

Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets



As part of its efforts to provide greater clarity regarding the Commission's treatment of crypto assets under the federal securities laws, the Securities and Exchange Commission issued an interpretation of the definition of "security" as applied to certain types of crypto assets and transactions involving crypto assets. The Commodity Futures Trading Commission (CFTC) joined the interpretation to provide guidance that the CFTC and its staff will administer the Commodity Exchange Act consistent with the interpretation, and that certain "non-security crypto assets" (which are crypto assets that themselves are not securities) could meet the definition of "commodity" under the Commodity Exchange Act.

Background

The Commission has engaged with crypto assets for more than a decade but has not addressed the unique aspects of the crypto asset markets. Instead, the Commission generally looked to the test developed by the U.S. Supreme Court in *SEC v. W.J. Howey Co.* (known as the "*Howey test*") to determine whether crypto assets, and transactions involving such assets, fall within the purview of the federal securities laws. If the federal securities laws applied, an issuer was forever required to comply with existing requirements regardless of whether promises or representations made by the development team were complete or not. Prior to 2025, the Commission failed to develop a tailored regulatory framework that accommodates crypto asset innovation and entrepreneurship and instead focused its resources on bringing enforcement actions, thereby "regulating by enforcement."

In light of the concerns raised about the Commission's approach to crypto assets prior to 2025, and the public input provided to the Crypto Task Force, the Commission issued the interpretation. The interpretation provides greater clarity regarding the Commission's treatment of crypto assets and complements Congressional efforts to codify a comprehensive crypto market structure framework into statute.

Highlights of the Interpretation

The Commission issued the interpretation to (1) provide a coherent token taxonomy, (2) address how a non-security crypto asset may become subject to, and how it may cease to be subject to, an investment contract, and (3) clarify the application of the Federal securities laws to protocol mining, protocol staking, the wrapping of a non-security crypto asset, and airdrops.

FACT SHEET | **Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets**

1. The Commission classified crypto assets into categories based on their characteristics, uses, and functions, and analyzed each category under the definition of “security” under the federal securities laws.
 - *Digital Commodities* – NOT Securities – Crypto assets that are intrinsically linked to and derive their 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 of others.
 - *Digital Collectibles* – NOT Securities – 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.
 - *Digital Tools* – NOT Securities – Crypto assets that perform a practical function, such as a membership, ticket, credential, title instrument, or identity badge.
 - *Stablecoins* – GENIUS Act Stablecoins NOT Securities – Defined in the GENIUS Act as “payment stablecoin issued by a permitted payment stablecoin issuer.”
 - *Digital Securities* (or “tokenized securities”) – Securities – Financial instruments enumerated in the definition of “security” that is formatted as or represented by a crypto asset, where the record of ownership is maintained in whole or in part on or through one or more crypto networks.
2. The Commission addressed how a non-security crypto asset may become subject to, and how it may cease to be subject to, an investment contract.
 - The Commission explained how a non-security crypto asset becomes subject to an investment contract when an issuer offers it 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.
 - The Commission provided guidance on the nature of the representations or promises necessary to form an investment contract, including the source of the representations or promises, the medium by which they are communicated, and the level of detail they must provide.
 - The Commission explained how a non-security crypto asset ceases to be subject to an investment contract when the investment contract terminates because either the issuer has fulfilled its representations or promises or the issuer has failed to satisfy its representations or promises.

3. The Commission explained that:

- “Protocol mining,” “protocol staking,” and the “wrapping” of a non-security crypto asset (each as described in the interpretation) do not involve the offer and sale of a security.
- Certain crypto asset disseminations known as “airdrops” do not involve an “investment of money” under the Howey test.