**Hypothetical for APRL Panel: “New Money/Old Rules”**

**August 4, 2018**

Richard is a lawyer in Chicago, with a general business law practice. He is one of six partners at his firm. Richard receives a call from an old high school friend, Arthur, inquiring whether he might be interested in representing Arthur’s new start-up venture, FonzCo, Inc., in issuing a new crypto-currency, “Fonz-Coin.” Arthur explains that he has developed the technology for Fonz-Coin, which he describes as “similar to Bitcoin but cooler.” More specifically (but not much more), Fonz-Coin uses the same “blockchain” technology as Bitcoin but it works faster; it is coupled with an app that allows for social networking with other users; and each Fonz-Coin comes with a unique digital photo depicting the Fonz-Coin mascot, a hamster named “Potsie,” in a randomly generated pose and background.

Arthur tells Richard that FonzCo intends to sponsor an Initial Coin Offering or “ICO” as soon as possible. He would like Richard’s legal advice on how best to structure the ICO. In particular, Arthur says he is interested in developing a structure that will not require Fonz-Coin to be registered as a security, since registration would be cost-prohibitive. Arthur says he understands that a lot of ICOs are moneymaking schemes that the SEC thinks are securities. In contrast, Arthur thinks of Fonz-Coin as a public good, not an investment, and he is willing to structure the whole thing as a non-profit if need be.

**Step One:**

Richard tells Arthur he is not an expert in cryptocurrency, or for that matter securities law, but promises to speak with his partners and get back to Arthur promptly concerning whether this is a matter Richard can take on, and if so what steps they might recommend. Richard then speaks to his partner, Marian, who also is not an expert on cryptocurrency but has some experience advising clients in securities matters.

Marian and Richard discuss the matter and agree that they can represent FonzCo for the limited purposes of (a) researching the securities laws and their application to cryptocurrency and (b) recommending potential ICO transaction structures to FonzCo if any appear feasible. But Marian says she is concerned about recent press reports about cryptocurrency’s connection with international criminal enterprises and Russian-sponsored election interference. Richard recalls that Arthur was a bit of an unruly high-schooler, but does not think he is the type to be an international racketeer. Even so, the two of them agree that it makes sense to consult with their partner, Ralph, who is a litigator and the firm’s de-facto general counsel.

Richard and Marian explain the matter to Ralph and ask his advice. What should Ralph advise?

**Step Two:**

Richard, Marian and Ralph conclude that the firm can represent FonzCo in providing the preliminary research and advice that Marian contemplated, provided FonzCo is willing to advance a retainer of $20,000. Richard informs Arthur, who is pleased and says he would like to retain the firm immediately -- if he can figure out how to pay the retainer. Arthur has sunk his entire savings into developing Fonz-Coin, and even had to sell his beloved motorcycle. He offers to pay the retainer in the form of an interest in any ICO of Fonz-Coin. Richard says that is unlikely to fly with his colleagues. Arthur then reveals that he is holding a quantity of Bitcoin (which he had used as a model to develop Fonz-Coin) in an amount that is currently valued at over $20,000, and asks whether Richard would accept that as payment.

Richard consults with Marian and Ralph. What should be their answer? If they decide to accept the Bitcoin, what additional steps if any should they take?