SEC Statement

In the United States, under the Securities Act of 1933 and the Securities Exchange Act of 1934, transactions that are considered “securities” (investment contracts) are subject to certain disclosure and registration requirements.

In order to determine whether transactions qualify as a security, the US Securities Exchange Commission (SEC) applies what is known as the "Howey Test". This arose from the case, SEC v. Howey, heard by the US Supreme Court in 1946.

Under the Howey Test, a transaction is an investment contract if:

1. It is an investment of money
2. There is an expectation of profits from the investment
3. The investment of money is in a common enterprise
4. Any profit comes from the efforts of a promoter or third party

Definitions

“Money” Although the Howey Test uses the term "money," later cases have expanded this to include investments of assets other than money.

"Common enterprise" The term is not precisely defined and courts have used different interpretations. Most federal courts define a common enterprise as one that is horizontal, meaning that investors pool their money or assets together to invest in a project. However, other courts use different definitions.

“Profit” If any profit that comes from the investment is largely or wholly outside of the investor's control, then the investment might be a security. However, if the investor's own actions largely dictate whether an investment will be profitable, then that investment is probably not a security.

Substance over Form

Even if an investment is not labelled a "stock" or "bond," it may very well be a security under the law. Courts look at the economic realities behind an investment scheme, rather than at its name or form, to determine whether it is a security.

Other Tests

The Howey Test is not the only test that courts have used for determining whether an investment is a security. For example, in 1990 the Supreme Court created the "family resemblance test." This test provides a way for issuers of a note to show that the note should not be considered a security, by showing that the note has a "family resemblance" to other investments that are not considered securities.

Individual US states have their own securities registration requirements, which are often referred to as "Blue Sky" laws. Some states, such as California, use what is known as the “risk capital test” that focuses mainly on the reasons why money or assets are being invested and what risks the investment poses for any investors, to determine whether an investment is a security.

Information obtained from - http://consumer.findlaw.com/securities-law/what-is-the-howey-test.html

Applying Howey to MEDIS

Up to 300 million MEDIS Tokens (MDS) will be created for public sale through the Ethereum Smart Contract system. These will be offered at a price of 0.0005 Ethereum per Token. Alternatively, 1 ETH will buy 2,000 Tokens. Unquestionably, any purchase of Tokens involves the transfer of “money”. In a loose sense, this may be viewed as an investment, in the same way that *any* purchase of goods and services can be referred to as an investment.

However, does it form an investment contract in the sense of the Howey test?

Is there an expectation of profit?

Is the money exchanged for Tokens being used in a common enterprise?

Do those purchasing Tokens have any control or influence over how the money raised is spent?

It is also pertinent to ask if the issuance of MDS bears “family resemblance” to other Token sales that either have, or have not, been deemed “Securities” by the SEC and/or others.

What is the money being raised for, and is there “risk” associated with the purchase of MDS?

Common Enterprise

The stated purpose behind the MEDIS Token Sale is to raise funds to allow the development of the MEDIS EMR System as described in the White Paper. Specifically, it will allow a Proof of Concept implementation to be built within the first twelve months, and then go on to complete development, deploy the final system and provide the service to the public.

Those purchasing Tokens understand that this is the goal, and that they are enabling it. That this is a common enterprise cannot be denied.

Control

The MEDIS Token Sale Terms and Conditions document (“Terms”) explicitly states –

> *“Purchase … of Tokens carries no rights, express or implied, … Parties understand and accept that Tokens do not represent or confer any ownership right or stake, share, security, or … any other form of participation in or relating to MYMEDIS.IN, LLC…”*

From this, it may be seen that purchase of Tokens obtains no direct control in the affairs of MEDIS as a company. Influence may be had via social media, and clearly, the company will want to avoid adverse publicity. Steps will be taken to ensure that those purchasing Tokens are kept abreast of developments. However, this is unlikely to satisfy the Howey criterion regarding control of “investment” monies.

Profit

The Howey test asks if there is an "*expectation*" of profit. From the foregoing, it is seen that purchase of Tokens does not confer ownership of, or shares in the company. There will be no payment of share dividends. Those purchasing MDS understand from the outset that possession of Tokens provides very specific rewards related to products and/or services within the MEDIS system only.

The Terms state explicitly, *"Tokens are not intended to be a digital currency, security, commodity, or any kind of financial instrument" – (Section 2, paragraph 3).* However, just because MEDIS says so, does not mean that the SEC would necessarily agree. By way of analogy though, it may be useful to consider postage stamps.

Stamps purchased today may be used to send letters or parcels from A to B. They have a fixed value in relation to this service. Over time, certain stamps may acquire additional value because of their rarity, or other perceived desirability. However, if one were to attempt to post a letter using such stamps, they would retain only their original face value for this purpose. While the Post Office may issue commemorative stamps with the purpose of raising funds – knowing that collectors will buy them – it cannot control the value others may ascribe to them in the future.

Furthermore, those taking part in the Token Sale acknowledge that they *"are not participating in the Token Sale for the purpose of speculative investment".*

Family resemblance

Upon review of other Initial Coin Offering (ICO), it is found that some have specifically excluded the sale of Tokens within the jurisdiction of the United States. This appears to be primarily because they *are* offering a financial instrument of some sort; and do not wish to become embroiled over registration with the SEC.

On 25th July 2017, the SEC announced that the offering and sale of digital tokens *"are subject to the requirements of the federal securities law"*. Subsequently, the cryptocurrency exchange "ShapeShift" has asked its lawyers to examine whether the Howey Test applies to the tokens that it lists. "*This means that we may need to delist some types of tokens from the platform".* US-based customers of ShapeShift may be the ones that feel the biggest impact as the review moves ahead.
https://www.coindesk.com/sec-statements-spur-shapeshift-review-cryptocurrency-listings/

It is only right and proper that the SEC apply scrutiny in the area of digital tokens. It is also apparent that any number of listed Tokens will not fail the Howey test. MEDIS likewise assert that MDS is not a financial "security".

Risk

It is undisputed that there is risk associated with the purchase of MDS. The MEDIS Token Sale Terms document goes on to enumerate many of them. Specifically, it states –

<< Parties acknowledge and agree that there are risks associated with the purchase of Tokens.
BY PURCHASING TOKENS, YOU EXPRESSLY ACKNOWLEDGE AND ASSUME THESE RISKS.
– Section 17 >>

Any value that the Tokens hold at all is bound up with the successful development and deployment of the MEDIS system. However, it is NOT dependent upon a speculative financial venture, or the discovery of gold in some inhospitable part of the world. The science upon which MEDIS is founded is real and well documented. The benefits are innumerable, and not merely to be defined in terms of profit and loss.

There is, or will be, real value behind the possession of MDS Tokens, but it does not derive from investment in a “security”. MYMEDIS.IN, LLC. has been completely open and transparent about the reason for the Token Sale, and the development goals of the company. “Investors” purchase Tokens freely and in full knowledge.