SOLANA POLICY INSTITUTE

January 9, 2026

VIA WEBSITE SUBMISSION
Commissioner Hester M. Peirce
Chair of the SEC Crypto Task Force
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Request for Information Regarding National Securities Exchanges and Alternative Trading Systems Trading Crypto Assets — Request No. 16

Dear Commissioner Peirce and Members of the SEC Crypto Task Force:

Solana Policy Institute[1] appreciates the opportunity to comment on Commissioner Peirce's December 17, 2025 request for information titled *And Then Some: Request for Information Regarding National Securities Exchanges and Alternative Trading Systems Trading Crypto Assets*.[2] This submission responds to Request No. 16:

> *How can the Commission protect the ability of individuals to develop and deploy software and transact directly (or indirectly through autonomous software intermediation) with other persons without unwarranted regulatory barriers?*

Transactions that take place via a smart contract protocol are not the regulatory equivalent of trading on an exchange or ATS and should not be treated as such. As we discuss below, the Commission can best protect the activity identified in Request No. 16 by establishing clear, durable lines between software tools and actual intermediaries that exercise custody, discretion, or control over funds or transactions. This approach aligns with recent public statements by Commission leadership and recent guidance published by the Commission staff. Importantly, this approach preserves investor protections while ensuring America's continued

[1] Solana Policy Institute is a non-partisan, non-profit entity focused on educating policymakers on how decentralized networks like Solana are the future infrastructure of the digital economy. We are also a member of Project Open — a collection of interested parties working collaboratively to address and enable tokenized securities on public blockchain networks in a manner consistent with existing regulations.

[2] Commissioner Hester Peirce, *And Then Some: Request for Information Regarding National Securities Exchanges and Alternative Trading Systems Trading Crypto Assets*, Securities and Exchange Commission (Dec. 17, 2025), https://www.sec.gov/newsroom/speeches-statements/peirce-12172025-then-some-request-information-regarding-national-securities-exchanges-alternative-trading-systems.

leadership in digital finance. Overbroad frameworks, by contrast, would discourage innovation, push activity offshore or to unregulated channels, and reduce U.S. competitiveness without corresponding market integrity benefits.

Software Development Is Not Intermediation

The ability to write, publish, and maintain software that others can run locally or use to interact with a blockchain network is not, without more, the hallmark or exercise of a securities intermediary service. Self-custody wallets and autonomous smart contracts enable individuals to exercise their own agency. In these systems, users hold their own keys, authorize and sign their own messages, and transmit them to the network. Code does not take custody, make individualized judgments, or exercise discretion on behalf of a person; it simply executes the same non-discretionary, programmed logic for all users.

The Commission should draw lines that distinguish intermediated from disintermediated activity using administrable criteria that the Commission and courts already understand, such as maintaining custody of funds or the ability to control transactions. The core principle underpinning this line is that non-custodial, non-discretionary software—whether a wallet application, a passive interface, or an autonomous liquidity mechanism—does not introduce the trust-dependent risks (*e.g.*, conflicts of interest) that the broker, dealer, exchange, or clearing agency regimes were designed to address. Those risks arise when a human or a firm stands between counterparties, holds or directs customer assets, or exerts control over execution. They do not arise from code that any user can use to transact from the user's own wallet, with transfers recorded transparently on a public ledger and ownership maintained on a direct, non-omnibus basis.

Regulation ATS and the Exchange Act Definition of "Exchange" Are Ill-Suited and Incongruous for Software Developers

Regulation ATS and the Exchange Act definition of "exchange" that underlies it focus on venues that bring together multiple buyers and sellers of securities and use established, non-discretionary methods under which such orders interact. The focus is on the operators of such venues. Software developers who publish or maintain non-custodial tools do not meet the functional profile of an operator. They do not receive or store customer orders, maintain order books, or match counterparties. They do not decide who may access the system, custody assets, or act as counterparties. They write and publish code that users can run without any ongoing involvement from the developer.

Industry submissions to the SEC have warned that expansive interpretations of "exchange," including ill-defined categories such as "communication protocol systems," risk sweeping in pure messaging or interface software that does not perform marketplace functions and for which ATS registration would be impracticable.[3] Those concerns are well founded. The technological reality is that subjecting DeFi protocols to the regulatory programs governing national securities exchanges or ATSs would, absent significant changes to those programs,

[3] *See, e.g.*, Letter from Andreessen Horowitz to the SEC (Mar. 13, 2025), https://www.sec.gov/files/a16z-crypto-response-sec-rfi-questions-1-6-03132025.pdf.

constitute a functional prohibition on DeFi protocols.[4] This is because such protocols cannot satisfy subjective, operator-centric requirements without somehow reestablishing themselves as traditional intermediaries. Reconstituting intermediation would reintroduce the very risks that decentralized designs seek to reduce.

Overbroad readings and applications of the law would convert software development into venue operation, thereby stifling innovation, chilling speech, and pushing development activity into offshore or unregulated channels—all with no offsetting investor-protection or market-integrity benefit. The Commission can and should avoid these harms by reaffirming that the regulatory frameworks governing national securities exchanges and ATSs attach to persons and entities *that operate systems that actually perform exchange functions*, not to those who build tools that users employ to transact on their own.

Protecting Developers Aligns With the Commission's Goals

This approach is consistent with public statements by Commission leadership, recent staff guidance and relief, and detailed submissions that the Commission has already received. For example, Chairman Atkins has stated that the Commission should protect "pure publishers of software code, drawing reasonable lines to distinguish intermediated and disintermediated activity," and that the Commission should not "interpose intermediaries for the sake of forcing intermediation where the markets can function without them."[5] Chairman Atkins has also emphasized that engineers should not be subject to the federal securities laws solely for publishing software code, and that the Commission's rules—written for issuers and intermediaries—were not drafted with the displacement of intermediaries by self-executing code in mind.[6] Additionally, just days before releasing the December 17 request for information, Commissioner Peirce noted that "the government should avoid imposing regulatory obligations, including Bank Secrecy Act obligations, on a software developer who does not have custody of users' assets or the ability to override users' choices."[7]

Regulation Based on Custody and Control Is a Workable, Justifiable Path Forward

The Commission can protect an individual's ability to build and use software while preserving robust investor protections by adopting a technology-neutral framework anchored in

[4] *See* Letter from the DeFi Education Fund to the SEC (June 12, 2025), https://www.defieducationfund.org/uploads/pdf-imports/84ba66_f997b07bbb6d43b8a3b6c0626f57cdf3.pdf ("The upshot of this technological reality is that holding DeFi protocols to the requirements of the regulatory regimes governing national securities exchanges and ATSs would result in their de facto expatriation from the United States.").

[5] Chairman Paul Atkins, *American Leadership in the Digital Finance Revolution*, Securities and Exchange Commission (July 31, 2025), https://www.sec.gov/newsroom/speeches-statements/atkins-digital-finance-revolution-073125.

[6] *See* Chairman Paul Atkins, *Remarks at the Crypto Task Force Roundtable on Decentralized Finance*, Securities and Exchange Commission (June 9, 2025), https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-defi-roundtable-060925.

[7] *See* Commissioner Hester Peirce, *Remarks at the Privacy and Financial Surveillance Roundtable*, Securities and Exchange Commission (December 15, 2025), https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-crypto-task-force-roundtable-121525.

custody and control. In practice, this means identifying true, bona fide intermediaries and market operators based on whether they hold customer funds or control the execution or settlement of customer transactions. It also means confirming that developers of non-custodial, non-discretionary software tools and messaging interfaces are outside the scope of intermediary registration regimes.

First, the Commission should issue interpretive guidance clarifying that the publication, maintenance, and provision of non-custodial, non-discretionary software—such as self-custody wallets, passive interfaces, and autonomous smart-contracts—do not, on their own, constitute "effecting transactions for the account of others," operating an "exchange," or acting as a "clearing agency." This guidance should reflect the principles evident in recent court decisions addressing non-custodial wallets and in staff statements regarding validators and staking.[8] It should also confirm that developers are not "operators" of a trading venue merely by virtue of having written and published code that others run independently.

Second, the Commission should consider targeted amendments to Exchange Act Rule 3b-16 to confirm that "a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange" does not include non-custodial, non-discretionary software that does not perform marketplace functions. A principled line here would limit the definition of an "exchange" to persons who bring together orders of multiple buyers and sellers and maintain or control the interaction of trading interests. Communication layers, interface software, and read-only tools that present market data should be expressly outside the definition when they do not have custody, do not exercise execution discretion, and do not control the interaction of orders. This approach addresses concerns raised about undefined categories that could sweep too broadly while preserving the Commission's ability to regulate true venues.

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Commissioner Peirce's Request No. 16 rightfully asks how the Commission can protect the ability of individuals to develop and deploy software and to transact directly—including through autonomous software intermediation—without unwarranted regulatory barriers and in promotion of the SEC's own mission to "maintain fair, orderly, and efficient markets." The answer lies in enshrining principles the Commission has articulated and practiced throughout 2025: regulate based on custody and control, not code publication; protect pure software development; draw bright lines between intermediated and disintermediated activity; and use exemptive tools to bring innovation onshore under pragmatic guardrails. We stand ready to assist the Commission in translating these principles into durable rule text. We would welcome

[8] *See, e.g., SEC v. Coinbase Inc.*, 726 F. Supp. 3d. 260, 306 (S.D.N.Y. Mar. 27, 2024) ("[T]he SEC's allegations do not implicate many of the factors courts use in identifying a 'broker.' Notably, the SEC does not allege that the Wallet application negotiates terms for the transaction, makes investment recommendations, arranges financing, holds customer funds, processes trade documentation, or conducts independent asset valuations. Rather, the Complaint alleges that Coinbase: charged a 1% commission for Wallet's brokerage services; actively solicits investors (on its website, blog, and social media) to use Wallet; compares prices across different third-party trading platforms; and 'routes customer orders' in crypto-asset securities to those platforms. Upon closer examination, these allegations, alone or in combination, are insufficient to establish 'brokerage activities.'") (internal citations omitted).

the opportunity to work with Commission staff on relief that preserves investor protection while enabling individuals to build and use the next generation of American market infrastructure.

Respectfully submitted,

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