Token Sales - General Facts & Questions

- Summary box: 1-2 page distillation of the most important information contained throughout the sections below
- Token Information
    - Name of Project
    - Name of token
    - Symbol of token contract by which the token will be known (e.g., AST for AirSwap Token)
    - Token address
    - Token decimals -- i.e., divisibility of token.
    - Type (e.g., ERC 223)
    - Classification(s) such as security or non-security and then types (e.g., bandwidth, license, other)
- Securities Laws:
    - Likelihood that the token is, has been, or will be deemed a security under U.S. federal securities laws:
        - Do the token's intrinsic characteristics provide financial rights like traditional securities (e.g., equity, debt)? Have they ever? Will they ever? If yes:
            - Details of how/when.
            - In exchange for work/services by the token holder?

- For all past and current token distributions:
    - Was the sale/token/distribution registered under securities laws? Did it rely on an exemption? If so, which?
    - Token marketed like an investment product? (e.g., promises or statements regarding financial returns/profits/listing on secondary market exchanges)
    - Did/will purchasers make representations about their intent in buying the tokens? If yes:
        - Intend to resell for profit?
        - Intend to use/consume the token?
    - Did/will the project sell tokens to investors who intend to resell the tokens for profit, either directly or through a vehicle like the SAFT? If yes, provide details, including number of investors, amount of tokens sold like this, and details of sale structure (e.g., private placement).
  - Likelihood that the token is, has been, or will be deemed a security under other securities laws (U.S. state or internationally).
- Token Mechanics
  - One-sentence summary of what the token is/does (if possible).
  - When can or will the token be usable and for what purposes/functions?
  - Full and complete description of the token function -- i.e., what it does, how it works.
  - Full and complete description of the protocol network - i.e., how the token's network/protocol operates.
  - Whether the token or protocol is expected to or may change.
  - Does the token or protocol include built-in features to encourage use/consumption of the tokens/network and discourage pure investment/speculation?
  - Has a security or technical audit been performed, and if so, what is the conclusion?
- Token Rights
  - Does the project or anyone else owe duties to deliver to token holders any type of financial return or interest? (e.g., staking rewards, equity, debt repayment, promise of token price appreciation)
  - Do token holders have any voting, staking or governance rights, including for the project, token, or platform?
- Token Supply
  - Total supply
    - Is there potential to mine or create new tokens to increase its supply or have all potential tokens been pre-mined?
    - If supply has potential to increase, how so -- when/why/how is supply changed?

- Inflationary -- e.g., New tokens are minted to provide miners for app rewards and are determined by the …. Can fluctuate over time….
  - Deflation can also be a feature of increasing supply (e.g. BTC, through its mining protocol).
- Deflationary -- e.g., Tokens are "burned" or otherwise taken out of circulation.
  - Certainty over the total token supply -- i.e., can it be changed (e.g., by vote of the miners), or is it hard-coded into smart contract?
    - Hard fixed supply (e.g. BTC)
    - Theoretical fixed supply
- Circulating supply
  - Full and complete description of circulating (or circulatable) supply after the token sale -- initial supply, lockup schedules, inflation/deflation
  - Breakdown of unsold tokens and their expected use/distribution
- Token Sale
  - Is the sale registered with any regulatory entity?
    - If yes, which and why?
    - If not, is the sale relying on an exemption? Which?
  - Timing, duration, and pricing of the sale?
  - Full and complete description of the sale structure and process.
  - Does the sale exclude or limit participation of any particular purchasers
    - In which countries will sale be offered?
    - In which countries will the sale be blocked?
    - Based on other characteristics -- e.g., sophistication, intent to use/consume, intent to resell for profit, lack of financial stability (or risk profile)?
  - Amount of tokens for sale
  - Does the sale conduct AML/KYC verification of token purchasers?
    - Do they use a blockchain ID service and/or some other service provider? (strongly recommended to use a service provider and/or time-tested blockchain ID as there are more serious obligations (legal and financial) regarding PII custody and security for teams that plan to just do AML KYC cheaply on their own-not recommended)
  - Individual caps:
    - Minimum purchase amount per buyer
    - Maximum purchase amount per buyer
  - Aggregate caps on the sale:
    - Success threshold - i.e., the minimum amount of ETH needed for the sale to be deemed a success; if less is received, the sale is abandoned and all ETH is returned to buyers.

- - - Max-cap - i.e., is there a maximum amount ETH that the sale can generate?
    - Will these be measured in fiat or in number of ETH? (For example, Coinfi abandoned their ICO because their hard cap was reached as a result of the rally in ETH's fiat price. They had done a presale of ETH, which skyrocketed in value. This had some negative blowback from those hoping to participate.)
  - Restrictions on purchased tokens
    - Applicable restrictions on use/transfer/sale -- e.g., freely transferable; transferable only to the protocol address, upon proof of use, and/or upon expiration of a lockup period.
  - Postsale
    - Total number of purchasers
    - Total number of tokens sold
    - Total ETH received
    - Largest amount of tokens purchased (number of tokens to a single purchaser)
    - Average amount of tokens purchased (average number of tokens per purchaser)
    - Prices:
      - Average price paid per token.
      - Average price paid per token based on circulation schedule -- i.e., average price paid for every batch of tokens that becomes available for circulate (e.g., after sale, after expiration of lockups).
- Project Team, Organizational Structure, & Entity Type
  - What is your website?
  - Does the firm have appointed legal counsel and if so who?
  - Does the firm have an appointed accountant and if so who?
  - Does the firm expect to utilize tax-treaties or exemptions?
  - What is the ultimate tax jurisdiction to which the project will fall under?
  - What is the anticipated effective tax rate on any funds raised?
  - Are there financial statements?
    - If so, are they audited, and by whom?
    - When will they be
  - Governance - of project and organizational structure
  - Organizational Structure:
    - Is there a legal entity? If yes:
      - Where and when was it incorporated?
      - Entity type (e.g., C-corp., non-profit, etc)
      - Copy of bylaws or operating agreement
      - Current distribution of equity between shareholders

- - - If no legal entity:
      - Description of organization, including relevant jurisdictions, governance
  - Names and biographies of key people -- e.g., officers, board members, project team, management, key contributors
  - Description of the activities that the foundation (or other entity) will carry out, including activities that require leadership to exercise business judgment
  - Description of how the leadership team is accountable to the community -- i.e., if key individuals are making decisions that affect the protocol, is there a mechanism for ensuring those decisions reflect the best interests of the community?
  - Whether background checks have been conducted on key people
  - Names and biographies of advisors
  - Information about multi-signature wallet setup:
    - Whether using multi-sig
    - If yes
      - Number of signatories;
      - Has the multi-sig contract been audited?
  - Use of Proceeds
    - Plans for how to use the proceeds.
    - Description of the procedures for the project team to access the proceeds -- e.g., disbursements, on a schedule, automated?
  - IP ownership
    - Who owns or will own the IP relevant to the project? (e.g., the foundation owns the IP, IP donated to the foundation in the future, perpetual open source software license to use IP, etc.)
    - What part of your IP is open-source, what parts are closed-source, and what parts are mixed-source?
  - What type of financial information is provided about the organization (if any) running the project?
    - Real-time? (e.g., Balanc3)
    - Transaction-level details?
    - Periodic reports?
  - Are employees receiving tokens?
    - If so, is their token allocation subject to a lock-up period or vesting schedule? Any other conditions for receiving, using or selling the tokens?
  - Are "advisors" receiving tokens?
    - If so, is their token allocation subject to a lock-up period or vesting schedule? Any other conditions for receiving, using or selling the tokens?

- - - Is there transparency into any advisor financial contributions vs. tokens received?
- Potential Conflicts of Interest
  - Identify all external parties who are receiving compensation from or related to their involvement in the project, whether in the form of future tokens, fiat or crypto payments for services rendered under contract work and/or handshake agreements.
- Project Information
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  - Whether there is and link to a whitepaper
  - History and overview of the project (do you have a minimum viable project ready?)
  - Current status -- i.e., what's been done, what needs to be done. (how developed is the project so far?)
  - Development path
  - Monetization model of business
  - Key risks for projects revenue streams
  - SWOT Analysis
  - Key competing projects, technologies, services on the market or scheduled to launch
  - What separates your project from any similar proposed or existing solutions?
  - Who are the key target customers?
  - Why will target customers use the product/solution?
  - What are the biggest risk that could prevent the project from materializing?
  - What type of financial information is provided about the project?
    - Real-time? (e.g., Balanc3)
    - Transaction-level details?
    - Periodic reports?
  - Projected road map or timeline with milestones
    - Flexibility (i.e., is this locked in stone or subject to change)
    - Dependencies (i.e., do these milestones depend on any events -- e.g., ethereum scaling)?
    - Consequences (if any) of a project not meeting milestones?
- Token Holder Redress
  - What legal protections may or may not be available in the event of fraud, a hack, malware, or a downturn in business prospects?
  - Who will be responsible for refunding my purchase if something goes wrong (if anyone)? What is the process?
  - If I do have legal rights:
    - Where and how can I enforce them?
    - Will there be adequate funds to compensate me if my rights are violated?