Tokenize the Musician

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I. INTRODUCTION

The centralization of the music industry has led to an imbalance of power and misaligned incentives for those involved.[1] With technological advancements, the cost of both creating and distributing music is negligible compared to prior decades.[2] Musicians can connect directly to fans, yet major record labels retain their domineering status as middlemen, extracting exorbitant fees from this content exchange.[3] As record sales rapidly decline, record labels are responding by expanding record deals to

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1. *See* Spotify Technology S.A., Registration Statement (Form F-1) (Feb. 28, 2018) [hereinafter Spotify Registration Statement].

2. David Byrne, *David Byrne's Survival Strategies for Emerging Artists—and Megastars*, WIRED (Dec. 18, 2007), http://www.wired.com/2007/12/ff-byrne/.

3. THE CHOON TEAM, CHOON —A MUSIC AND DIGITAL CONTENT ECOSYSTEM UTILIZING SMART RECORD CONTRACTS 7-8 (2017), https://longcatchain.com/data/files/131217020_637662346.pdf.

include all activities associated with the musician.[4] These "360-degree" deals include granting tour and merchandising rights as well as existing rights already included in traditional contracts like digital performance rights in sound recordings.[5] Assigning these rights to major record labels further dilutes a musician's power and autonomy.[6]

There are two types of models that describe the methods used to develop a musician's career: a "top down" model and a "bottom up" model.[7] A top down model is when a label spares no expense promoting and marketing a contracted musician's music to the public.[8] The musician is referred to as a "priority act" because they are thrust into the spotlight at the beginning of their career without their own network of listeners.[9] In a bottom up model, a musician grows their career by sharing music on the radio or performing live shows in the hopes of building an organic following of fans.[10] A bottom up or established musician is driven by passion and a strong network of listeners with the hope of becoming more well-known in the music industry.

This Comment focuses on bottom up musicians. These musicians distinguish themselves from developing musicians in that they have a social network and fan base funding their lives and careers.[11] For established musicians, capital formation is crucial because they are trying to advance to the next level of their career.[12] Musicians may utilize their fan base network to source the capital needed to retain control and expand by tapping into the new token economy.

At the core, blockchain-based tokens, or cryptocurrencies, facilitate incentive networks.[13] These incentives are embedded in network

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4. Justin M. Jacobson, *360 Record Deals: A Look Inside "Multiple Rights" Agreements*, HYPERBOT.COM (July 12, 2017), http://www.hypebot.com/hypebot/2017/07/360-agreements-an-examination-of-multiple-rights-deals-part-1.html.

5. *Id.*

6. Byrne, *supra* note 2.

7. THE CHOON TEAM, *supra* note 3, at 11.

8. *Id.* at 11-13. The term "priority act" denotes which musicians receive the most promotion and marketing attention from the record label. *Id.* at 11.

9. *Id.* at 13.

10. *Id.*

11. Interview with Stacie Sater, Founder, SAS Entertainment, in Atlanta, Ga. (Mar. 15, 2018).

12. *See* Straith, *Gramatik Brings the Age of Reason to BitTorrent Bundle*, BITTORRENT BLOG (Jan. 24, 2014), http://blog.bittorrent.com/2014/01/24/gramatik-brings-the-age-of-reason-to-bittorrent-bundle/.

13. *See* Patrick Mayr, *Improving Network Incentives Through Work Tokens*, MEDIUM (Feb. 28, 2018), http://medium.com/@patrickmayr/improving-network-incentives-through-work-tokens-94193b0dd922.

protocols and the cryptocurrency induces predefined good behavior.[14] As a network, the cryptocurrency becomes useful to network participants when it reaches a critical mass of users. Getting to a critical mass requires an incentive mechanism for the users to join and participate in the network, which then creates a demand before the network establishes its usefulness.[15] This demand is referred to in the industry as the "bootstrapping problem."[16] The key to overcoming the bootstrapping problem is to raise enough capital to develop an incentive network and reach a critical mass.[17] The token is then used to signal some value before the network reaches critical mass.[18] The value of the token will incentivize users to own and/or use the token as a participant in building the network.[19] For an established musician, the token may provide capital to further grow their music network without a record label. Once the musician has established a sufficient network, she can then leverage that token network to negotiate a more reasonable contract with a record label.

Part II of this Comment discusses the music industry as a whole, as well as the 360-degree deals used by record labels to maintain control over artists in the industry.[20] Part III provides an overview of asset-backed securities and the economics related to blockchain-based tokens using the Bowie Bond as a relevant example. Part IV explores the different methods used to tokenize a bottom up musician. Finally, the Comment will provide an analysis of the legal considerations for conducting an initial coin offering (ICO).[21]

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14. *See id.*

15. Chris Dixon, *Crypto Tokens: A Breakthrough in Open Network Design*, MEDIUM (June 1, 2017), http://medium.com/@cdixon/crypto-tokens-a-breakthrough-in-open-network-design-e600975be2ef.

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. Zack O'Malley Greenburg, *Revenge of the Record Labels: How the Majors Renewed Their Grip on Music*, FORBES (Apr. 15, 2015), http://www.forbes.com/sites/zackomalleygreenburg/2015/04/15/revenge-of-the-record-labels-how-the-majors-renewed-their-grip-on-music/#a3fafd82fba7.

21. An initial coin offering is sometimes also referred to as a token generation event (TGE). For the purposes of this Comment, either may be used interchangeably.

II. THE MUSIC INDUSTRY

A. Control Concentrated Among the Few

The music industry has experienced significant consolidation over the last few decades.[22] The "Big Three" record labels—Sony Music, Universal Music, and Warner Music Group—control nearly seventy percent of the record label market alongside a few hundred independent labels.[23] Combined, the three major record labels retain a fifteen percent ownership stake in Spotify, an on-demand music-streaming company that commands over forty percent of the global streaming market.[24] Despite disruptive technology like streaming, file sharing, and social media, these three major record labels act as gatekeepers to content access, further cementing themselves as perceived value-added intermediaries and leaving artists without leverage.[25]

B. A Record Label's Deal

A bottom up established musician, lacking leverage, is forced to sign a standardized 360-degree deal in order to have access to a record label's larger distribution network.[26] These deals grant the record label a percentage of a musician's revenue including any record sales, ticket sales, personal appearances, publishing income, and merchandise sales.[27] These deals may even include cross-collateralization clauses that allow the label to recoup any financial losses.[28] Often, a musician will assign their

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22. DON TAPSCOTT & ALEX TAPSCOTT, BLOCKCHAIN REVOLUTION: HOW THE TECHNOLOGY BEHIND BITCOIN IS CHANGING MONEY, BUSINESS, AND THE WORLD 226 (2016) (ebook).

23. *Id.* at 226-27; *see also Global Market Shares 2016: Sony and Warner Gain on Universal, as Indies Rule*, MUSIC BUS. WORLDWIDE (Feb. 26, 2017), http://www.musicbusinessworldwide.com/global-market-shares-2016-sony-and-warner-gain-on-universal-as-indies-rule (listing the percentages of market share).

24. Spotify Registration Statement, *supra* note 1; *see also* TAPSCOTT & TAPSCOTT, *supra* note 22 (noting the big three record labels' ownership interests in Spotify).

25. *See* TAPSCOTT & TAPSCOTT, *supra* note 22, at 234 (outlining a developing artist's experience with her new YouTube contract forcing her to abide by YouTube's new terms and not promote her content on other comparable platforms).

26. Greenburg, *supra* note 20.

27. Jacobson, *supra* note 4.

28. *Id.*; *see also* Steve Gordon, *How to Avoid Getting Completely Screwed by a 360 Degree Deal*, DIGITAL MUSIC NEWS (July 2, 2013), http://www.digitalmusicnews.com/2013/07/02/threesixty/ (using 50 Cent's deal with Vitamin Water authorizing the use of his professional name in an ad campaign in exchange for shares in the company that became worth over $100 million after Coca-Cola purchased Vitamin Water's parent company as an example of a deal that the record label could potentially include in a cross-collateralization provision that the record label would argue would not have been possible without the label's support).

copyright ownership rights to the record label with a separate agreement identifying how to share any earnings from those rights.[29] With an ownership stake in a musician's work, a record label can generate additional revenue from the works, even if the musician is no longer affiliated with the label.[30] Opportunistically, the label will look for any way to financially benefit from the artist.

The allure of a 360-degree deal is based on the belief that a musician can attain a wide market saturation and sizeable sales, further supported by an attentive label that stands to profit from the musician's efforts.[31] Eventually, the musician becomes "a brand, owned and operated by the label."[32] The record label brings the musician under the label's umbrella of dedicated staff and representatives to build the musician's career.[33] Any advance payments to the musician grants the record label an equity stake in that musician.[34] On the surface, the record label and the musician are aligned with a long-term perspective and interest in growing the musician's value.

In reality, over ninety percent of signed musicians fail to recoup a record label's initial investment and are typically dropped for newer musicians.[35] Any advance payments to jumpstart the musician's career are not given in a lump sum, but rather are paid out based on the number of albums released or certain milestones hit.[36] For example, Unlocking the Truth, a metal band trio, signed a $1.8 million record deal with Sony.[37] This was a cumulative sum based on a five album release requirement, with the payment advances increasing for each released album.[38] Additionally, the band needed to sell more than 250,000 copies of a single album to go beyond the payment advance, which is a lofty goal for newer musicians.[39] After understanding the hard terms of the Sony contract and

29. D.A. Wallach, *Bitcoin for Rockstars: How Cryptocurrency Can Revolutionize the Music Industry*, WIRED (Dec. 10, 2014), http://www.wired.com/2014/12/bitcoin-for-rockstars/.

30. Byrne, *supra* note 2.

31. *Id.*

32. *Id.*

33. Justin Jacobson, *A Look at 360 Agreements: "Multiple Rights Deals" [Part 2]*, TUNECORE BLOG (July 13, 2017), http://www.tunecore.com/blog/2017/07/look-360-agreements-multiple-rights-deals-part-2.html.

34. *Id.*

35. THE CHOON TEAM, *supra* note 3, at 13.

36. Marlow Stern, *Our Record Industry Nightmare: Unlocking the Truth's Journey from Viral Craze to Label Hostages*, DAILY BEAST (Mar. 27, 2015), http://www.thedailybeast.com/our-record-industry-nightmare-unlocking-the-truths-journey-from-viral-craze-to-label-hostages.

37. *Id.*

38. *Id.*

39. *See id.*

the reality of the time constraints associated with releasing each album, Unlocking the Truth was able to terminate its contract with Sony.[40] But this is a rare outcome for new musicians.[41]

Beyond the contract's legalese with regards to payment advances, if a musician struggles to sell the specified amount of records they will be deprioritized by the label.[42] Meanwhile, the record label can still enforce the record agreement by withholding any of the musician's unreleased work under the contract's original terms.[43] During this process, a musician may lose control over their future, including any credibility with fans, who will no longer expect new music.[44] In effect, the musician is trapped in a record label purgatory.[45]

Leaving a label does not always mean leaving the terms of the agreement. A label may still retain ownership of the musician's rights.[46] For many musicians, there is no clause in their contract that allows them to buy back the rights to their works.[47] This makes walking away from a record agreement more difficult in spite of the potential harm to the musician's career. Some independent musicians are able to negotiate for better terms or "carve-outs" in an agreement that may exclude live performance revenues; however, without access to alternative financial instruments and markets, a label is the only familiar source of capital capable of boosting a musician to the next level.[48] Despite the continued prevalence of aggressive 360-degree deals, musicians try to explore new ways to form capital outside of market-controlling record labels.[49]

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40. *See id.*

41. *See* Graham Winfrey, *How a Legal Battle with Sony Put this Documentary in Jeopardy*, INDIEWIRE (Apr. 26, 2016), http://www.indiewire.com/2016/04/how-a-legal-battle-with-sony-put-this-documentary-in-jeopardy-289260/.

42. Stern, *supra* note 36.

43. *See* Maria Sherman, *The Veronicas Return: Talking Magic, Revenge and the Illusion of Fame*, FUSE (May 11, 2015), http://www.fuse.tv/2015/05/the-veronicas-interview.

44. *Id.*

45. Mark Savage, *The Veronicas' Triumphant Return from Pop Purgatory*, BBC NEWS (Nov. 17, 2014), http://www.bbc.com/news/entertainment-arts-30051670.

46. Helienne Lindvall, *Behind the Music: When Artists Are Held Hostage by Labels*, GUARDIAN (Apr. 15, 2017), http://www.theguardian.com/music/musicblog/2010/apr/15/artists-held-hostage-labels.

47. *Id.*

48. *See* THE CHOON TEAM, *supra* note 3, at 12, 14; *see also* Gordon, *supra* note 28 (explaining carve-outs).

49. *See* Hannah Karp, *The Wild West of Record Deals: With Industry in Flux, Labels and Artists Shake Things Up*, BILLBOARD (June 22, 2017), http://www.billboard.com/articles/business/7841131/record-deals-changing-new-rules-music-industry.

III. FINANCIAL INSTRUMENTS AND ECONOMICS

A. The Music Industry's First Asset-Backed Security

In 1997, David Bowie became the first musician to utilize a traditional financial instrument to raise $55 million through the issuance of an asset-backed security via a bond issuance.[50] The issued bond was backed by royalty streams from Bowie's first twenty-five albums.[51] Bowie was the ideal musician to securitize his own intellectual property because he controlled all the rights associated with the collection of the works contained in the bond.[52] Further, these assets had predictable cash flow over a long enough period of time, making the rights attractive as an asset-backed security.[53] The royalties from Bowie's albums generated a 7.9% interest rate on the ten-year average life of the bond.[54] While Bowie was a first tier, superstar musician, sole ownership is not always the norm, especially for second or third tier musicians forced to negotiate away their rights.[55] However, Bowie did not own all of his later works outside the scope of the bond issuance.[56] For his later works, Bowie used some of the $55 million from the bond issuance to purchase the remaining rights to works owned by his former manager, thus reinvesting and regaining control of his career.[57]

Generally, securitization is a multistep process. The originator isolates the assets and assigns them to a special purpose vehicle (SPV).[58] The SPV acts as an issuer of the securities based on revenue streams and receivables.[59] The SPV then issues securities backed by the rights assigned to it and uses the issuance of those new securities to repay the originator for the initial assignment.[60] The SPV serves as a credit enhancement for the bond.[61] This is done through bankruptcy remoteness

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50. Jay C. Klear, *Applicability of Private Equity Fund Structure in the Furtherance of Intellectual Property Securitizations*, 2002 COLUM. BUS. L. REV. 796, 798 (2002).

51. Adam Grant, *Ziggy Stardust Reborn: A Proposed Modification of the Bowie Bond*, 22 CARDOZO L. REV. 1291, 1291-92 (2001).

52. Dov Solomon & Miriam Bitton, *Intellectual Property Securitization*, 33 CARDOZO ARTS ENT. L.J. 125, 147 (2015).

53. Klear, *supra* note 50, at 798.

54. *Id.*

55. *See* Grant, *supra* note 51, at 1299.

56. *Id.*

57. *Id.*

58. Klear, *supra* note 50, at 800-01. The originator in the Bowie Bond, for example, was David Bowie.

59. *Id.*

60. *Id.*

61. *Id.* at 801.

as the assets are separated from the originator's total assets, insulating the securitized assets from any potential bankruptcy proceedings concerning the originator.[62]

Another credit enhancement used in the Bowie Bond issuance was using EMI Records, which is known today as Sony/ATV Music Publishing, as a guarantor to cover any defaults in payments.[63] Using both the strength of the assets and the credit enhancement tactics, the Bowie Bond was given a triple-A rating, the highest credit rating by Moody's, one of the most reputable credit-rating agencies.[64] The Bowie Bond was ultimately sold to Prudential Life Insurance Company.[65] The sale to Prudential Life allowed Bowie to avoid the cost of registering the bond with the Securities and Exchange Commission (SEC) per the Securities Act of 1933.[66]

While other well-known musicians have followed Bowie's lead and issued their own asset-backed securities, the financing tool failed to gain widespread industry adoption.[67] The Bowie Bond illustrated the benefits of securitizing an artist's intellectual property so a musician can circumvent a traditional royalty/advance agreement, retain ownership of their protected works, and generate immediate income.[68] However, this ability to scrutinize intellectual property through a debt offering is only available to musicians with proven valuable assets and who have predictable future royalty revenues.[69]

B. Blockchain Tokens: A New Financial Instrument

Following the 2007-2008 financial crisis, Bitcoin launched as a new technology encouraging public focus on issues of transparency and

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62. *Id.*

63. *Id.* at 803.

64. Solomon & Bitton, *supra* note 52. AAA bonds are perceived as having an exceptional degree of creditworthiness and thus a very low risk of default. *Id.*

65. Grant, *supra* note 51, at 1294.

66. Securities Act of 1933 § 4(a)(2), 15 U.S.C § 77d(a) (2016) (listing exempted securities transactions). As well as avoiding the SEC registration requirements, Bowie did not incur any taxes associated with the bond issuance. Klear, *supra* note 50, at 799.

67. Solomon & Bitton, *supra* note 52, at 147-49. The Bowie Bond only included Bowie's works; however, in theory, multiple musicians, or weak originators, could be bundled together in order to add diversity to the bond and thus decrease the risk that one musician's decline in popularity would adversely affect the future payments of the whole bond. Grant, *supra* note 51, at 1307.

68. Hewson Chen, *Don't Sell Out, Sell Bonds: The Pullman Group's Securitization of the Music Industry—An Interview with David Pullman*, 2 VAND. J. ENT. L. PRAC. 161, 162 (2000).

69. *See* Solomon & Bitton, *supra* note 52, at 168.

aligning economic incentives in the monetary system.[70] As the first blockchain application, bitcoin sparked a broader movement to expand blockchain technology to many different uses.[71] Blockchain is a distributed ledger technology that bundles transactions into blocks, and cryptographically links or chains those blocks together to serve as an immutable repository of information.[72] As a ledger technology, the data is structured by rules.[73] These distributed databases, or ledgers, allow economic coordination using computational features such as programmable money (cryptocurrencies), programmable contracts (smart contracts), and programmable organizations (decentralized autonomous organizations (DAOs)).[74] With these three features, blockchain lowers the costs of economic coordination.[75]

Economic coordination results from a combination of rules-based systems like organizations or institutions.[76] A blockchain protocol is a way to organize people without using a traditional corporate hierarchical rules-system.[77] It is an institutional technology that facilitates new types of contracts and organizations.[78] Economizing on transaction costs leads to efficient institutional structures of economic organization and governance.[79] In summary, blockchain technology is a new rules-system for economic coordination.[80]

An economization on transaction costs suggests that economic organization is a contracting problem.[81] The contracting process includes planning, promise, competition, and governance with the presence or

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70. *See* Vitalik Buterin, *Ethereum White Paper: A Next Generation Smart Contract & Decentralized Application Platform,* BLOCKCHAIN 1, https://github.com/ethereum/wiki/wiki/White-Paper.

71. *Id.* Capitalized Bitcoin refers to the Bitcoin protocol while lowercase bitcoin is used to denote the cryptocurrency.

72. *See* Marley Gray, *Introducing Project "Bletchley*," GITHUB: AZURE-BLOCKCHAIN-PROJECTS (Nov. 1, 2017), http://github.com/Azure/azure-blockchain-projects/blob/master/bletchley/bletchley-whitepaper.md.

73. Darcy Allen et al., Blockchain: An Entangled Political Economy Approach (Apr. 9, 2018) (unpublished paper), http://ssrn.com/abstract=3158805.

74. Sinclair Davidson et al., *Blockchain and the Economic Institutions of Capitalism*, 14 J. INSTITUTIONAL ECON. 639, 645 (2018).

75. *Id.* at 648-49.

76. Sinclair Davidson et al., Economics of Blockchain (Mar. 8, 2016) (unpublished paper), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2744751.

77. *Id.* at 9.

78. *See id.* at 18.

79. *See id.*

80. *Id.* at 7.

81. OLIVER WILLIAMSON, THE ECONOMIC INSTITUTIONS OF CAPITALISM: FIRMS, MARKETS, INSTITUTIONAL CAPITALISM 20 (1985).

absence of each, depending on behavioral assumptions made and any assets listed in the contract.[82] "Planning is defined as the mental models that assist in developing analytical structure to solve previously unstructured market problems."[83] "Promise is defined as mental models that help in promoting trustworthiness in economic relationships."[84] Competition means short-term, easy to observe contracting, otherwise known as spot market transactions.[85] Governance plays a role when there is no short-term, easy to observe contract.[86]

An applicable contracting process may also depend on behavioral assumptions made by parties to the contract and attributes of any assets in question.[87] Transaction Cost Economics (TCE) asserts that agents are subject to two behavioral assumptions: (1) bounded rationality and (2) opportunism.[88] Bounded rationality occurs when agents are intendedly rational, but only to the extent of their cognitive limitations.[89] Opportunism is when agents are self-interested and take advantage of others when possible—essentially, self-interest seeking with guile.[90] Another contracting factor is asset specificity, which is when assets are idiosyncratic and require specialized investment.[91] Asset specificity moves the market further away from easy-to-observe, spot market contracting.[92] This shift requires contractual and organizational safeguards to suppress opportunism when buyers and sellers cannot readily walk away from a transaction. The ultimate goal of economic organization is to form structures that diminish bounded rationality and

82. *Id.* at 30.

83. JAMES J. CHRISMAN ET AL., INNOVATION AND ENTREPRENEURSHIP IN WESTERN CANADA: FROM FAMILY BUSINESSES TO MULTINATIONALS 141 (1985).

84. *Id.* at 142.

85. Blockchain at Berkley, *CESC2017—Sinclair Davidson—What Is a Token?*, YOUTUBE (Oct. 17, 2017), http://www.youtube.com/watch?v=sIp11sadEyU.

86. *Id.*

87. WILLIAMSON, *supra* note 81, at 30.

88. Oliver Williamson, *Corporate Finance and Corporate Governance*, 43 J. FIN. 567, 569 (1988).

89. *Id.*

90. *Id.*

91. *Asset Specificity*, INVESTOPEDIA, http://www.investopedia.com/terms/a/asset-specificity.asp (last visited Mar. 20, 2018).

92. Paul L. Joskow, *Asset Specificity and the Structure of Vertical Relationships: Empirical Evidence*, 4 J.L. ECON. & ORG. 95, 101 (1988). There are four different types of asset specificity: site specificity, physical asset specificity, human asset specificity, and dedicated assets. OLIVER WILLIAMSON, THE MECHANISMS OF GOVERNANCE 105-06 (1996).

suppress opportunism; thereby, reducing the need for the high cost worlds of competition and governance.[93]

Behavioral Assumption			
Bounded Rationality	Opportunism	Asset Specificity	Implied Contracting Process
0	+	+	Planning
+	0	+	Promise
+	+	0	Competition
+	+	+	Governance

0 = absence, + = presence

Along with TCE's individual assessment for contracting as described above, TCE's "approach to corporate finance examines individual investment projects and distinguishes among them in terms of their asset-specificity characteristics."[94] While corporate financing options can be divided into either debt or equity, TCE approaches debt and equity as more than simple financial instruments used for particular projects.[95] Debt and equity are also governance mechanisms.[96]

The implied contracting process based on behavioral assumptions may influence a firm's decision to use debt or equity as a financial instrument and governance structure in order to carry out a transaction.[97] Debt, as a governance structure, is rules-based and applies to highly re-deployable assets.[98] Debt does not finance specific assets because it is risky, and debt is a relatively low-risk financial instrument.[99] With debt, an issuer is subject to contractual obligations of a debt instrument, which may include promised distributions for the duration of a debt's existence.[100] If an asset underperforms or outright fails relative to the promised interest rate, an issuer will not want to bear the burden of the financial loss.[101] In comparison, equity is highly discretionary and applies to less re-deployable assets.[102] Equity does finance asset specificity.[103] In

93. *See* Blockchain at Berkley, *supra* note 85.
94. Williamson, *supra* note 88, at 579.
95. *Id.*
96. *Id.*
97. *Id.* at 581.
98. *Id.*
99. *See* George Chapman Poindexter, *Dequity: The Blurring of Debt and Equity Securitized Real Estate Financing*, 2 BERKLEY BUS. L.J. 233, 243-44 (2005).
100. *See id.*
101. *See* Williamson, *supra* note 88, at 580.
102. *Id.* at 581.
103. *Id.*

a way, "Equity is soft, debt hard. Equity is forgiving, debt insistent. Equity is a pillow, debt a sword."[104] Thus, generally speaking, debt is more suitable for cash flow and steady assets with a low risk, whereas equity is more suitable for riskier assets.[105]

Accordingly, value can be maximized by dequity, a hybrid instrument.[106] Dequity is both a financial instrument and governance structure containing the rules of debt with the ability to temporarily suspend the rules if the rules complicate value-maximizing activities.[107] Nobel Prize winner Oliver Williamson coined the term dequity by recognizing its ability to operate as a real-world financial instrument because of opportunism.[108] People's self-interest seeking with guile, or opportunism, would not allow them to properly use dequity because they could manipulate the conditions under which the rules are waived, and the selective intervention offered by equity could be subject to errors of omission or commission.[109]

1. The Economics of Blockchain Tokens

As a shared store of information, blockchain combines peer-to-peer networks with cryptography to create one public, tamperproof ledger.[110] As previously described, blockchain can be understood in an economic sense as an institutional technology that enhances economic coordination.[111] Tokens are applications of blockchain technology that represent a different market-based financial instrument financing specific assets (like equity) and enforcing a rules-based system (like debt).[112] Combined, blockchains and tokens act as a means to limit bounded rationality, suppress opportunism, and finance specific assets.[113] Public blockchains conquer bounded rationality because information is public

104. David Warsh, *The Case for Turning Over Business to the Leveraged Buyout Specialists*, WASH. POST (Oct. 25, 1989), http://www.washingtonpost.com/archive/business/1989/10/25/the-case-for-turning-over-business-to-the-leveraged-buyout-specialists/e87b84b1-bb77-40d3-a83c-fd0f468c78af/?utm_term=.aee07a05b55e (quoting G. Bennet Steward and David M. Glassman).

105. *See* Williamson, *supra* note 88, at 579-81.

106. *Id.* at 581-82.

107. *Id.*

108. *Id.* at 582. Across the full spectrum of parameters, dequity should be regarded as comparable to preferred stock. *Id.*

109. *Id.*

110. Davidson et al., *supra* note 74, at 639-41.

111. *Id.*

112. Blockchain at Berkley, *supra* note 85.

113. Davidson et al., *supra* note 74, at 650; *see also* Blockchain at Berkley, *supra* note 85.

and open to online searches.[114] Various mechanisms like proof-of-work or proof-of-stake suppress opportunism by combining with smart contracts to enforce a rules-based governance structure that allows for automatic, ex-post settlements.[115] A network-specific token is asset-specific because it serves as currency within a decentralized application's ecosystem and is used to reward or punish user behavior based on an application's governance structure.

When combined, these features, as described above, effectuate an application's incentive network. Networks are valuable at scale.[116] The more people participating on a network, the more useful a network becomes.[117] This bootstrapping problem is incentivizing users to grow the network to reach scale.[118] Application utility is very low when only a few people participate on the network.[119] An application's utility rises as more people join the network; thus, the application utility is low in the beginning, a publicly tradeable token signals a financial utility incentivizing potential users to purchase tokens and join the network.[120] Eventually, the financial utility equals the application utility, creating a network effect, and the benefits of the network are realized.[121] Therefore, blockchain uses consensus mechanisms, public information, smart contracts, and tokens as dequity to shift the world of contracting from competition and governance to the "promise" contracting process.[122]

2. Initial Coin Offerings

The most popular way to issue a token is through an initial coin offering (ICO), also commonly referred to as a token generation event (TGE).[123] ICOs are arguably the fastest and most efficient way to raise capital, having raised $5.6 billion in 2017.[124] However, given the high

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114. Davidson et al., *supra* note 74, at 650. This Comment focuses on public blockchains and does not contemplate the reasons for potentially using a private blockchain.

115. *Id.*

116. Dixon, *supra* note 15.

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. Blockchain at Berkley, *supra* note 85.

123. There is debate that an ICO should really be called a Token Generation Event (TGE). Such a debate is outside the scope of this Comment, and the term ICO will be used for ease of use.

124. *See* Oscar Williams-Grut, *Only 48% of ICOs Were Successful Last Year—but Startups Still Managed to Raise $5.6 Billion*, BUS. INSIDER (Jan. 31, 2018), http://www.businessinsider.com/how-much-raised-icos-2017-tokendata-2017-2018-1.

failure rates of ICOs and exposure to fraud, securities regulators are increasingly more outspoken about their role in the ICO process.[125] There are two categories of issued tokens: (a) security tokens and (b) utility tokens.[126] The difference between the token categories lies in the token structure.[127] Launching one token does not preclude the launching of another.[128]

Security tokens function as investment contracts.[129] The rationale behind investing in a security token is the anticipation of future profits in the form of dividend payments, revenue sharing, or simple price appreciation.[130] The value of the token is tied to an underlying asset that represents rights—for example, rights to future royalties of a music catalogue.[131] In comparison, utility tokens are designed for consumptive use and are not designed as investments.[132] Utility tokens do not provide the token holder with any ownership rights in an entity that generates the token.[133] The token is the payment method within the network for the resources that the network provides.[134] These key differences in a tokens' characteristics have significant legal implications for the token issuers.

IV. TOKENIZING THE MUSICIAN

The tokenization of a musician allows an artist exclusive creative control by distributing ownership in their works to token holders and availing themselves of a record label's bureaucratic rule.[135] Within the music industry, an investment in a musician is highly asset-specific

125. *See* Stephen O'Neal, *SEC, CFTC, IRS and Others: A Guide to US Regulating Bodies*, COINTELEGRAPH (May 26, 2018), http://cointelegraph.com/news/sec-cftc-irs-and-others-a-guide-to-us-regulating-bodies.

126. Michael J. Casey, *Regulators Are Slowly Starting to Get It: Utility Tokens Are Real*, COINDESK (July 11, 2018), http://www.coindesk.com/regulators-are-slowly-starting-to-get-it-utility-tokens-are-real/.

127. *Id.*

128. *See id.*

129. SEC. & EXCHANGE COMM'N, RELEASE NO. 81207: REPORT OF INVESTIGATION PURSUANT TO SECTION 21(A) OF THE SECURITIES EXCHANGE ACT OF 1934: THE DAO 1 (July 25, 2017), http://www.sec.gov/litigation/investreport/34-81207.pdf [hereinafter THE DAO REPORT].

130. *See id.* at 11.

131. *See id.* at 11-12.

132. Laura Shin, *Are ICOs for Utility Tokens Selling Securities? Prominent Crypto Players Say Yes*, FORBES (Oct. 27, 2017), http://www.forbes.com/sites/laurashin/2017/10/02/are-icos-for-utility-tokens-selling-securities-prominent-crypto-players-say-yes/#16fd518134fa.

133. *Id.*

134. *Id.*

135. *See, e.g.*, Zach LeBeau, *Gramatik, the World's First 'Crypto-Artist' . . . by SingularDTV*, MEDIUM (Sept. 21, 2017), http://medium.com/singulardtv/gramatik-the-worlds-first-crypto-artist-by-singulardtv-ad2bc078986c.

because it is an investment in the individual, which represents human asset specificity.[136] Record labels invest in musicians with limited information and without the ability to fully understand the complexities of society's cultural tastes.[137] Determining future royalties from newly released music is challenging because record labels will often resort to incomplete financial models to determine the next big musician.[138] Then, the record labels draft agreements with complex terms including opportunistic provisions that are difficult to spot for a less business-savvy musician.[139] Bounded rationality, opportunism, and asset specificity are prevalent in the music industry, resulting in the current state of hierarchies and governance instead of a world of promise-based contracting.[140]

Seemingly, a 360-degree deal operates as an equity instrument, but the terms seem to borrow from debt instruments. Record labels operate similar to equity investors in that the record labels bear the full risk of investing in a musician.[141] However, as a debt holder, a record label is given the status of a creditor if a musician files for bankruptcy.[142] For example, in California, a record label has the right to sue its contracted musician to collect damages if the musician failed to adhere to a contract provision, like creating a specified number of albums according to the terms of the agreement.[143] Musicians have started declaring bankruptcy in order to seek relief from contractual obligations, claiming that the obligations have caused a sufficient amount of financial distress on them.[144] The record label may then attempt to challenge the bankruptcy filings as being filed in bad faith, which then requires the court to decide the issue on a case by case basis.[145] Given the record label's demonstrated

136. Jonathan Gander & Alison Rieple, *How Relevant Is Transaction Cost Economics to Inter-Firm Relationships in the Music Industry?*, 28 J. CULTURAL ECON. 57, 69 (2004).

137. *See id.* at 69-71.

138. *See, e.g.*, Solomon & Bitton, *supra* note 52, at 167.

139. *See, e.g.*, Emma Jones, *How Did Music Producer Gramatik Raise $2M in 24 Hours?*, BBC NEWS (Dec. 19, 2017), http://www.bbc.com/news/42337546.

140. *See, e.g.*, Gander & Rieple, *supra* note 136.

141. *How Record Labels Invest*, IFPI, https://www.ifpi.org/how-record-labels-invest.php (last visited Oct. 05, 2018).

142. *See* Victor O, *Toni Braxton's Second Bankruptcy Costs Labels $16 Million*, FJT (May 29, 2015), http://financialjuneteenth.com/toni-braxtons-second-bankruptcy-costs-labels-16-million/.

143. CAL. LAB. CODE § 2855(b) (2018).

144. David C. Norell, *The Strong Getting Stronger: Record Labels Benefit from Proposed Changes to the Bankruptcy Code*, 19 LOY. L.A. ENT. L. REV. 445, 446 (1999).

145. *Id.* at 466. TLC, a popular girl group in the 1990s, found itself financially distressed. In order to pay back some loans, the group borrowed money from its record label, which was to be repaid from future royalties. This is particularly troubling considering that the group's December 31, 1994, royalty statement had a negative $576,828.98 balance. The court granted the group bankruptcy relief. After a five-year hiatus, TLC released "Fanmail," which sold more than 6

preference for challenging bankruptcy filings, the record label seeks to enforce the record agreement as a debt instrument.[146] Thus, a record label exists as a means to streamline the costs of scaling the highly asset-specific musician but enforces the rules of the record agreement like debt instruments.

The record agreements also function in a way similar to the function of dequity. They resemble debt as a rules-based relationship with at least one party (the record label) forcing liquidation (i.e., dropping the artist while retaining copyright ownership of works produced). Additionally, the agreement functions like equity because the investment is in an asset-specific object and the record label's role is similar to an administration providing structure for a musician to create music at its discretion.[147] Thus, record deals are like financial instruments used to finance asset specificity and impose a rules-based system associated with debt, coupled with the discretionary properties of equity.[148] The reason that dequity does not work for a record deal is because discretionary and selective intervention fails in its implementation, and the agreement to "behave responsibly" lacks creditability.[149] Unless blockchain properties are used in conjunction with tokens to promote desirable agent behaviors, the value-maximizing properties of dequity cannot be realized.[150]

A. Gramatik: The Tokenized Musician

An established musician can benefit from the efficient capital formation of a new tokenized market.[151] For independent musicians, the biggest challenge is a financial one.[152] In 2017, Gramatik, an international electronic dance musician and independent music producer, launched a token sale of his cryptocurrency GRMTK with SingularDTV.[153] This

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million copies. As evidenced by the release of "Fanmail," TLC did not have a lackluster fan base or an IP problem. TLC had a liquidity problem at the time and this was further exacerbated by their stifling recording contract and lack of financial alternatives. *In re* Watkins, 210 B.R. 394 (Bankr. N.D. Ga. 1997).

146. *See, e.g.*, Norell, *supra* note 144, at 457-469.

147. *See* Williamson, *supra* note 88, at 580.

148. *See id.* at 579-81.

149. *Id.* at 582.

150. Blockchain at Berkley, *supra* note 85.

151. While this Section of the Comment references an individual musician, the same analysis could be applied to a group. If the group splits up, the token, in theory, would retain some value as still being tied to the existing intellectual property of the group. Further, a band member launching a solo career after leaving the group could be treated as a hard fork and a new token could emerge.

152. Straith, *supra* note 12.

153. LeBeau, *supra* note 135.

token sale, which represented twenty-five percent of available tokens, raised just over $2 million in the first twenty-four hours of the launch and valued the token at $9 million.[154] As Gramatik explained, "If you hold 100 GRMTK tokens, then you own 100 tokens worth of the rights and royalties of the music and projects create[ed]."[155] In this fashion, the GRMTK token is the modern-day Bowie Bond.[156]

The GRMTK token contains Gramatik's intellectual property, revenues, and royalties.[157] Using public data available on the blockchain, blockchain enables the instantaneous distribution of revenue to rights holders.[158] Since the token represents the musician's intellectual property, the token can be leveraged to allow token holders to pay for an artist's content and tangible goods such as merchandise and concert tickets.[159] Enabling the token to change hands within a community allows an artist to sell and retain control of his assets; thereby, a record label is no longer the only source of capital for the musician. The agreement is with the token holders in a peer-to-peer network with rules transparently embedded in an application, allowing the token holders to choose whether to participate in the application.

B. Regulating ICOs[160]

Musicians looking to launch their own token have legal implications to consider and securities exemptions to take advantage of similar to those of the Bowie Bond. The SEC regulates public offerings of securities with a triple mandate to protect investors, facilitate capital formation, and

154. Ryan Middleton, *Gramatik Lets Fans Own a Piece of His Music with Launch of GRMTK Cryptocurrency Token Valued at $9 Million*, MAGNETIC (Nov. 21, 2017), http://www.magneticmag.com/2017/11/gramatik-launches-grmtk-cryptocurrency-token-valued-at-9-million/.

155. *Id.*

156. LeBeau, *supra* note 135.

157. Jones, *supra* note 139.

158. Ben Dickson, *Blockchain Could Completely Transform the Music Industry*, VENTUREBEAT (Jan. 7, 2017), http://venturebeat.com/2017/01/07/blockchain-could-completely-transform-the-music-industry/.

159. Zach LeBeau, *TOKIT is Here! The Evolution of Entertainment Begins . . .*, MEDIUM (Nov. 6, 2017), http://medium.com/singulardtv/tokit-is-here-the-evolution-in-entertainment-begins-1d3e9eaff348.

160. For the purposes of my analysis in this Comment, I am assuming that the issuer of the token is conducting a "private placement" under the 1933 Act and is not a reporting company under the 1934 Act. A "private placement" is a security offering that is exempt from registration with the SEC. *Investor Bulletin: Private Placement Under Regulation D*, U.S. SEC. EXCHANGE COMMISSION (Sept. 24, 2014), http://www.sec.gov/oiea/investor-alerts-bulletins/ib_privateplacements.html.

maintain fair, orderly, and efficient markets.[161] The SEC's fear is referred to as the "promoter problem," which is when corporate issuers will try to sell flawed securities to the public.[162] While blockchain can suppress opportunism, ICOs still suffer from the promoter problem that exists in traditional initial public offerings (IPOs).[163] Because billions of dollars poured into the ICO market in 2017, the SEC has been under pressure from the blockchain industry to provide regulatory guidance.[164] This guidance was issued initially through the SEC's DAO Investigation Report (DAO Report).[165]

Without specifying, the DAO Report's analysis of all tokens, regardless of the company's description, hinges on whether or not the issuance of the token is a security that includes an "investment contract."[166] The predominant test used to determine whether an instrument is an investment contract is the Howey test.[167] The Howey test states that an investment contract is an investment of money in a common enterprise with an expectation of profits solely from the efforts of others.[168] Subsequent case law has defined an investment of money as capital, assets, cash, goods, services, or promissory notes.[169] A common enterprise lacks a singular definition so many courts rely on horizontal commonality, which means that an investor has pooled its money or assets together to invest in a common project.[170] The third prong, expectation of profits, includes dividends, periodic payments, or an increase in the value of the

161. *What We Do*, U.S. SEC. EXCHANGE COMMISSION (June 13, 2013), http://www.sec.gov/Article/whatwedo.html.

162. *See* Paul G. Mahoney, *Mandatory Disclosure as a Solution to Agency Problems*, 62 U. CHI. L. REV. 1047, 1047-51 (1995).

163. The Snap IPO is a good example of the promoter problem in traditional securities markets.

164. *See* Marc Hochstein & Bailey Reutzel, *SEC ICO Probe Underway, but Stories Conflict on Size of Sweep*, COINDESK (Mar. 1, 2018), http://www.coindesk.com/sec-ico-probe-underway-stories-conflict-extent-sweep/.

165. THE DAO REPORT, *supra* note 129.

166. *Id.* at 11, 17.

167. *Id.*; *see also* SEC v. W.J. Howey, 328 U.S. 293, 298-99 (1946) (ruling that an investment contract includes "a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party").

168. *W.J. Howey*, 328 U.S. at 298-99.

169. Jeffrey Bekiares & Stan Sater, *What Is the Howey Test? How to Tell if a Coin Passes the Test*, SMART UP LEGAL (July 20, 2018), http://www.smartuplegal.com/learn-center/what-is-a-common-enterprise-and-is-bitcoin-or-ethereum-one/.

170. Jeffrey Bekiares & Stan Sater, *What Is a Common Enterprise and Is Bitcoin or Ethereum One?*, SMART UP LEGAL (Aug. 9, 2018), http://www.smartuplegal.com/learn-center/what-is-a-common-enterprise-and-is-bitcoin-or-ethereum-one/.

investment.[171] The fourth prong, "solely from the efforts of others," depends on "whether the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise."[172] Even with a clear test, determining whether or not an offering is a security can be highly fact-specific.[173]

If an investment is a security, there are a few exceptions, or "safe harbors," that can be used to circumvent the registration and filing requirements of the Securities Act of 1933 under the Jumpstart Our Business Startups Act (the JOBS Act).[174] Rule 506 of Regulation D (Reg D) provides two exemptions from registering securities offerings with the SEC: rule 506(b) and rule 506(c).[175] Rule 506(b) is considered a "safe harbor" under section 4(a)(2) of the Securities Act of 1933 because it prevents a company from using general solicitation or advertising its securities.[176] However, the company may sell its securities to an unlimited number of accredited investors and up to thirty-five nonaccredited, sophisticated investors.[177] Under rule 506(c), a company can solicit and generally advertise its offering provided all of its investors are accredited and the company takes reasonable steps to verify that the investors are accredited.[178] Accredited investors, representing approximately ten percent of the U.S. population, are natural persons "who: (i) earned income that exceeded $200,000 (or $300,000 together with a spouse) in each of the prior two years, and reasonably expects the same for the current year; or (ii) has a net worth over $1 million, either alone or together with a spouse (excluding the value of the person's primary residence)."[179]

171. SEC v. Edwards, 540 U.S. 389, 394 (2004).

172. SEC v. Glenn W. Turner Enters., Inc., 474 F.2d 476, 482 (9th Cir. 1973).

173. Stephen J. Obie et al., *SEC Provides Framework to Determine if Digital Assets Are Securities*, LEXOLOGY (June 26, 2018), http://www.lexology.com/library/detail.aspx?g=237af51f-99d6-49cb-abde-4b08a54b82db.

174. *See* Jumpstart Our Business Startups Act, Pub. L. No. 112-106, 126 Stat. 306 (2012) (codified as amended in scattered sections of 15 U.S.C.). This Comment only discusses the laws around private placements conducted under the Securities Act of 1933 and will not discuss the reporting requirements under the Securities and Exchange Act of 1934.

175. 17 C.F.R. § 230.506 (2015).

176. *Id.* § 230.506(b).

177. *Id.*

178. *Id.* § 230.506(c).

179. Herbert F. Kozlov et al., *Regulation A+: A Path to Market for Crypto Companies?*, REED SMITH: FINTECH UPDATE (Aug. 21, 2018), http://www.fintechupdate.com/2018/08/regulation-a-a-path-to-market-for-crypto-companies/. Entities such as banks, partnerships, corporations, nonprofits, and trusts with total assets in excess of $5 million also qualify as accredited investors. *Id.*

Purchasers of rule 506 receive restricted securities because the securities cannot be sold for at least six months to a year without registering them.[180] Companies wishing to utilize rule 506(b) or 506(c) must file a Form D with the SEC after they first sell their securities.[181] Reg D offerings are considered private offerings and not the desired exemption for a musician trying to garner the most community support because of the restrictions placed on individuals who may participate.[182]

Another available exemption is Regulation Crowdfunding (Reg CF), which permits the general public to invest in an offering; however, that offering is capped at $1,070,000 in any twelve-month rolling period.[183] Additionally, an investor's contributions are limited based on the investor's annual income or net worth.[184] Because of the limited amount raised and limits on the potential investor pool, this exemption does not give the musician the most freedom either.

The most flexible exemption is Regulation A-Plus (Reg A+). Under a Reg A+ offering, American or Canadian entities can choose between two types of offerings: Tier 1 and Tier 2.[185] In a Tier 1 offering, the capital raise is limited to $20 million within a twelve-month period.[186] The Tier 2 offering limits the capital raised to $50 million within a twelve-month period.[187] Unaccredited investors participating in a Tier 2 offering are limited to investing no more than ten percent of either annual income or net worth, whichever is greater.[188] Both tiers allow general solicitation and the use of online crowdfunding platforms.[189] Additionally, both tiers allow nonaccredited investors to participate.[190] The SEC does review both Tier 1 and Tier 2 offerings.[191] Only Tier 2 offerings are exempt from state

180. *Rule 506 of Regulation D*, SEC. EXCHANGE COMMISSION, http://www.sec.gov/fast-answers/answers-rule506htm.html (last visited Feb. 23, 2018).

181. *Id.*

182. *See* Aaron Kaplan, *Reg A-Plus Is Perfect for Initial Coin Offerings*, LAW360 (Jan. 10, 2018), http://www.law360.com/articles/1000365/reg-a-plus-is-perfect-for-initial-coin-offerings.

183. *Regulation Crowdfunding: A Small Entity's Compliance Guide for Issuers*, SEC. EXCHANGE COMMISSION, http://www.sec.gov/info/smallbus/secg/rccomplianceguide-051316.htm #_ftn2 (last visited Feb. 23, 2018).

184. *Id.*

185. 17 C.F.R. § 230.251(a) (2015).

186. *Id.* § 230.251(a)(1).

187. *Id.* § 230.251(a)(2); *see also* Regulation A+ Improvement Act of 2017, H.R. 4263, 115th Cong. § 2 (2018) (proposing to increase the cap to $75 million).

188. 17 C.F.R. § 230.251(d)(2)(i)(C)(2).

189. *Id.* § 230.255.

190. Press Release, SEC, New Rules Provide Investors with More Investment Choices (Mar. 25, 2015), http://www.sec.gov/news/pressrelease/2015-49.html.

191. *Id.*

review.[192] Tier 2 offerings require audited financial statements, which raises the cost of issuing the offering.[193] While Tier 1 offerings are not required to participate in ongoing financial reporting, Tier 2 offerings submit annual and semi-annual public reports including auditing reports.[194] However, if the holders of the Reg A+ stock fall below 300 holders, then ongoing reporting is no longer required.[195]

While generally more flexible than the other exemptions, Reg A+ limits the offered securities to "equity securities, debt securities, and securities convertible or exchangeable to equity interests, including any guarantees of such securities."[196] It is undetermined if utility tokens or hybrid tokens could issue a Reg A+ offering under this restriction. The SEC did not distinguish between the varying types of tokens in its DAO Report.[197] Rather, it concludes that some ICOs were securities, without expanding on the differing types of securities as the above Reg A+ limitation shows.[198]

As indicated in a Tier 2 Reg A+ offering, registering a securities offering is not the only issue for a musician to consider.[199] Even if it is a private placement offering, or an unregistered offering exempt from the 1933 Act requirements, the offering could subject an issuer to becoming a reporting company subject to periodic reporting requirements under the 1934 Act. Under Section 12(g) of the 1943 Act, an issuer does not become a reporting company if on the last day of the fiscal year the issuer's total assets are less than $10 million, or if fewer than 2000 holders of record and fewer than 500 of those holders are nonaccredited investors.[200] Further, any revenue from the ICO may be taxable income to the issuing entity.[201] This portion of the Comment, while legally technical, is not meant to deter a would-be token issuer. Rather, it is meant to provide an issuer a baseline understanding of just some of the securities regulations that lie ahead and a means to navigate through the process of a token launch.

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192. *Id.*
193. *Id.*
194. *Id.*
195. 17 C.F.R. § 230.257(d) (2015).
196. *Id.* § 230.261(c).
197. Kaplan, *supra* note 182.
198. *Id.*
199. *See* 17 C.F.R. § 230.257(d).
200. *Id.* § 240.12(g).
201. Sarah-Jane Morin, *Tax Aspects of Cryptocurrency with a Focus on the Tax Aspects of Initial Coin Offerings*, 32 PRAC. TAX L. 12, 16-17 (2018).

V. CONCLUSION

The layers of abstraction between a musician and their fans, where the value is actually created, has undercut the democratizing promise of the Internet. The Internet was an opportunity for artists to directly connect with fans and generate new revenue streams. This opportunity was to be accomplished through digital downloads and streaming of both audio and video content without intermediaries extracting fees from the musicians. However, these new revenue streams and platforms have been leveraged by record labels taking advantage of the less business-savvy musicians in order to further cement their dominant role in the music ecosystem.[202] With each new intermediary, musicians lose more revenue and more control.[203] Fortunately, there is no longer one way of doing business in the music industry.[204]

Blockchain is a new institutional technology for economic coordination in the music industry.[205] Musicians can leverage blockchain tokens, in a regulatory compliant manner, to create valuable networks and leverage in the next tier in their career. These blockchain tokens are financial instruments much like debt and equity.[206] However, the tokens are not debt because they finance asset specificity, and they are not equity because they are rules-based.[207] Similarly, record agreements are not debt because they finance asset specificity and are not equity because of the restraints enforced by the record labels.[208] Capital raised from ICOs can replace the need for restrictive 360-degree deals and record labels impeding a musician's vision.[209]

While this Comment focuses on tokenizing a musician, tokenizing a record label could be the next step. The big three record labels could join the music community in a positive way rather than constantly finding themselves at odds with the musicians they represent.[210] In tokenizing and decentralizing their portfolios, a record label can align its interests with the

202. *See* Greenburg, *supra* note 20.
203. *See* Byrne, *supra* note 2.
204. *Id.*
205. Davidson et al., *supra* note 74, at 640.
206. Blockchain at Berkley, *supra* note 85.
207. *Id.*
208. *See id.*
209. *See, e.g.*, Jones, *supra* note 139.
210. Trent McConaghy, *Tokenize the Enterprise . . . and Melt It into the Community. Rinse, Repeat*, MEDIUM: BIGCHAINDB BLOG (June 16, 2017), http://blog.bigchaindb.com/tokenize-the-enterprise-23d51bafb536.

rest of the music industry,[211] resulting in the record labels becoming networks in effect dissolving the vertical hierarchy.[212] The label's intermediary oligopoly and administrative overhead costs would be diminished.[213] Like a venture capital firm or private equity firm, the record labels can insert themselves as strategic and financial investors supporting musicians creating asymmetrical value in the ecosystem.[214]

211. *See id*; *see also* Matt Medved, *Why Dance Music Stars Are Crazy About Cryptocurrency, and May Make a Killing*, BILLBOARD (Jan. 1, 2018), http://www.billboard.com/articles/news/dance/8096461/bitcoin-dance-music-djs-blockchain-cryptocurrency?utm_source=t.co&utm_medium=referral.

212. *See* TAPSCOTT & TAPSCOTT, *supra* note 22, at 21.

213. Wallach, *supra* note 29.

214. These investors would also have to access using lock up periods on their tokens because holding such a large amount could drastically manipulate the market cap of the token if sold all at once either because it is a signal of less optimistic prospects or the lack of token liquidity to facilitate a price efficient sale.