

# SEC's Crypto Framework: The New Token Taxonomy

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# SEC's Crypto Framework: The New Token Taxonomy

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## Key Takeaways

- ▼ The SEC issued a formal interpretation of the definition of “security” as applied to certain types of crypto assets and activities involving crypto assets. The CFTC joined the interpretation to provide complementary guidance under the Commodity Exchange Act.<sup>1</sup> This interpretation supersedes the 2019 “Framework for ‘Investment Contract’ Analysis of Digital Assets” previously issued by the staff of the SEC’s Strategic Hub for Innovation and Financial Technology (staff of the SEC, the “Staff”).
- ▼ The Interpretive Release classifies crypto assets into five categories: (i) Digital Commodities (not securities); (ii) Digital Collectibles (not securities); (iii) Digital Tools (not securities); (iv) Stablecoins (GENIUS Act payment stablecoins and certain “covered stablecoins” not securities); and (v) Digital Securities / tokenized securities (securities), while noting that even a non-security crypto asset may be offered as part of an investment contract and thus be subject to the federal securities laws.<sup>2</sup> Conversely, the Interpretive Release also provides guidance on when the investment contract analysis would be considered to be separated from the non-security crypto asset.
- ▼ The Interpretive Release provides guidance on the circumstances under which protocol mining, protocol staking and the wrapping of a non-security crypto asset do not involve the offer and sale of a security and certain airdrops do not involve an “investment of money” under the *Howey* test.
- ▼ The SEC is likely to follow up on the Interpretive Release by issuing a “safe harbor” for issuers of crypto assets that are offered as part of an investment contract.

## Summary

The SEC issued a formal interpretation (the “Interpretive Release” or the “Release”) of the definition of “security” as applied to certain types of crypto assets and activities involving crypto assets, with the aim of providing greater clarity regarding the application of the federal securities laws to such assets and activities. The CFTC joined the Interpretive Release, signaling growing cooperation between the two agencies on crypto matters. The CFTC stated that the CFTC and its

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<sup>1</sup> See [Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets](#), 91 Fed. Reg. 13714 (Mar. 23, 2026).

<sup>2</sup> See [Fact Sheet: Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets](#) (“Fact Sheet”).

staff will administer the Commodity Exchange Act in a manner consistent with the Interpretive Release and indicated that certain non-security crypto assets could meet the definition of “commodity” under the Commodity Exchange Act.<sup>3</sup>

In 2019, nearly seven years prior to its release of the Interpretation, the Staff of the SEC’s Strategic Hub for Innovation and Financial Technology (“[FinHub](#),” as it then was called) issued a “Framework for ‘Investment Contract’ Analysis of Digital Assets”<sup>4</sup> (the “[Framework](#)”), which sought to provide factors for analyzing whether a crypto asset was a security. Although many crypto firms sought to use the Framework, it was criticized as being overly complex, ambiguous and difficult to apply in practice. Many market participants therefore likely will welcome the SEC’s statement that the Framework now stands superseded by the Interpretive Release. The Interpretive Release is also likely a response to criticisms that the SEC, under the prior Administration, had been overly reliant on litigation and adversarial actions to regulate crypto – an approach often characterized as “regulating by enforcement.”<sup>5</sup>

Notably, while the Interpretive Release supersedes the Framework, it does not supersede the *Howey* test for assessing whether a transaction or scheme is an investment contract (and therefore a security).<sup>6</sup> The *Howey* test was first set forth in a Supreme Court decision and remains binding legal precedent. The *Howey* test as formulated by the SEC in the Release defines an investment contract as a contract, transaction or scheme involving (1) an investment of money, (2) in a common enterprise, (3) with an expectation of profits derived from the efforts of others. The Release sets forth the SEC’s views on how certain aspects of the *Howey* test apply to crypto assets and transactions involving crypto assets.

Several sections of the Interpretive Release echo views that have already been publicly expressed by the Staff, and the general direction of the Interpretive Release is likely to be consistent with the current perspectives and practices of many participants in the crypto industry. With that said, certain areas of ambiguity remain, and the SEC is soliciting public comment on the views expressed in the Interpretive Release to inform its ongoing consideration of the topics addressed therein.

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<sup>3</sup> See 91 Fed. Reg. at 1316.

<sup>4</sup> *Framework for “Investment Contract” Analysis of Digital Assets* (April 3, 2019) available at [https://www.sec.gov/about/divisions-offices/division-corporation-finance/framework-investment-contract-analysis-digital-assets#\\_edn1](https://www.sec.gov/about/divisions-offices/division-corporation-finance/framework-investment-contract-analysis-digital-assets#_edn1).

<sup>5</sup> See, e.g., Commissioner Hester M. Peirce, *Outdated: Remarks before the Digital Assets at Duke Conference* (Jan. 20, 2023), available at [https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-duke-conference-012023#\\_ftn35](https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-duke-conference-012023#_ftn35); Commissioner Mark T. Uyeda, *Remarks at the “SEC Speaks” Conference 2022*, available at <https://www.sec.gov/newsroom/speeches-statements/uyeda-speech-sec-speaks-090922>; Commissioner Mark T. Uyeda, *Remarks at the “SEC Speaks” Conference 2025*, available at <https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-sec-speaks-051925>.

<sup>6</sup> In *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) (“*Howey*”).

In this *OnPoint*, we summarize:

- (1) the taxonomy discussed in the Interpretive Release for crypto assets;
- (2) the SEC’s view on *Howey*’s application to crypto assets; and
- (3) the Interpretive Release’s analysis of common activities involving crypto assets such as mining, staking, wrapping and airdrops.

## Discussion

### I. Token Taxonomy: Five Categories of Crypto Assets

According to the SEC, crypto assets can represent virtually any type of security, good, service, right or interest in digital format, and they vary widely in their characteristics, uses and functions. The Interpretive Release classifies crypto assets into five categories:<sup>7</sup>

- (i) **Digital Commodities (Not Securities).** Digital commodities are crypto assets whose value is derived from the programmatic operation of a “functional”<sup>8</sup> crypto system and from supply and demand dynamics and which do not have intrinsic economic properties or rights, such as yield or rights to future income or profits of a business enterprise.<sup>9</sup> The SEC provides a non-exhaustive list of examples in the Interpretive Release, many of which are among the largest crypto assets by market capitalization – Aptos (APT); Avalanche (AVAX); Bitcoin (BTC); Bitcoin Cash (BCH); Cardano (ADA); Chainlink (LINK); Dogecoin (DOGE); Ether (ETH); Hedera (HBAR); Litecoin (LTC); Polkadot (DOT); Shiba Inu (SHIB); Solana (SOL); Stellar (XLM); Tezos (XTZ); and XRP (XRP).<sup>10</sup> The Interpretive Release states

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<sup>7</sup> Note that these five categories are effectively identical to categories identified by SEC Chair Atkins in a speech in November 2025. See Paul S. Atkins, *The SEC’s Approach to Digital Assets: Inside “Project Crypto”* (Nov. 12, 2025), available at <https://www.sec.gov/newsroom/speeches-statements/atkins-111225-secs-approach-digital-assets-inside-project-crypto>.

<sup>8</sup> A crypto system is “functional” where its native crypto asset is capable of being used on the system in accordance with the system’s programmatic utility. A “native” crypto asset is one generated for use on a particular crypto system. See 91 Fed. Reg. at 13718 n.49.

<sup>9</sup> There is some ambiguity regarding whether a digital commodity must be part of a “decentralized” crypto system. In one footnote, the Interpretive Release notes that a digital commodity *may* be native to a decentralized crypto system. However, in the text the SEC states that “[a] functional crypto system does not have a central party that oversees participation or distributes rewards to users.” On balance, it seems more likely that the SEC sees a digital commodity as a crypto asset that is part of a decentralized crypto system. According to the Interpretive Release, a crypto system is “decentralized” if it functions autonomously and no person or entity exercises operational, economic or voting control over it. See 91 Fed. Reg. at 13718 n.50.

<sup>10</sup> In footnote 51 of the Interpretive Release, the SEC explained that each digital commodity referenced in the Interpretive Release underlies a futures contract available for trading on a designated contract market subject to CFTC oversight. However, underlying such a futures contract is not a prerequisite for digital commodity status; it merely explains the selection of these examples. For instance, as of the date of the Interpretive Release, Algorand (ALGO) and LBRY Credits (LBC) – neither of which underlies such a futures contract – qualify

that because a digital commodity does not have the economic characteristics of a security, it is not itself a security. More specifically, the SEC states that the value of a digital commodity is intrinsically linked to the programmatic functioning of a “functional crypto system,” (*i.e.*, it has intrinsic value derived from the value of the goods and services that may be produced or accessed using that digital asset (which the digital asset facilitates and incentivizes), as well as from “supply and demand dynamics”). Thus, a purchaser would not reasonably expect to profit based on the essential managerial efforts of others.<sup>11</sup>

- (ii) **Digital Collectibles (Not Securities).** Digital collectibles are crypto assets 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 (*i.e.*, “meme coins”), characters, current events or trends, among other things.<sup>12</sup> Like its physical counterpart, a digital collectible derives its value from supply and demand, subject matter, popularity or scarcity – not from the expectation of profits based on the essential managerial efforts of its creator. While the value of a digital collectible may be impacted directly or indirectly by the activities or reputation of the creator, the creator of a digital collectible typically does not make representations or promises to undertake essential managerial efforts from which a purchaser would reasonably expect to derive profits. The Interpretive Release concludes that digital collectibles do not have the economic characteristics of a security and are therefore not securities.<sup>13</sup>
- (iii) **Digital Tools (Not Securities).** Digital tools are crypto assets that serve a practical function, such as memberships, tickets, credentials, title instruments or identity badges.<sup>14</sup> Holders acquire digital tools for their functional utility and do not obtain any rights or interests in, or with respect to, any business enterprise or other entity. Like digital commodities and digital collectibles, digital tools do not have the economic characteristics of a security and are therefore not considered to be securities by the Interpretive Release.

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as digital commodities because their value is intrinsically derived from the programmatic operation of a functional crypto system and from supply and demand dynamics, rather than from the expectation of profits attributable to the essential managerial efforts of others. See 91 Fed. Reg. at 13718 n.51.

<sup>11</sup> See 91 Fed. Reg. at 1378.

<sup>12</sup> See 91 Fed. Reg. at 13718.

<sup>13</sup> See 91 Fed. Reg. at 13718-13719. Note, however, that the offer and sale of a digital collectible that either is fractionalized or otherwise enables individuals to acquire a fractional ownership interest of a single digital collectible could constitute the offer or sale of a security because it may involve essential managerial efforts from which a purchaser would reasonably expect to derive profits and, therefore, may be offered and sold as an investment contract.

<sup>14</sup> See 91 Fed. Reg. at 13719-13720.

(iv) **Stablecoins (May Not Be Securities).** The GENIUS Act, which creates a federal framework for the regulation of payment stablecoins, expressly excludes any payment stablecoin issued by a “permitted payment stablecoin issuer” from the definition of “security.”<sup>15</sup> A “payment stablecoin” is defined as a digital asset that is, or is designed to be, used as a means of payment or settlement, and the issuer of which generally is obligated to convert, redeem or repurchase the digital asset for a fixed amount of monetary value and represents that it will maintain, or create the reasonable expectation that it will maintain, a stable value relative to a fixed amount of monetary value.<sup>16</sup> Once the GENIUS Act takes effect<sup>17</sup>, payment stablecoins that comply with the Act will not be securities by operation of statute.<sup>18</sup>

Prior to the enactment of the GENIUS Act, the Staff of the SEC’s Division of Corporation Finance issued a statement addressing the security status of certain stablecoins – referred to therein as “Covered Stablecoins.” Covered Stablecoins were defined by the Staff to refer to those stablecoins that (1) are designed to maintain a stable value relative to the United States Dollar, or “USD,” on a one-for-one basis, (2) can be redeemed for USD on a one-for-one basis (*i.e.*, one stablecoin to one USD), and (3) are backed by assets held in a reserve that are considered low-risk and readily liquid with a USD-value that meets or exceeds the redemption value of the stablecoins in circulation. The Staff’s statement concluded that such Covered Stablecoins were not securities.<sup>19</sup>

In the Interpretive Release, the SEC affirmed that the staff statement reflected the Commission’s views on the non-security status of “Covered Stablecoins.” Accordingly, Stablecoins that do not qualify as GENIUS Act-compliant payment stablecoins issued by a permitted payment stablecoin issuer and that are not “Covered Stablecoins” as defined by the Staff’s statement may constitute securities, depending on the facts and circumstances.<sup>20</sup>

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<sup>15</sup> See 91 Fed. Reg. at 13720.

<sup>16</sup> For additional background, see [Implementing GENIUS: OCC Proposes Rules for Payment Stablecoin Issuers](#), *Dechert OnPoint* (March 2026) and [The GENIUS Act for Asset Managers: What to Know](#), *Dechert OnPoint* (Aug. 2025).

<sup>17</sup> The effective date of the GENIUS Act is the earlier of January 18, 2027, or the date that is 120 days after the date on which the federal banking regulators issue implementing regulations.

<sup>18</sup> Payment stablecoins issued by a “foreign permitted stablecoin issuer” (as defined in the GENIUS Act) registered with the Comptroller of the Currency will generally qualify as “Covered Stablecoins” and therefore will not constitute “securities,” notwithstanding their omission from the statutory exclusion in section 17 of the GENIUS Act. See 91 Fed. Reg. at 13720 n.81; See also section 18 of the GENIUS Act; Staff Stablecoin Statement.

<sup>19</sup> For additional background, see [SEC Staff Issues Statement on Stablecoins](#), *Dechert OnPoint* (April 2025).

<sup>20</sup> See 91 Fed. Reg. at 13720.

- (v) **Digital Securities (Securities).** A digital security (commonly referred to as a “tokenized” security) is a financial instrument that is enumerated in the statutory definition of “security” and is formatted as or represented by a crypto asset, with ownership records maintained in whole or in part on one or more crypto networks.<sup>21</sup> Digital securities may be tokenized either by the issuer of the underlying security or by unaffiliated third parties, and they may be one of two types: (1) digital securities that convey the same legal rights with respect to a business enterprise or other entity, promisor or obligor as their offchain counterparts and (2) digital securities that do not convey equivalent legal rights but instead entitle the holder to receive economic distributions from a central party that manages a business enterprise or other entity, promisor or obligor on behalf of the digital security holders. Purchasers of this latter type invest in the underlying enterprise and depend on the central party to generate such distributions. Digital securities may also provide non-financial benefits to holders, similar to those associated with a digital commodity, digital collectible or digital tool. However, the provision of such non-financial benefits does not remove a digital security from the definition of “security.” In the SEC’s formulation, a security is a security, regardless of whether it is issued or represented onchain or offchain or the ancillary benefits the security may convey.<sup>22</sup>

## II. How a Crypto Asset Becomes – and Ceases to Be – Part of an Investment Contract

The SEC’s taxonomy of crypto assets establishes several types of assets that are non-securities, such as digital commodities, digital collectibles and digital tools. However, even such a non-security crypto asset may become subject to an investment contract<sup>23</sup> when an issuer offers it under circumstances in which (1) a purchaser makes an investment of money, (2) in a common enterprise, (3) with representations or promises to undertake essential managerial efforts from which a purchaser would reasonably expect to derive profits.<sup>24</sup> Whether this definition is met is a facts-and-circumstances determination, and the Release elaborates on this point by providing guidance on the nature of the representations or promises necessary to establish an investment contract.

- (1) **Source of Representations or Promises.** A purchaser’s reasonable expectation of profits must be based on explicit representations or promises made by the issuer or on the

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<sup>21</sup> For additional background, see [SEC Staff Maps Tokenization Models: Tokenized Securities are Still Securities; Models Matter](#), *Dechert OnPoint* (Feb. 2026).

<sup>22</sup> See 91 Fed. Reg. at 13720-13721.

<sup>23</sup> Note that in such a circumstance, it is not the asset itself that becomes a security – rather the asset forms part of a transaction which is itself an investment contract and therefore a security.

<sup>24</sup> The SEC indicated that contracts for the purchase and delivery of a “payment stablecoin issued by a permitted payment stablecoin issuer” (as defined in the GENIUS Act) would generally not constitute investment contracts, provided they do not involve a reasonable expectation of profit derived from the essential managerial efforts of others, regardless of delivery timing. See Interpretive Release, FN 85 at 25.

issuer's<sup>25</sup> behalf. Representations or promises made by unaffiliated third parties may give rise to such expectations only if the third party is authorized by the issuer to make them and they are conveyed to the purchaser.<sup>26</sup>

- (2) **Timing of Representations or Promises.** To shape a purchaser's reasonable expectations, representations or promises must be conveyed to the purchaser before or at the time of the issuer's offer or sale. Representations or promises made after a sale has occurred do not retroactively convert that sale into an offer or sale of an investment contract.<sup>27</sup>
- (3) **Medium of Communication.** Representations or promises conveyed through the issuer's established communication channels – such as agreements, its website, social media accounts, direct private communications between the issuer and purchasers, regulatory filings or whitepapers – may give rise to reasonable expectations of profit. Where representations or promises are made outside such established channels, whether they give rise to reasonable expectations depends on the extent of their dissemination and the issuer's customary communication practices.<sup>28</sup>
- (4) **Level of Detail.** Representations or promises are more likely to give rise to reasonable expectations of profit where they are explicit and unambiguous and are supported by a detailed business plan setting forth, for example, milestones, timelines, funding sources and profit mechanisms. Conversely, vague representations that lack an actionable plan are unlikely to create such expectations.<sup>29</sup>

The Commission further clarified that the existence of an investment contract does not cause the underlying non-security crypto asset itself to become a security. As a result, the asset does not remain subject to the associated investment contract in secondary market transactions where purchasers would not reasonably expect such representations or promises to remain connected to the non-security crypto asset. The non-security crypto asset continues to be subject to the investment contract – and accordingly forms part of a security – only to the extent that purchasers would reasonably expect the issuer's representations or promises to remain associated with the asset.<sup>30</sup>

An investment contract to which a non-security crypto asset is subject terminates (and the asset accordingly ceases to be subject to it) when the issuer either fulfills or fails to satisfy the

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<sup>25</sup> See 91 Fed. Reg. at 13721.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> See 91 Fed. Reg. at 13721-13722.

<sup>30</sup> For additional background, see [In Major Ruling Celebrated by Crypto Industry, Federal Court Holds That XRP Token is “Not Necessarily a Security.”](#) *Dechert OnPoint* (July 2023).

representations or promises underlying the contract.<sup>31</sup> An issuer that fails to perform or otherwise completes the essential managerial efforts it represented or promised it would undertake nevertheless may be subject to liability under the federal securities laws, including the anti-fraud provisions.<sup>32</sup>

### III. Security Status of Certain Crypto Asset Activities

In addition to its taxonomy of crypto assets and its discussion of the application of *Howey* to such assets, the Interpretive Release also clarifies the status of certain common crypto asset-related activities – namely, staking, mining, wrapping and airdrops. The Release’s position on these activities is largely consistent with prior statements by the Staff on these subjects and should therefore cause no surprises in the crypto industry. The Release concludes that these activities generally do not constitute or create securities, subject to certain well-defined exceptions. We review these in more detail below.

#### *Protocol Mining*

The Interpretive Release addresses two forms of protocol mining activity. The first is self (or “Solo”) mining, in which a miner uses its own computational resources to operate a node and mine digital commodities on a public, permissionless proof-of-work (“PoW”) network. The second is participation in a mining pool, in which miners combine their computational resources to increase the likelihood of successfully validating transactions, and rewards flow from the PoW Network either directly to the participating miners or through the pool operator.<sup>33 34</sup>

The Release concludes that neither Solo mining nor mining pool participation constitutes an investment contract under the *Howey* test because miners do not have a reasonable expectation of profits derived from the essential managerial efforts of others. Rather, miners earn rewards through their own contribution of computational resources (which the Release states is an administrative or ministerial activity) to secure the network and validate transactions and not through any third party’s essential managerial efforts. In a mining pool, individual miners continue to perform the actual mining by contributing their own computational power. The Release states that the pool operator’s coordination role is administrative or ministerial and does not rise to the

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<sup>31</sup> Whether an issuer has fulfilled its representations or promises regarding essential managerial efforts is measured against the issuer’s own definitions and descriptions of such efforts – not general market conceptions. This applies equally to representations concerning decentralization of an associated crypto system and to representations concerning the functionality of a crypto asset or its associated crypto network. In each case, the relevant benchmark is how the issuer itself defined or described the objective in marketing and promoting the investment contract. See 91 Fed. Reg. at 13722 n.96.

<sup>32</sup> See 91 Fed. Reg. at 13723.

<sup>33</sup> See 91 Fed. Reg. at 13724.

<sup>34</sup> For additional background on protocol mining activities and their status under the securities laws, see [SEC Staff Issues Statement on Proof-of-Work Crypto Mining Activities](#), *Dechert OnPoint* (March 2025).

level of essential managerial efforts upon which miners' profit expectations depend.<sup>35</sup> Accordingly, neither Solo nor mining pool activities typically constitute investment contracts.<sup>36</sup>

### *Protocol Staking*

The Release addresses four forms of protocol staking activity on public, permissionless proof-of-stake (“PoS”) networks, none of which involve the offer and sale of a security under the Securities Act or the Exchange Act:

- (1) self (or solo) staking, in which a node operator stakes its own digital commodities;
- (2) self-custodial staking directly with a third party, in which an owner grants validation rights to a third-party node operator while retaining ownership, control and private keys;
- (3) custodial arrangements, in which a custodian stakes an owner's digital commodities on the owner's behalf as agent; and
- (4) liquid staking, in which a liquid staking provider stakes deposited digital commodities and issues staking receipt tokens on a one-for-one basis evidencing the depositor's ownership and accruing rewards.<sup>37</sup>

The Release concludes that none of the four forms of staking give rise to or constitute an investment contract because staking rewards are earned through the contribution of computational resources to secure the PoS Network and validate new blocks rather than the essential managerial efforts of others. Custodians and liquid staking providers act as agents performing administrative or ministerial coordination functions, and the value of any staking receipt token provided as part of liquid staking is derived from the underlying deposited digital commodity, not from any provider's efforts. Ancillary services (such as slashing coverage, early unbonding, alternate rewards payment schedules and aggregation of digital commodities) provided by Custodians do not rise to the level of essential managerial efforts, and accordingly custodial staking does not create an investment contract.

Note, however, that where a node operator or liquid staking provider guarantees or fixes the amount of rewards owed to customers who deposit assets to be staked, these activities are outside the scope of the Interpretive Release and may involve the offer or sale of securities. If a liquid staking provider selects whether, when or how much of a depositor's digital commodities to

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<sup>35</sup> See 91 Fed. Reg. at 13725.

<sup>36</sup> *Id.*

<sup>37</sup> See 91 Fed. Reg. at 13725-13727.

stake, its activities are outside the scope of the Release and may involve the offer or sale of securities.<sup>3839</sup>

### *Wrapping*

The Interpretive Release concludes that the “wrapping” of a non-security crypto asset not subject to an investment contract does not involve the offer and sale of a security. “Wrapping” is the process by which a person deposits a crypto asset with a Custodian or cross-chain bridge (the “Wrapped Token Provider”) and receives an equivalent amount of “Redeemable Wrapped Tokens” on a one-for-one basis, with no return, yield or profit opportunity. The deposited asset is locked and may not be transferred, lent, pledged, rehypothecated or otherwise used. Holders may redeem a Redeemable Wrapped Token for the underlying asset on a fixed, one-for-one basis, at which point the token is burned. Wrapping serves to facilitate interoperability between different crypto networks and token standards.<sup>40</sup>

A Redeemable Wrapped Token is a receipt which evidences the holder’s ownership of the deposited crypto asset. Accordingly, a Redeemable Wrapped Token that is a receipt for a crypto asset that is (i) not a security and (ii) not subject to an investment contract is not a receipt for a security.

The Interpretive Release goes further and states that the wrapping of a non-security crypto asset and the creation of a corresponding Redeemable Wrapped Token does not create an investment contract for two independent reasons. First, there is no common enterprise: the deposited crypto asset is locked and may not be used by the Wrapped Token Provider for any purpose, and holders’ funds are neither pooled nor deployed to develop any enterprise. Second, holders’ economic benefits are not derived from the essential managerial efforts of others: the value of a Redeemable Wrapped Token derives solely from the underlying deposited crypto asset, and the Release states that the wrapping process (including all activities of the Wrapped Token Provider) is administrative or ministerial in nature. Moreover, the wrapping process generates no financial incentive, as redemption occurs only on a fixed, one-for-one basis.<sup>41</sup>

Note, however, that the analysis relates specifically to the wrapping of a non-security crypto asset. A Redeemable Wrapped Token that is a receipt for a tokenized security or non-security crypto asset that is subject to an investment contract is a security and will be regulated as such.

### *Airdrops*

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<sup>38</sup> See 91 Fed. Reg. at 13727-13728.

<sup>39</sup> For additional background, see [SEC Staff Issues Statement on Protocol Staking Activities](#), *Dechert OnPoint* (June 2025).

<sup>40</sup> See 91 Fed. Reg. at 13729-13730.

<sup>41</sup> See 91 Fed. Reg. at 13730.

Certain crypto asset disseminations for nominal or no consideration (known as “airdrops”) do not constitute investment contracts because recipients provide no money, goods, services or other consideration to the issuer. Accordingly, there is no “investment of money” for the purposes of the *Howey* test.<sup>42</sup>

The Interpretive Release covers three scenarios in which recipients provide no consideration and therefore do not require registration or an available exemption:

- (1) unannounced airdrops to holders of another specified crypto asset;
- (2) post-launch airdrops rewarding prior use of a testing environment, without further conditions; and
- (3) unannounced airdrops to users of a related software application based on prior usage criteria.<sup>43</sup>

Airdrops where the recipient receives the airdrop for performing a service (such as following the issuer on social media, reposting content or making referrals<sup>44</sup>) are not covered by the analysis above, and may, depending upon facts and circumstances, constitute investment contracts. The analysis does, however, apply to airdrops of non-security crypto assets in which recipients have provided to the issuer valuable consideration but not in exchange for the airdropped non-security crypto assets. In other words, no investment contract exists where the recipient does not bargain for or choose to provide such consideration in exchange for the airdropped non-security crypto asset.<sup>45</sup>

## Practical Implications

Unlike the now-superseded Framework released by the SEC in 2019, the Interpretive Release focuses on common crypto asset types and activities and analyzes them primarily in terms of the *Howey* framework. The Interpretive Release is therefore likely to be welcomed by market participants for providing specific, practical and unambiguous guidance likely to be useful to developers, investors and their attorneys. The Release also is entirely consistent with and builds on earlier statements issued by the Staff since the beginning of this new Administration, reflecting what many will view as welcome continuity. Last, but certainly not least, the Release and its

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<sup>42</sup> See 91 Fed. Reg. at 13731 n.144.

<sup>43</sup> See 91 Fed. Reg. at 13731.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* For example, where such consideration was provided to the issuer prior to the announcement of the airdrop and the recipients are not required to provide any further consideration to the issuer after such announcement to obtain the airdropped non-security crypto asset, the Release would not view such consideration as being provided to the issuer in exchange for the airdropped non-security crypto asset.

proposed taxonomy are likely to be compatible with the market practices of crypto asset exchanges, investors and developers, making it less likely to face resistance from the industry.

Notwithstanding these benefits, the Release has its limitations. The *Howey* analysis is inherently driven by facts and circumstances, and market participants and their lawyers will undoubtedly continue to confront hard cases and struggle to determine precisely where to place certain crypto assets in terms of the Release's taxonomy. In particular, the Release's apparent identification of digital commodities as assets that form part of a decentralized network will likely continue the debate on precisely when it is that a network could be said to be decentralized. Legislative efforts such as the Financial Innovation and Technology for the 21<sup>st</sup> Century Act (FIT21) and the Digital Asset Market Clarity Act have each sought to set parameters for decentralization. Absent comprehensive crypto market structure legislation, however, the debate around decentralization looks set to continue.

The Release also marks the SEC's acknowledgement of a reversal of its position on secondary trading. Since its loss in the Southern District of New York in *SEC v. Ripple*, the SEC had not specifically spoken to the question of whether purchasers of an asset in on-exchange transactions or other secondary transactions purchase the asset based on the representations of the issuer. The Release does not state that secondary transactions in non-security crypto assets are not investment contracts. However, it does state that even where the initial issuance of the asset involves an investment contract, secondary transactions need not be investment contracts if the issuer's representations do not attach to such transactions. This concession will be significant reassurance to crypto trading platforms, market makers and other secondary market participants. Perhaps most importantly, it draws the clear distinction between the crypto asset itself and the transaction in which it was offered – a line sometimes blurred in SEC enforcement actions under the prior administration.

Relatedly, the Interpretive Release also does not settle the regulatory status of crypto assets issued in coin offerings where the network is not yet decentralized, and when the initial developer team or initial investors hold a significant number of tokens and exert commensurate influence or power over the network. Questions about the regulatory status of such tokens will remain and will continue to be part of the risk evaluation for venture capital firms and other early-stage investors in token projects. Concerns will also remain regarding representations that may have been provided by members of the development team regarding a token, or the specifics of each transaction in which such tokens were sold. There are thousands of tokens in existence today, many of which are actively traded on centralized and decentralized venues as well as on a peer-to-peer basis. Evaluating individual transactions for a multitude of crypto assets will likely prove impossible in practice.

In this context, SEC Chair Atkins's announcement of the SEC's intention to create a safe harbor for token offerings as part of Project Crypto is extremely significant. If this safe harbor becomes a reality that would undoubtedly address many of the residual concerns regarding whether specific tokens were issued or formed part of an investment contract at some point and would contribute further to the regulatory certainty that the Release seeks to provide. More specifically, in a speech

published on the same day as the Release,<sup>46</sup> Chair Atkins outlined three key elements of this safe harbor proposal:

- ▶ **Startup Exemption:** This would be a time-limited registration exemption for offerings of investment contracts involving certain crypto assets and would provide developers with a regulatory runway during which to reach maturity. The exemption would be non-exclusive, so that all other exemptions to raise capital under the federal securities laws could remain available. The exemption would allow issuers to raise up to a defined amount with notices to the Commission when relying on the exemption and when exiting. Compliant issuers would publicly provide principles-based disclosures about the investment contract and the underlying crypto asset, similar to the white paper for a tokenization project.
- ▶ **Fundraising Exemption:** This would be a new offering exemption for investment contracts involving certain crypto assets. Entrepreneurs could raise up to a defined amount during any 12-month period while being able to rely on other exemptions from registration under the federal securities laws. Issuers relying on the exemption could file disclosures with the Commission including (1) the same principles-based disclosure, as in the “startup exemption”; (2) a discussion of the issuer’s financial condition; and (3) the issuer’s financial statements.
- ▶ **Investment Contract Safe Harbor:** This safe harbor would apply once the issuer has completed or otherwise permanently ceased all essential managerial efforts that the issuer represented that it would engage in under the investment contract. The safe harbor is intended to provide a rule-based standard with greater certainty about when a crypto asset is not subject to the federal securities laws. The safe harbor will likely align with the principles articulated in the Interpretive Release.

Beyond the specifics of the Interpretive Release and Chair Atkins’ proposed safe harbor, market participants are also likely to approve of the CFTC’s involvement in the Interpretive Release and its commitment to administer the Commodity Exchange Act in accordance with the Release. The two agencies have not always seen eye to eye on crypto matters, but the recent announcement by CFTC Chair Selig and SEC Chair Atkins confirming their intent to work together on crypto regulatory matters<sup>47</sup> will reassure crypto market participants that jurisdictional battles over asset status are less likely in the near future.

Nonetheless, the specter of the efforts by the Gensler SEC to apply the *Howey* test more broadly to crypto assets remains. The Gensler SEC litigated and won a number of enforcement actions that resulted in federal district court opinions that to a significant degree echo the Gensler SEC’s views, and the opinions in these cases remain persuasive authority for courts that choose to follow

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<sup>46</sup> Paul S. Atkins, *Regulation Crypto Assets: A Token Safe Harbor* (March 17, 2026), available at <https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-regulation-crypto-assets-031726>.

<sup>47</sup> Remarks of Chairman Michael S. Selig at CFTC-SEC Event on Harmonization, *The Next Phase of Project Crypto: Unleashing Innovation for the New Frontier of Finance* (Jan. 29, 2026).

them.<sup>48</sup> The Interpretive Release should, of course, be understood in part as an effort to create an alternative and better-grounded source of authority on crypto assets' security status, as well as a clear signal that Chair Atkins' SEC will not bring enforcement actions on these broader theories. For example, the Release in several places indicates that a digital asset's value's varying with "supply and demand dynamics" is not a ground for finding that purchasers are relying on the managerial efforts of others. This position appears to be a direct repudiation of the theory asserted by the Gensler SEC that statements by protocol founders about their efforts to help increase the value of a digital asset represented just such reliance on their managerial efforts. However, in a post-*Chevron* world, courts are no longer bound to defer to the SEC's interpretation.<sup>49</sup> Thus, the Release cannot provide the same degree of clarity that legislation would, as Chair Atkins himself has acknowledged.<sup>50</sup>

Finally, we would note that the Release represents yet another opportunity to engage with an SEC that has proved to be both very favorable towards crypto and welcoming of industry participation. Comments may be submitted by any of the following methods referencing File Number S7-2026-09: (1) using the SEC's internet comment form at <https://www.sec.gov/comments/s7-2026-09/application-federal-securities-laws-certain-types-crypto-assets-certain-transactions-involving>; (2) sending an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov); or (3) sending paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

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<sup>48</sup> See *SEC v. Terraform Labs Pte. Ltd.*, 708 F. Supp. 3d 450 (S.D.N.Y. 2023); *SEC v. Ripple Labs, Inc.*, 682 F. Supp. 3d 308 (S.D.N.Y. 2023); *SEC v. LBRY, Inc.*, 639 F. Supp. 3d 211 (D.N.H. 2022); *SEC v. Kik Interactive Inc.*, 492 F. Supp. 3d 169 (S.D.N.Y. 2020); *SEC v. Telegram Grp. Inc.*, 448 F. Supp. 3d 352 (S.D.N.Y. 2020).

<sup>49</sup> See *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

<sup>50</sup> *Testimony Before the U.S. Senate Committee on Banking, Housing, and Urban Affairs*, Paul S. Atkins, Chairman, U.S. Securities and Exchange Commission (Feb. 12, 2026), <https://www.sec.gov/newsroom/speeches-statements/atkins-testimony-sbhuac-021226>.

# Quick Reference Guide: Crypto Asset & Activity Securities Status

Asset / Activity	Security Status Under <i>Howey</i> <sup>51</sup>
<b>Digital Commodities</b> (e.g., BTC, ETH, SOL, XRP)	Not a security.
<b>Digital Collectibles</b> (e.g., NFTs representing art, music, trading cards, in-game items)	Not a security.  <b>Exception:</b> Fractionalized digital collectibles enabling acquisition of fractional ownership interests may constitute an investment contract.
<b>Digital Tools</b> (e.g., memberships, tickets, credentials, title instruments, identity badges)	Not a security.
<b>Stablecoins</b> (GENIUS Act-compliant payment stablecoins; “Covered Stablecoins”)	<b>GENIUS Act payment stablecoins:</b> Not a security by statute once GENIUS Act takes effect.  <b>Covered Stablecoins (as defined by the Staff):</b> Not a security.  <b>Other stablecoins:</b> May be a security depending on facts and circumstances.
<b>Digital Securities / Tokenized Securities</b>	Security.
<b>Non-Security Crypto Asset offered pursuant to an Investment Contract</b>	The transaction (not the asset itself) constitutes a security.  Investment contract terminates when issuer fulfills or fails to satisfy its representations or promises.

<sup>51</sup> Note that while an asset may not be a security under *Howey*, it may nevertheless be a security under any one of the other enumerated categories if the definition of a “security” under the Securities Act and/or the Exchange Act.

<p><b>Secondary Market Transactions in Non-Security Crypto Assets</b></p>	<p>Generally not a security in secondary market transactions, <u>provided</u> issuer’s representations do not attach to such transactions.</p>
<p><b>Protocol Mining</b>  (Solo Mining &amp; Mining Pool participation)</p>	<p>Not a security (not an investment contract).</p>
<p><b>Protocol Staking</b>  (Solo Staking; Self-Custodial Staking with Third Party; Custodial Staking; Liquid Staking)</p>	<p>Not a security.  <b>Exception:</b> Where a node operator or liquid staking provider guarantees or fixes the amount of rewards, or selects whether, when or how much to stake, those activities may constitute securities.</p>
<p><b>Wrapping of Non-Security Crypto Assets</b>  (Redeemable Wrapped Tokens)</p>	<p>Not a security.  <b>Exception:</b> A Redeemable Wrapped Token that is a receipt for a tokenized security, or a non-security crypto asset subject to an investment contract, is a security.</p>
<p><b>Airdrops</b>  (unannounced; no consideration provided by recipient)</p>	<p>Not a security (no investment of money).  <b>Exception:</b> Airdrops where recipients perform a service in exchange (e.g., social media follows, reposts, referrals) may, depending on facts and circumstances, constitute investment contracts.</p>

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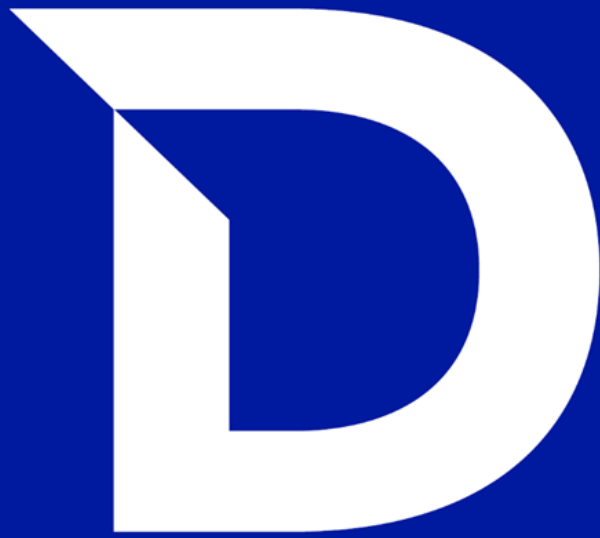


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