

INX Leads the Finance Industry into the Future with Registered Public Offering of “Security Tokens”

McDermott Will & Emery

THE CHALLENGE:

When INX Limited formed in 2017, its founders recognized that market enthusiasm around bitcoin and other blockchain assets would lead to a new standard in the finance industry.

Looking beyond the unregistered initial coin offerings (ICOs) that marked that era, INX developed a forward-thinking vision: work with regulators to bring the offering and trading of blockchain assets within the legal framework that governs securities. To accomplish this goal, INX set out to create its own security token—a relatively new financial instrument—that would possess a hybrid of characteristics, including a share of cash flow from INX operations and the right to redeem the token as payment for blockchain asset trades performed on INX trading platforms.

INX planned to conduct a public offering of their INX Token and register that offering with the Securities Exchange Commission (SEC). Although blockchain assets had been sold in private markets and through unregistered ICOs, there was no precedent for going through a registration process with the SEC for a public offering of security tokens.

OUR OBJECTIVE:

The company approached a cross-practice legal team at McDermott led by [Mark Selinger](#) and [Dan Woodard](#) to help develop the creative solutions needed to achieve its unique business goals.

The McDermott team helped INX structure a new product for a new era, developing a consensus between regulators and blockchain enthusiasts around features, terminology and disclosure that would highlight the capabilities of blockchain technology while also meeting the standards of federal and state securities laws.

THE OUTCOME:

Nearly three years after INX confidentially filed for an IPO in January 2018, the SEC declared the first-of-its-kind offering of security tokens effective in August 2020. Less than a month later,

after receiving purchase commitments that exceeded the offering minimum, INX completed an initial closing.

Using the proceeds from the offering, INX plans to continue to develop and launch its regulated trading platforms for cryptocurrencies and security tokens.

“We approached McDermott in late 2017 with an incredibly challenging task: to complete the registration of the first security token IPO. Such a task was seen as impossible at the time and had never been brought before the SEC,” said Shy Datika, founder and president of INX Limited. “The McDermott team worked with us for over 1,000 days and spanning three different global time zones to get this momentous achievement done. They were instrumental to our success on this industry first.”

DIG DEEPER:

Throughout the lengthy process, including numerous rounds of SEC review and commentary, INX leaned on its McDermott team to navigate the regulatory landscape, develop creative solutions and secure a favorable outcome.

For background, public offerings undergo review by the SEC staff, a process that typically takes three to six months. During the process, companies may receive varying levels of SEC staff comments requesting additional clarification on unique aspects of their business operations or capital structure. Because INX was seeking to register a new financial product that is recorded and traded using a new technology, members of the SEC staff sought clarity around more fundamental questions, such as how to characterize the INX security token, how to accurately and completely describe its features and risks, and how the INX token and the technologies on which it is developed fit into the world of existing securities laws. In addition, the novelty of blockchain technology and security tokens and their potential impact on securities trading markets increased the level of scrutiny at the SEC, subjecting INX’s registration to review by a variety of divisions that would not weigh in on a more typical public offering.

The McDermott team worked closely with the SEC, representatives from Ernst & Young (Israel), counsel from Horn & Co (Israel) and counsel from Hassans International Law Firm (Gibraltar) to identify how INX could work within the current regulatory infrastructure to launch a registered offering of its security token. Working through those questions opened a more detailed discussion of blockchain assets and helped INX, the McDermott legal team and the SEC

think outside the box and come to a consensus on appropriate disclosures regarding the INX token, the company and the offering.

“Our client had both the foresight and the patience to pursue a registered offering,” said Mark Selinger, lead for INX’s US counsel and New York-based partner. “By working with US regulators, our client has pushed past the next boundary toward widespread adoption of blockchain assets both by retail investors and mainstream financial institutions.”

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