U.S. Securities and Exchange Commission

Office of the Advocate for Small Business Capital Formation

Transactions Involving Crypto Assets

The SEC regulates the offer and sale of all securities, including crypto assets if they are securities. The SEC provided interpretive guidance in 2026 on crypto assets under the federal securities laws.

What is a security?

Federal securities laws define "security" broadly. The term covers common instruments—such as stocks, bonds, and notes—as well as instruments of "a more variable character," like investment contracts.

When do non-security crypto assets become subject to the federal securities laws?

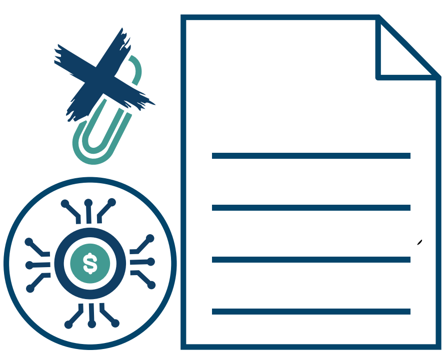
Some crypto assets that are not securities may become subject to the federal securities laws because they are offered and sold subject to an investment contract.

The term "investment contract" is not defined in the federal securities laws. The Supreme Court determined that an investment contract exists when there is:

- ☑ an investment of money
- ☑ in a common enterprise
- ☑ with a reasonable expectation of profits
- ☑ derived from the essential managerial efforts of others

These elements make up what you may hear called the *Howey* test. Non-security crypto assets can become subject to an investment contract if the issuer offers the crypto assets with *representations or promises* of managerial efforts and the other elements of the Howey test are met. If an investment contract exists, the transaction is subject to the federal securities laws.

When do non-security crypto assets separate from the investment contract?



A non-security crypto asset can also separate from the investment contract under which it was sold and no longer be subject to the federal securities laws. This occurs once:

- ☑ the issuer fulfills its promises or
- ☑ it becomes clear that the issuer
  - ☑ abandoned its efforts or
  - ☑ cannot fulfill its promises

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