Brazil's securities and exchange commission decides that D¥N tokens are not securities

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Tokens are digital representations of rights over goods or services, classified according to their function. The question of whether a given token is a security generates legal debate, because once tokens are classified as securities, they are subject to regulation and oversight by the CVM. A recent example is the CVM's decision on Dynasty's D¥N token, which highlights the complexity of assessing investors' rights and expectations.

The International Organization of Securities Commissions, IOSCO, defines tokenization as the process of digitally representing an asset, or ownership of an asset. Tokens themselves can perform various functions, and are usually classified according to their underlying assets. The CVM takes a functional approach and categorizes tokens as payment tokens, utility tokens, and assetbacked tokens.

The categories are designed to indicate the legal treatment applicable to a given token and, if the asset digitally represented by the token is a security, the CVM will have jurisdiction over the offering and distribution of the token to the general public.

In Brazil, securities are defined under Law 6385/1976 in an exhaustive list, set out in article 2(i) to (viii) of the Law, along with a catch-all item, 2(ix), which refers to all other publicly-offered instruments or collective investment contracts that generate rights to a share of profits, partnership rights, or rights to income, including those resulting from the provision of services, where the earnings from the instrument or contract derives from the efforts of the entrepreneur or third parties.

In a recent meeting of its Commissioners, the CVM examined the D¥N token issued by Dynasty Global Investments BR Ltda. One of the requirements contained in article 2(ix) of Law 6385/1976 is the expectation of a return, and the Commission's discussion turned on the question of whether holders of D¥N tokens expected to share in the profit generated by Dynasty's business.

Dynasty has adopted a buyback and burn model for its tokens, which means that when unusual fluctuations are detected, Dynasty buys back tokens available on the market to withdraw them from circulation and maintain the purchasing power of the cryptocurrency.

The Commissioners split over the issue, but the majority took the position that the measures adopted by Dynasty to stabilize the value of the asset and generate liquidity, particularly through the buyback and burn mechanism, were not sufficient to produce a benefit intrinsic to the asset deriving from profit sharing, partnership or income rights required by law to categorize an asset as a security. As for the "efforts of the entrepreneur or third parties", the

CVM's decision noted that Dynasty's efforts to influence the D¥N trading price are directed to preserving the value of the tokens against inflation, and do not amount to effective income.

The CVM concluded that D¥Ns are payment tokens, which are not subject to the CVM's jurisdiction.

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