

Blog Entry: District Court Stays Securities Class Action Involving Initial Coin Offering Pending Supreme Court Review

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On February 1, 2018, a federal district court in the Northern District of California stayed a putative class action involving the Tezos Initial Coin Offering (“ICO”) pending the United States Supreme Court’s decision in a case addressing state court jurisdiction over securities class actions. In granting the defendant’s request for a stay, the court refrained from deciding the novel securities and jurisdictional issue of whether ICOs are securities offerings subject to the Securities Act of 1933.

In *Baker v. Dynamic Ledger Solutions, Inc.*, the plaintiff is one of five plaintiffs bringing a putative class action alleging federal securities law violations against defendants involved with the well-known Tezos ICO. Tezos, a blockchain technology, conducted one of the largest ICOs in history, raising approximately \$232 million. Unlike the other plaintiffs suing Dynamic Ledger Solutions in federal court, the plaintiff in *Baker* originally brought suit in state court on behalf of himself and all purchases of “Tezzies,” and acknowledged that his federal securities law claims are based upon the Tezos ICO having offered covered “securities” subject to the Securities Act.

No court has squarely determined that ICOs are securities offerings subject to the Securities Act, although the SEC has indicated that they are. In *Baker*, the defendant removed the plaintiff’s action to federal court and, on the plaintiff’s motion to remand, contended removal was proper because the Securities Litigation Uniform Standards Act (“SLUSA”) stripped state courts of jurisdiction over Securities Act class actions. This issue—whether SLUSA divests state courts of subject matter jurisdiction over class actions alleging violations of the Securities Act—has split federal courts and is currently before the Supreme Court in *Cyan, Inc. v. Beaver County Employees Retirement Fund, et al.*, No. 15-1439. As a decision is expected within the next five months, the defendant thus alternatively sought a stay of the plaintiff’s motion to remand pending the Supreme Court’s decision.

The district court ordered a stay, joining at least four other district courts issuing stays of motions to remand pending Supreme Court review in *Cyan*. In its opinion, the court noted that the case involved “novel questions of federal securities law. The Tezos-related actions currently pending before this Court are among the first to apply federal securities laws to cryptocurrency assets.” The district court highlighted the risk of remand and the lack of federal case law which would guide the state court, as well as the risk of parallel state and federal court litigation involving cryptocurrencies, ICOs, and their applicability to the Securities Act. Thus, in light of these risks and the “negligible harm” to the plaintiff, the court ordered a stay pending review in *Cyan*.

The case is *Baker v. Dynamic Ledger Solutions, Inc.*, Case No. 17-CV-06850-RS, 2018 WL 656012 (N.D. Cal. Feb. 1, 2018).