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BLOCKCHAIN BASICS FOR INVESTMENT MANAGERS: A TOKEN OF APPRECIATION

Innovative digital financial products are attracting the attention of regulators concerned with their potential disruptive impact on the financial system and the risks they pose to investors. The authors discuss the basic background and current uses of blockchain technology, and then turn to the responses of regulators, most notably the SEC and the CFTC. The issues they address include digital tokens as securities, exchange trading of digital products, and requirements for investment advisers, investment companies, and commodity pool operators.

By Jay G. Baris and Joshua Ashley Klayman *

The global blockchain frenzy is creating a new — and swiftly evolving — paradigm for investment managers and regulators alike. This “disruptive” technology is challenging traditional ideas about how issuers raise capital, how investors invest, how value is transmitted through the financial system and how regulators regulate and adapt to new technologies. As interest in blockchain technology soars as fast and as high as the price that one bitcoin has ascended in the past year, many players in the capital markets are applying existing securities laws to new digitally-driven financial products and services.

Blockchain technology, which has been likened to the “second generation” of the internet, has begun to fulfill its “promis[e] to disrupt business models and transform

industries,”¹ including through the introduction of digital assets and tokens, as well as related derivatives.

As regulators, investment managers, lawyers, and others develop and promote legally compliant practices with respect to these new financial innovations, guidance published by the U.S. Securities and Exchange Commission (the “SEC”) is likely to have far-reaching

¹ Tapscott, Don and Tapscott, Alex, *Realizing the Potential of Blockchain: A Multistakeholder Approach to the Stewardship of Blockchain and Cryptocurrencies*, World Economic Forum White Paper (Jun. 28, 2017), available at http://www3.weforum.org/docs/WEF_Realizing_Potential_Blockchain.pdf.

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