result (though possibly for other reasons), the total funds raised via ICOs [decreased through 2018](#). Increasingly, many issuers sold tokens in jurisdictions (such as Singapore) with looser cryptocurrency regulations, and many token exchanges prohibited access by U.S. citizens (although even this [may not suffice to put a sale out of the SEC's jurisdictional reach](#)). But the U.S. capital market is too big, and issuers began to look for ways to retap it.

Over the past year, many issuers have sought to issue tokens in the US expressly acknowledging that the SEC will consider them securities and attempting to comply with the SEC's requirements for the offer and sale of securities. These new offerings have been referred to as "Security Token Offerings" or "STOs". The definition of STO varies with the source. For example, STOs have been defined as an ICO that is "[secure, regulated, and distributed under a legal framework](#)", as "[an SEC-compliant ICO](#)", and a "[digital asset that derives its value from an external asset that can be traded . . . \[and is thus\] subject to federal laws that govern securities.](#)" Like some tokens issued via an ICO, tokens issued via an STO may offer the holders rights such as [equity in the issuer](#) or [non-equity voting and dividends](#). But many commentators [distinguish between utility tokens and security tokens](#) (and thus between ICOs and STOs).

So, is an STO different than an ICO? Based on the above, at least two purported differences emerge. First, STO issuers willingly submit to and attempt to comply with applicable securities regulation. Second, many distinguish "security tokens" from "utility tokens". But are these differences meaningful, or is the STO old wine in a new bottle?

In one sense these purported distinctions lack coherence. Willing submission to and compliance with securities laws don't change the nature of the underlying token or the sale, only the issuer's conduct, so changing the name of the token or sale seems odd. Also, utility tokens can be securities, so utility tokens and security tokens are actually overlapping, not distinct, categories. Thus, there may not exist a logically coherent distinction between the ICO and the STO.

The logo for Squire Patton Boggs, featuring the word "SQUIRE" in a large, bold, serif font, followed by a stylized blue and green circular icon. Below it, the words "PATTON BOGGS" are written in a smaller, all-caps, sans-serif font.

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The labels may still matter, if for no other reason than to rebrand. ICOs received lots of [bad press](#), in part because many argued that without registration they violated securities regulations (debate on this [continues](#)). The relabel may signal to the public a step towards industry maturity and responsibility. It is a statement that the industry continues to believe in the legitimate value of blockchain technology and wants to move past old missteps, inevitable in any budding industry. Thus, perhaps a new bottle is precisely what this old wine calls for.

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