

Foundations and financial market law

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The foundation form did not remove the project from financial market law, because the regulatory classification of a token depends on its function whatever the legal form of its issuer. A foundation that issued asset tokens was subject to securities law. A foundation that issued payment tokens or accepted crypto-assets as a service for third parties could be a financial intermediary under the Anti-Money Laundering Act. The foundation's charitable appearance gave no exemption. While Part H deals with the financial market rules in detail, for this chapter it is enough to note that the choice of the foundation had to be accompanied by a regulatory analysis of the token and of the foundation's activities.

FINMA's enforcement practice made the point when, in 2017 and 2018, it opened investigations into a number of ICOs and closed several unlicensed providers that had issued tokens resembling deposits.¹ The foundations of the well-known projects were not affected by these measures, but the enforcement signalled that the legal form did not decide the regulatory question.

1 Notes

1. FINMA, press release "FINMA closes down coin providers and issues warning about fake cryptocurrencies", 19 September 2017, finma.ch: E-Coin providers QUID PRO QUO Association, DIGITAL TRADING AG and Marcelco Group AG closed for accepting at least CHF 4 million in deposits without a licence; eleven further investigations into presumably unauthorised coin business models. FINMA, press release "FINMA is investigating ICO procedures", 29 September 2017, finma.ch: FINMA is looking into a number of ICO cases. ↩

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