How To Use Insurance To Shield Against Cryptocurrency Risks, *Law360, ft. Ivan Dolowich and Marc Voses*

Both **Ivan J. Dolowich, co-managing partner of Kaufman Dolowich & Voluck LLP, and Marc S. Voses, partner at KD in New York City and Co-Chair, Data Privacy & Technology Services, were quoted in a** *Law360 article published on July 25, 2018, written by Jeff Sistrunk.*

As cryptocurrencies continue their meteoric rise, companies in the space are facing an expanding range of risks, including the threat of large-scale theft and class actions filed by disgruntled investors in funding ventures known as initial coin offerings.

Law360 looks at some of the perils faced by cryptocurrency businesses, and how insurance may help shield against those risks.

Cryptocurrency Theft

Digital currency companies, exchanges and purchasers have become increasingly popular targets for cybercriminals in recent years, with thieves stealing more than $1 billion worth of cryptocurrency in the first half of 2018, according to a June report issued by cybersecurity firm Carbon Black Inc. In one headline-grabbing incident in January, hackers plundered about $500 million of a cryptocurrency called NEM from Japanese exchange Coincheck, which had the digital coins stored in an internet-linked "wallet."

According to attorneys, with cryptocurrencies now numbering in the thousands, theft will continue to be a major concern for industry participants and consumers — one that demands robust insurance coverage.

Initial Coin Offering Litigation

Digital currency fundraising endeavors known as initial coin offerings, or ICOs, have attracted the attention of plaintiffs attorneys, presenting a host of potential legal exposures for businesses that launch such offerings.

Companies and their executives have long relied upon directors and officers policies to cover claims stemming from issues with traditional initial public offerings. But at this point, it is unclear whether D&O policies will also apply to actions tied to ICOs, attorneys say.

"D&O coverage in the cryptocurrency arena is an emerging area," said Ivan J. Dolowich, co-managing partner of Kaufman Dolowich & Voluck LLP, who represents insurers. "Right now, in the cryptocurrency environment, ICOs may give rise to claims by disgruntled purchasers. However, while federal and state regulators have started to scrutinize these ICOs, the regulatory landscape is still unsettled, so it is uncertain whether these sorts of claims will trigger coverage under a D&O policy."

Regulatory Investigations

As regulators get their heads around ICOs, businesses conducting such offerings should be wary of potential probes or enforcement actions by the SEC and Federal Trade Commission, which may also implicate D&O coverage, according to attorneys.

Marc S. Voses, co-chair of Kaufman Dolowich & Voluck LLP's data privacy and technology services practice, said insurers are likely to deal with developing cryptocurrency risks in the short term by "adding manuscripted endorsements to policies indicating the risks the insurer is willing to cover, and those it is unwilling to take on."

"With D&O policies as well as cyber and crime policies potentially implicated, it will be interesting to see whether a new product will emerge to address the risks faced by cryptocurrency industry participants," Voses said.

"These products were not initially intended to cover these specific types of risks," he added. "It will take a while for the marketplace to feel things out and decide how to respond to the needs of policyholders."