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SEC and CFTC Release Interpretation on Application of Federal Securities Laws to Crypto Assets

On March 17, 2026, the SEC and CFTC issued a joint interpretation[1] clarifying how the federal securities laws apply to certain crypto assets and transactions (the "Interpretation"). The Interpretation does not supersede or replace existing law, but explains the SEC's views on how the law, specifically the *Howey* test for determining whether an asset or transaction is a security, applies to these assets and transactions.

The Interpretation classifies crypto assets into five categories based on their characteristics, uses and functions: (i) digital commodities; (ii) digital collectibles; (iii) digital tools; (iv) stablecoins; and (v) digital securities. It clarifies that digital commodities, digital collectibles, digital tools, and certain stablecoins are not themselves securities, but notes that those assets may be offered and sold subject to an investment contract, which itself is a security. Finally, the Interpretation explains that certain crypto asset activities, including "protocol mining" and "protocol staking," "wrapping" of assets, and "airdrops" disseminating non-security crypto assets, are not subject to the federal securities laws. The Interpretation also states that the CFTC will administer the Commodity Exchange Act consistent with the Interpretation and that certain non-security crypto assets could meet the definition of "commodity" under the Commodity Exchange Act.

Key Takeaways

- **Most forms of crypto assets and activities are not securities**. The Interpretation reflects the SEC's view that "most crypto assets are not themselves securities."[2] The SEC classifies each type of asset into five categories by assessing how the assets derive their value and whether a purchaser would reasonably expect profits from essential managerial efforts. This "token taxonomy" reflects the SEC's perspective that four of the five categories of crypto assets are not securities. Moreover, even if a non-security crypto asset is offered or sold subject to an investment contract, which is a security, the underlying crypto asset itself does not become a security.

- **Securities remain securities regardless of format or label.** A "tokenized" security, or security that is represented by a crypto asset, does not cease to be a security just because it is offered, sold, and/or represented on the blockchain. In other words, a financial instrument that meets the traditional definition of a security is a security—whether it is represented by a paper certificate, digital token, or otherwise does not affect this analysis.

[1] Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, 91 Fed. Reg. 13714-733 (Mar. 23, 2026) (to be codified at 17 C.F.R. pts. 1, 231, 241).

[2] U.S. Sec. & Exch. Comm'n, Press Release 2026-30, *SEC Clarifies the Application of Federal Securities Laws to Crypto Assets* (Mar. 17, 2026).

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- **Investment contracts may terminate**. When a non-security crypto asset is offered or sold subject to an investment contract under the *Howey* test, those transactions are subject to federal securities laws. However, the investment contract comes to an end when the representations or promises forming the investment contract are fulfilled, or there is no longer a reasonable expectation that they can or will be fulfilled, at which point subsequent transactions in the underlying non-security crypto asset are not securities transactions.

Classification of Crypto Assets

The SEC defines five categories of crypto assets—a "token taxonomy"—and explains that, for four of the five categories, the relevant assets are generally not securities and thus not subject to federal securities laws because they do not "have the economic characteristics of a security."

- **Digital Commodities**: The SEC defines a digital commodity as "a crypto asset that is intrinsically linked to and derives its value from the programmatic operation of a crypto system that is 'functional,' as well as supply and demand dynamics, rather than from the expectation of profits from the essential managerial efforts from others." These assets or tokens may be used to participate in or interact with features of the associated crypto system. Examples include frequently traded tokens such as Bitcoin, Ether, and Solana. Under the Interpretation, digital commodities are **not securities** because the underlying functional crypto system "does not have a central party that oversees participation or distributes rewards to users" and thus "a purchaser would not reasonably expect to profit based on the essential managerial efforts of others." The Interpretation also clarifies that the term "commodity" in the Interpretation is used in an economic and commercial sense, rather than articulating a legal position on the status of all digital commodities under the Commodity Exchange Act. It does, however, leave open the possibility that certain digital commodities could meet the definition of "commodity" set forth in the Act.

- **Digital Collectibles**: Crypto assets that are "designed to be collected and/or used and may represent or convey rights to artwork, music, videos, trading cards, in-game items, or digital representations or references to internet memes, characters, current events, or trends, among other things." The Interpretation provides that digital collectibles are **not securities** because their value is based on supply and demand factors such as their "subject matter, popularity, or scarcity, as is the case with physical collectibles," rather than a purchaser's "expectation of profits from any essential managerial efforts of" the creator of the collectible.

- **Digital Tools**: Crypto assets that "perform[] a practical function, such as a membership, ticket, credential, title instrument, or identity badge." They are often non-transferrable, and their value is derived from "practical functionality" in connection with an associated crypto system, rather than an expectation of profits from the managerial efforts of the developers; thus, digital tools are **not securities**.

- **Stablecoins**: Crypto assets that are "designed to maintain a stable value relative to a reference asset like the U.S. dollar." The Interpretation refers to the GENIUS Act, enacted by Congress in July 2025, which excludes any "payment stablecoin issued by a permitted payment stablecoin issuer," as those terms are defined in the GENIUS Act, from the definition of "security." Further, in accordance with the April 4, 2025 SEC Staff Statement on Stablecoins,[3] "Covered Stablecoins" (stablecoins that are "designed and marketed for use as a means of making payments, transmitting money, or storing value") are **not securities**. However, certain stablecoins that are not "payment stablecoins" or "Covered Stablecoins" may be digital securities subject to federal securities law, if they otherwise meet the definition of a security based on the particular facts and circumstances.

- **Digital Securities**: Also known as a "tokenized" security, a digital security is a "financial instrument enumerated in the definition 'security' that is formatted as or represented by a crypto asset." Digital securities may be tokenized by or on behalf of the issuers of such securities, or by unaffiliated third parties. The SEC notes that "[a] security is a security regardless of whether it is issued, or otherwise represented, offchain or onchain," and thus digital or tokenized securities are **securities**.

Non-Security Crypto Assets Offered or Sold Subject to an Investment Contract

Although most forms of crypto assets are not themselves securities under the SEC's token taxonomy, the Interpretation explains that a "non-security crypto asset" may nonetheless become "subject to an investment contract when an issuer offers it

[3] U.S. Sec. & Exch. Comm'n, Division of Corporation Finance, *Staff Statement on Stablecoins* (Apr. 4, 2025).

by inducing an investment of money in a common enterprise with representations or promises to undertake essential managerial efforts from which a purchaser would reasonably expect to derive profits." It further provides that "[w]hether it would be reasonable for a purchaser to expect profits based on representations or promises to engage in essential managerial efforts depends on the specific facts and circumstances, taken as a whole, under which those representations and promises are made." This includes factors such as the source of the representations or promises, the timing, and the manner in which they are made. Any representations or promises are also "more likely to create reasonable expectations of profit when they are explicit and unambiguous as to the essential managerial efforts to be undertaken by the issuer, contain sufficient details demonstrating the issuer's ability to implement the proposed project, and explain how the issuer's efforts will produce the profits that purchasers reasonably expect." When such representations or promises lead to the investment of money in a common enterprise (i.e., investors purchase the underlying crypto asset), they create an investment contract subject to federal securities laws under the *Howey* test.

However, the Interpretation emphasizes that just because a non-security crypto asset is subject to an investment contract, the asset itself does not transform into a security. Rather, the underlying crypto asset will only remain subject to the investment contract so long as purchasers "continue to reasonably expect the issuer's representations or promises to engage in essential managerial efforts to remain connected to the non-security crypto asset." If not, the non-security crypto asset will separate from the representations or promises, and cease to be subject to the investment contract. The SEC provides two "indicia of separation" suggesting that subsequent transactions in the crypto asset will no longer be subject to federal securities laws: (1) when "the issuer has fulfilled the essential managerial efforts it represented or promised it would undertake" or (2) when the issuer fails to satisfy its representations or promises. An issuer's failure to satisfy its representations or promises might occur when, for example, a sufficiently long period of time has passed since the offer and sale with no indication that the issuer still intends to conduct essential managerial efforts or when the issuer publicly announces that it will no longer perform the efforts it promised to undertake.

Application of Federal Securities Laws to Certain Crypto Asset Activities

The Interpretation also describes the status of crypto asset activities, including protocol mining, protocol staking, wrapping, and dissemination of non-security crypto assets via airdrops, under the federal securities laws. The analysis relies on the application of the *Howey* test to each activity to determine that each activity described is generally not subject to federal securities laws.

- **Protocol Mining**: Protocol mining activities, in which a miner contributes its own computational resources to earn rewards (in the form of newly generated digital commodities) in accordance with a network software protocol, are **not subject to federal securities laws**, whether self (or solo) mining or combining resources into a mining pool. The expectation of a reward is based on the miner's own efforts (or miners' pooled efforts) and the network software protocol, rather than essential managerial efforts.

- **Protocol Staking**: Protocol staking activities, in which network participants stake or lock up digital commodities to provide validation services for the underlying network in exchange for rewards, are **not subject to federal securities laws**. This is so even where network service providers offer "ancillary services" as described in the Interpretation because such services are "administrative or ministerial in nature," not essential managerial efforts.

- **Wrapping**: The wrapping of crypto assets refers to the process through which a provider holds a deposited crypto asset and in return generates a "wrapped token" redeemable on a one-for-one basis with the deposited crypto asset. These redeemable wrapped tokens are receipts for the deposited crypto asset. When the deposited crypto asset is a non-security and not subject to an investment contract, the wrapped token is also **not a security**. However, if the deposited crypto asset is a digital security or a non-security that is subject to an investment contract, the wrapped token is a **receipt for a security**, and therefore subject to federal securities laws.

- **Airdrops**: When issuers disseminate non-security crypto assets via airdrops for no or nominal consideration in exchange, there is no "investment of money" and thus such airdrops are **not subject to federal securities laws**.

Practical Implications

SEC Chairman Atkins previewed the token taxonomy and investment contract analysis in November of last year, and the Interpretation issued by the SEC is largely consistent with his earlier comments.[4] While the Interpretation does not change existing, binding precedent such as *Howey*, it reflects the SEC's view that most crypto assets are not themselves securities under that analysis. In his March 17, 2026 speech at the D.C. Blockchain Summit, Chairman Atkins reinforced that view, noting that under the Interpretation, only "traditional securities that are tokenized" remain subject to federal securities laws.[5] He also remarked that "a key tenet of our interpretation is that the project team clearly discloses the representations or promises that they make, so investors understand the bundle of rights they are purchasing." A few days later at SEC Speaks, Chairman Atkins framed the Interpretation as part of the SEC's broader efforts to clarify the regulatory regime to streamline oversight and unlock innovation. He also said that the Interpretation "amounts to a beginning, not an end" of these efforts.[6]

Crypto asset issuers and developers should take note of the emphasis on explicit, unambiguous, and detailed public disclosures at the time an asset is offered, sold, or issued, at the time any prior representations or promises are fulfilled, or when circumstances change that would render any prior representations or promises no longer applicable. In particular, the Interpretation suggests that the SEC's view is that where there are no explicit representations or promises made by or on behalf of an issuer in connection with the offer, sale, or issuance of a crypto asset, no investment contract is formed. However, courts addressing this question have taken a more expansive view of when an investment contract is formed, suggesting that there need not be any particular explicit promise by the issuer. Thus, although the Interpretation clarifies the SEC's view of when crypto assets are securities, we will continue to monitor how courts address this issue moving forward.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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[4] Paul S. Atkins, Chairman, *The Securities and Exchange Commission's Approach to Digital Assets: Inside "Project Crypto"* (Nov. 12, 2025).

[5] Paul S. Atkins, Chairman, *Regulation Crypto Assets: A Token Safe Harbor* (Mar. 17, 2026).

[6] Paul S. Atkins, Chairman, *Prepared Remarks Before SEC Speaks* (Mar. 19, 2026).