Securities Regulation Daily Wrap Up, ENFORCEMENT—S.D.N.Y.: Kik agrees to $5M penalty for unregistered ICO, (Oct. 21, 2020)

Securities Regulation Daily Wrap Up

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By Anne Sherry, J.D.

After a district court ruled on summary judgment that Kik's ICO constituted a securities offering, the company agreed to pay a $5 million penalty and notify the SEC if it sells any digital assets in the next three years.

The SEC and Kik Interactive came to a settlement over remedies after the Southern District of New York last month ruled that Kik's sale of Kin tokens constituted an unregistered securities offering. The court approved the settlement, which requires Kik to pay a $5 million penalty and enjoins it from future registration violations. For the next three years, Kik also has to inform the Commission before selling digital assets (*SEC v. Kik Interactive Inc.*, October 20, 2020).

The SEC sued Kik Interactive for conducting an unregistered initial coin offering that raised $100 million from investors in the U.S. and other countries—excepting Canada, where a provincial regulator had told Kik that what it was planning looked like a securities offering. The SEC claimed that Kik told investors they would profit from its effort to create a digital ecosystem, a hallmark of a security under the *Howey* test. When the SEC filed suit, the tokens, called Kin, were trading at about half the value public investors paid in the September 2017 offering.

In September 2020 the district court agreed with the SEC that the ICO amounted to an offering of securities and directed the parties to submit a proposed judgment for injunctive and monetary relief. The resulting settlement calls for Kik to pay a $5 million civil penalty. Kik also agreed to an injunction against further registration-related violations of the Securities Act.

The settlement also contains a notice-related directive. For the next three years, Kik must provide 45 days' notice to the SEC before it participates in any issuance, offer, sale, or transfer of not only the Kin tokens themselves but of any new cryptocurrency, digital coin, digital token, or similar digital asset using distributed ledger technology. The provision does not require Kik to seek the SEC's approval or consent or provide any additional information.

Kristina Littman, Chief of the SEC Enforcement Division's Cyber Unit, noted that the entry of summary judgment "recognized that Kik was engaged in a single, illegal offering of securities"—a reference to the court's finding that Kik's private and public token sales were integrated as a single offering. "Issuers seeking to use the public markets to capitalize their businesses may not evade the registration requirements of the federal securities laws," Littman said.

The case is No. 19-cv-5244.

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Companies: Kik Interactive Inc.

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