

Bitcoin: Look Again

By 0xAnonymous

Can a mob ever be sufficiently decentralized such that illegal behavior of its participants transformed and no longer illegal? Can companies avoid responsibility for collusion and other anti-competitive behavior in the absence of centralized command and control? Can a pyramid scheme or Ponzi scheme be legal simply because control over the top pyramid has been eliminated or shifted to all members of the pyramid?

The obvious answer to these questions is “No.”

Yet, in the case of Bitcoin and other “network tokens,” as defined in *Recommendations Regarding a Safe Harbor for Certain Airdrops and Incentive-Based Rewards of Network Token* by a16z crypto,¹ many advocate the government adopt the unintuitive answer, “Yes,” on the ground that behavior that is illegal (such as securities fraud), but coordinated by computers in a “decentralized” way in which “control is eliminated,” is somehow transformed to be not illegal.

Chairman Uyeda’s recent request to SEC staff to review previous work on crypto, including “Framework for “Investment Contract” Analysis of Digital Assets”² is an opportunity for the SEC to look again at its positions on Bitcoin, network tokens, and decentralization.

I recommend that the SEC:

1. Reflect on what makes something a “commodity” by “emphasis placed on economic reality.” Claims that certain categories of tokens, such as Bitcoin and other network tokens, are “commodities” and not securities should be met with skepticism.
2. Reconsider its analysis that Bitcoin is not a security under the Howey Test,³ given that the definition of an investment contract “embodies a flexible rather than static principle, one that is capable of adaptation to meet countless and variable schemes devised by those who seek the use of the money of others on the promise of profits.”⁴ Bitcoin is a security issued by a for-profit collective coordinated by software - a new type of scheme, but one certainly captured by a flexible principle.
3. Reconsider whether any network token, such as ETH, is not a security under the Howey Test. They are not.
4. Disavow previous statements that include concepts of decentralization and use those concepts to justify limited regulation of digital assets. Bitcoin and other network tokens are not decentralized in the first place, and secondarily, decentralization is not sufficient

¹ <http://sec.gov/files/ctf-input-andreesen-horowitz-2025-03-13.pdf>

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<https://www.sec.gov/about/divisions-offices/division-corporation-finance/framework-investment-contract-analysis-digital-assets>

³ <https://supreme.justia.com/cases/federal/us/328/293/>

⁴ <https://supreme.justia.com/cases/federal/us/328/293/>

to address potential market harms that the SEC is charged by Congress with addressing.

I organize this piece around the above sections: first I point out that Bitcoin is not a commodity in “economic reality.” It’s actually better understood as a core element of a collective for profit undertaking. Next, I argue for common sense application of the Howey Test to Bitcoin. Then, I will point out that if Bitcoin is an investment contract under the Howey Test, many other network tokens are also investment contracts. Finally, I argue decentralization is not a valuable factor in determining if regulation is needed.

1. Bitcoin is not a commodity based on economic realities

Analysis of whether Bitcoin is a commodity should start with facts and circumstances and consider the economic realities that exist within the Bitcoin ecosystem.

(Without being overly formal, the Bitcoin network is the computer network, owned and operated by persons, that maintains the Bitcoin ledger. The Bitcoin ledger is the database that records what addresses possess what amounts of Bitcoin and own other data. Bitcoin is a unit of account within the ledger and also used to pay for ledger updates. The Bitcoin ecosystem is the broadly defined group of Bitcoin users, exchangers, miners, and developers and the tools and systems on which they work.)

To consider economic realities of commodities, start with economics

To consider economic realities, it’s important to start with economics. First, economics is the study of how society allocates scarce resources, including goods. Allocation is done through markets with varying levels of government regulation. Market regulations are generally based on the type of goods sold and the inherent behaviors of these markets. Like goods get like regulations when the market behaviors are like.

For non-dangerous, non-defense related commodities, such as silver, generally the U.S. government does not regulate spot markets other than to prevent fraud, market manipulation, and cartel-like price-fixing behavior. The reason is obvious - anyone, anywhere can offer to buy or offer to sell silver. The buyer can assess the value of the silver based on their own criteria - for example, purity, location, delivery, amount - and come to a conclusion about price. The seller, absent fraud, market manipulation, and price-fixing, can sell however they please. Absent a futures contract, the spot transaction is largely unregulated.

The reason for this comes down to the economic realities of commodities: how they are supplied, how they are consumed, and how they are sold.

How commodities are supplied: by market forces

Inputs are used to produce any commodity. While the inputs are many (capital, labor, land, ore, etc.), they all are available for hire therefore the most important input is capital. A producer who

wants to create more of a commodity simply applies more capital and can create more of the commodity. A producer who wants to trim production, applies less capital (or idles some capital) and produces less. While there are barriers to entry (e.g., available supplies of ore / mining sites), generally the only barrier to acquiring these is capital.

Suppliers all have a marginal cost to create a particular commodity. When the price goes up, more firms enter and compete to produce the commodity and the overall supply of new production over a given period goes up. The same occurs in reverse when the price falls.

Consider silver for example. When the price for silver increases, companies compete to produce more silver and overall production increases.

How commodities can be used: independent of production system

After production, a firm has a product that it can use in any number of ways. It can sell, make products with, or store the commodity. The commodity is not dependent on anything for its utility. All producers of the commodity in the world could stop working and the commodity could still be used. In the hands of a buyer, the commodity still has use cases that are not tied to its production. A buyer can produce goods, store it, sell it further, all without the production system functioning.

Consider silver again. A silversmith can make silverware with silver in the absence of the production system.

How commodities are sold: in unique transactions

Commodities are sold in bilateral spot or forward transactions where delivery location, time, quantity, quality and other factors all influence the price of a transaction. For example, delivery location and cost to deliver based on that location are highly likely to vary - delivering oil to Midland or Galveston are truly different and as a result have different costs and value to buyer and seller. Further, not all oil is the same - WTI and light sweet crude are both grades of oil, but within each category, wide variation exists. All of these factors may be different between different suppliers of the commodity. As a result, there is no common market - each transaction is unique and a buyer must consider all these factors and its own needs before concluding a negotiation and deal.

Commodities are characterized by economic realities that make spot markets lower risk

In summary, the economic realities of commodities are:

1. Supplied by market forces, including the fact they can have increased new production in times of high demand and prices
2. Fully functioning in the absence of the production system
3. Sold in spot and futures transactions where all transactions are unique in asset, delivery, and costs.

Why are these important? Because they reduce risks for buyers in the market. First, in times of high demand, buyers are protected from cartel-like price-fixing behavior because supply can expand in production - there is limited risk of supply fixing to fix prices and that behavior can be policed. This means that price may rise in the short term, but the price increases are self-limiting because net new supplies of the commodity will grow to satisfy demand and buyers are able to negotiate on price. Second, in the event the good is no longer produced, the buyer can still use the good. No relationship between the buyer and the production system, however decentralized, exists to prevent the commodity buyer from getting full use of the commodity. Third, because each supplier's offerings are different, each spot transaction must be negotiated to incorporate those differences which gives buyers the opportunity to negotiate on price.

Bitcoin's economic realities are different than commodities

These distinctions matter when it comes to Bitcoin and other network tokens that are often purported to be commodities. Consider Bitcoin for simplicity.

How Bitcoin is supplied: its production is fixed by agreement of the miners

Bitcoin is produced by miners. Similar to silver, inputs (e.g., rigs, electricity) are a function of capital available; there are no formal barriers to entry. However, the new production can never expand based on a price signal from demand - it is fixed by the mining participants in software controlled by the mining participants. The miners collude to set the maximum production over a given period - even if this collusion is negative (the absence of changing production quotas). This means that Bitcoin supply is completely inelastic in the face of price changes. When Bitcoin price increases, overall production stays the same.

How Bitcoin can be used: Bitcoin cannot be used outside of its production system

Let's examine the product, Bitcoins. Each Bitcoin produced is inextricably tied to the Bitcoin ledger - it only can exist there. The Bitcoin ledger is inextricably tied to the Bitcoin network - it has no value outside of the network. In no way can a single Bitcoin be used separately from the production system for Bitcoin. No user can take a Bitcoin and produce another product from it at their house or workshop. Bitcoin cannot be used in the absence of its production system.

How Bitcoin is sold: in virtually identical transactions

When Bitcoin is sold in a spot transaction, nearly all features of a transaction are more similar to a securities transaction - same asset, same delivery, same costs - than a commodities transaction. In a spot Bitcoin transaction, a buyer and seller pick a delivery address and price at which the transaction will occur. While the addresses may be different numbers, they are akin to putting mail in a P.O. Box at one giant central post office - there is no real difference other than who can access the particular mailbox. And the price of the delivery simply varies based on a formula related to speed of delivery and network congestion - not on buyer and seller attributes. Finally, all Bitcoins are the same - there are no 'grades' or variations in Bitcoins themselves - similar to securities, each Bitcoin is the exact same and includes the same set of rights.

In contrast to a commodities, Bitcoin has economic realities which are not consistent with a lower risk spot market

Unlike the economic realities of commodities, Bitcoin is:

1. Not responsive to market forces in supply, specifically new production is fixed.
2. Not useful when separated from its production system, because the Bitcoin itself can't exist untied from its production system.
3. Sold in transactions where there are no meaningful differences in the asset, delivery, or costs.

Why is this important: first, if new supply is fixed, then the behavior of the market for Bitcoin is not like that of a commodity, but more like that of a patented product delivered by a for profit firm. The supply becomes a function of a single decision about supply vs. a market forces driven result of independent economic actors. When a for-profit firm is the only firm that produces a good, that is traditionally called a monopoly in economics. Monopolies often use their market power to harm their customers. Generally, the U.S. government regulates monopolies to prevent them from abusing their power.

Second, goods not separable from their production systems are sold in the presence of legal rights whether stated or understated which govern the relationship between the good, the producer of the good, and the user. Consider software-as-a-service solutions which are sold with licensing agreements, cloud computing, such as AWS, in which AWS Credits are sold subject to a licensing agreement, and reward tickets at arcades which grant the holder the opportunity to redeem the tickets for prizes. Users need to be able to exercise these rights, or the value of the good is zero. Bitcoin is sold in the presence of an undocumented legal right to hold and transfer the coin.

Third, when there are no meaningful differences in asset, delivery, or costs buyers do not have room to negotiate against multiple suppliers to identify optimal terms and price. Instead, with virtually identical assets like Bitcoin, buyers and sellers meet in centralized venues and compete exclusively on price because there is no other meaningful attribute on which differentiation exists.

Bitcoin is produced by a collective for-profit undertaking

The Bitcoin network produces Bitcoin. The Bitcoin network produces Bitcoin through the actions of a distributed workforce that, on a regular basis, competes to provide updates to the ledger. The members of this network are called miners.

There is no doubt that the miners are collectively working to maintain the ledger and provide updates. While some observers would say they are competing, in fact, all their efforts are the same - each miner attempts to update the network. Rather than trusting any single miner, the Bitcoin network made a decision to randomly pick which miner would get to provide the latest version of the ledger at each update moment. The fact that the random selection is done by a

mathematical puzzle vs. a centralized random selection agent does not change the fact that the miners have chosen a collective method of working together to maintain the Bitcoin ledger.

The Bitcoin network is for-profit. At each update, the network receives fees for processing transactions. These fees are then distributed to the miners. The Bitcoin network made a decision to randomly pick who would gain the fees at each update. Nevertheless, fees are collected, profits are earned, and miners collectively share in those profits. The fact that the selection is random and that one miner's selection means another miner does not win does not eliminate the fact that the miners have chosen a profit sharing plan for their collective work.

This economic realities based analysis shows how Bitcoin is different from commodities and, rather than being produced in a free open market, is produced by a single collective for-profit undertaking. Because of the fact that the collective has made decisions (even if a long time ago, that may be very hard to change, and which a newcomer to the collective may have had no voice in originally) and works together under those decisions, Bitcoin cannot be treated by economic realities as a commodity good. Rather, because Bitcoin is tied inextricably to the Bitcoin network and users are bound to that network, its decisions, and rules, a legal relationship exists between the holders of Bitcoin and the collective for-profit undertaking.

I next argue this relationship between the Bitcoin network, Bitcoin, and holders of Bitcoin is a securities relationship.

2. Apply the Howey Test to Bitcoin using common sense and Bitcoin itself is an investment contract

In much of the securities analysis of crypto, the Howey Test is applied to determine whether some crypto asset or a transaction in a crypto asset is an investment contract. The Howey decision states: "an investment contract for purposes of the Securities Act means a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party, it being immaterial whether the shares in the enterprise are evidenced by formal certificates or by nominal interests in the physical assets employed in the enterprise."⁵

Bitcoin itself is a security under the Howey Test

The best way to use the Howey Test is to apply each of the prongs to an asset or transaction. First, Bitcoin passes the Howey Test and is an investment contract and therefore a security.

⁵ <https://supreme.justia.com/cases/federal/us/328/293/>

Prong 1: Acquiring Bitcoin requires an investment of money

A user who acquires Bitcoin invests money. This investment can occur as the result of paying another user for a Bitcoin or as a result of deploying capital (e.g., mining rigs, electricity) to the Bitcoin network to gain a share of the profits of the network.

In the case of buying a Bitcoin on the open market, the Bitcoin is typically purchased for cash and in exchange, the Bitcoin network moves a Bitcoin into the purchaser's address. The cash is used to 1) compensate the previous owner of the coin, who either invested capital to produce it or purchased it from someone (eventually down the line, someone used capital in the Bitcoin network and was rewarded Bitcoin as their profit share), and 2) pay a fee to the Bitcoin network for moving the coin to a new address.

In the case of acquiring mining rigs and electricity, an acquirer contributes capital to the Bitcoin network to buy into the network and be able to earn fees in Bitcoin.

Prong 2: The Bitcoin network is a common enterprise

An investor in a Bitcoin benefits from the rights given to that user by the Bitcoin network. While not documented as a legal agreement, the Bitcoin code, which is promoted as a core promise to Bitcoin network users and tokenholders, states that a user, after paying a fee, may move their Bitcoin to another user. Because Bitcoin is the unit of account of the Bitcoin network, all Bitcoin holders, whether part of the collective Bitcoin network or just a passive Bitcoin holder, will experience the same change in value as the value of the network changes. In essence, there is pooling of the Bitcoin investors' capital into the production of the Bitcoin - in that it finances the capital used to maintain the network - and correlated fortunes between the investor and the Bitcoin network that offers Bitcoin.

Prong 3: Investors in Bitcoin are led to expect profits

Bitcoin contains many legal rights, undocumented as they are, chief among them the right to transfer one's Bitcoin to another. The Bitcoin network, collectively, promotes this as the primary benefit of Bitcoin - one can sell Bitcoin later for value. This future sale for value is profit in two ways:

1. If the value of Bitcoin has increased in nominal USD terms, then there is profit in USD terms, something everyone would consider profit.
2. If the value of Bitcoin has increased in further acceptance as a means of transmitting value, there is profit in the increased acceptability of Bitcoin.

Both of these increases in value are profits that investors are led to expect by the Bitcoin network.

Prong 4: Investors are rely on the efforts of others, especially managerial efforts

The Bitcoin network has collectively made decisions about how to structure and maintain itself. It further makes a continuous series of decisions to keep production low and fixed. These decisions are not ministerial - there is strategic thinking at play and collective coordination

around whether to change these features of the network. If these decisions were ministerial, they would not be the central selling points of the Bitcoin network nor would they be changeable. Just because changing the choices may not seem to be in the interest of the network or easy to do, does not mean continuing with the choices is merely ministerial if the collective for-profit undertaking can change the choice.

Some observers take the position that because these decisions cannot be easily changed, they are not decisions, but fixed attributes of Bitcoin. This position ignores the fact that something that is hard to change, but can be changed through collective action, is still changeable and the decision to change is strategic. Consider the U.S. Constitution; it is hard to change. But it would not be a ministerial act to change it. Nor for that matter is leaving the Constitution unchanged a ministerial act - no member of Congress would say their role in advancing or not advancing amendments to the constitution is ministerial - it's absolutely a critical strategic managerial effort of the individual members of Congress and the collective body, Congress, that decides how to manage the Constitution.

Transactions in Bitcoin are investment contracts under the Howey Test

While many observers stop with the question of whether Bitcoin itself is a security, it's important to analyze and confirm that transactions in Bitcoin are also investment contracts and therefore securities.

A transaction for Bitcoin includes an investment of money that flows back to the Bitcoin network

When a purchaser buys a bar of gold, the money for that purchase flows back through many layers to a miner who, perhaps in prehistoric times, dug for ore and created gold. That miner however has no necessary link to any other miner for gold, in the past, present, or future. In particular, no chain of transactions can tie the purchase of the gold today to the entire gold production ecosystem because there is no gold production echo system.

When an investor buys a share of Coca Cola stock, the money for that purchase flows back through many transactions to The Coca Cola Company ("TCCC"). Sometime during the last 150 years, TCCC sold a share of stock for capital financing and that share after some number of transactions, reaches the investor. In particular, all chains of transactions can be tied back to the organization who creates Coca Cola shares - TCCC.

Bitcoin is more akin to the second of these examples - when an investor buys a Bitcoin, it doesn't matter how many transactions have occurred in the intervening period, there is a chain that leads back to a miner that is or was part of the Bitcoin network. That miner receives capital from the Bitcoin transaction which then finances the continued operation of the Bitcoin network. In essence, the sale of a Bitcoin is just the latest in a potentially long string of transactions which terminates in the original sale of the Bitcoin from its original producer to raise capital to buy electricity, mining rigs, and fund mining operations.

Because of the tie between any transaction and a mining member of the Bitcoin network, any purchase of a Bitcoin is an investment of money in the Bitcoin network.

Prong 2: The investment in Bitcoin is an investment in a common enterprise

Without restating the above, a purchaser buying a Bitcoin buys into the Bitcoin network because the purchaser now has a Bitcoin at an address they control. Along with everyone else who owns a Bitcoin, that purchaser is reliant on the expertise of the Bitcoin network for continued operation of the business and will share in similar financial results. And because the purchaser is funding the capital of the network, through however long a series of transactions, the purchaser's capital is pooled by the Bitcoin network for the operations of the Bitcoin network.

Prong 3: The investor is led to expect profits from their purchase of Bitcoin

Why do people buy Bitcoin? Because it's shiny? Because they can wear it around their necks? Because they like to finance the purchase of mining rigs and electricity around the world? The likely answer to the latter questions is "No." The answer to the first question is because they are expecting profits.

One naturally asks, who is leading the investor to expect profits? Is it the Bitcoin network, who as a collective for-profit undertaking, has an incentive for people to buy Bitcoin? Is it the seller? Is it the platform that is facilitating the sale? Short story is that all these individuals are leading the investor to expect profits.

But it's the public commitments from the Bitcoin network that is the source of the expectation of profits. The Bitcoin network commits to:

1. Hold back new production of Bitcoin to drive up price of existing coins.
2. Deliver the value of a holder's token from the holder's address to a new address for a fee.

This is no different than the holder of a share of a company expecting that their transfer of the share will be recorded and the next holder will benefit from the share on the company's ledger. The company publicly commits to deliver value to the shareholder. And the shareholder receives value.

Prong 4: The efforts of others are instrumental to the profits

When purchased, there is no doubt that the Bitcoin network does work to deliver a token to a user. However, the key effort related to generating profit are the decisions to fix supply of Bitcoin. These efforts are essential managerial efforts that affect the success of the enterprise - if Bitcoin supply were not restricted, it's not hard to imagine its price falling as millions of new Bitcoins were supplied.

Some might point to the lack of an active promoter ("AP") taking action to affect supply. However, the fact that an active promoter in the past made a decision and that decision is re-ratified every day as supply expansion is held fixed by the current membership of the

for-profit collective does not miraculously eliminate the efforts of others in restricting increased supply.

Consider a common counterpoint - limited edition baseball cards. Perhaps only 1,000 Cal Ripken rookie cards were printed in 1982. Someone might say, "the decision was made in the past, but the supply is limited today and there are no on-going efforts - isn't this the same?" Simply, no - in the case of the cards, the cards were printed, and there is no way to go back in time and change the decision. Further, the cards are disconnected from the production system. They exist on their own - and no reliance is made on decisions in the present to maintain the choices from the past.

Ultimately, the collective effort by the collective members of the Bitcoin network to maintain the fixed supply IS the essential effort to create profits.

Because Bitcoin is a security, someone should have filing obligations under the Securities and Exchange Act of 1934

Many observers despair: "all the Bitcoin mining is decentralized and no one can afford the cost of filing an S1." Or: "tokens, such as Bitcoin that provide interests in a decentralized network don't represent securities."

Well, as above, Bitcoin is a security of the Bitcoin network and transactions in Bitcoin, even P2P are securities transactions.

Who can file with the SEC? Well, there are a number of businesses that make Bitcoin their business. They broadly are either mining businesses or Bitcoin holding businesses. There are several of these companies that are large enough to already file with the SEC, for example, Mara Holdings and Strategy (formerly Microstrategy). These businesses could reasonably file on behalf of the full Bitcoin network.

Further, if no one of these companies wanted to take the burden themselves, they could fund a foundation to file with the SEC. And if these companies wanted to enforce everyone paying, they could help the network make a decision to finance a foundation.

Finally, the government has the ability to take action with respect to transactions in Bitcoin in the United States and could apply taxes or other measures to drive the Bitcoin network to comply with filing requirements. The Commission is not helpless in the face of the Bitcoin network.

3. Other network tokens are also securities

Unsurprisingly, since Bitcoin launched, a number of similar businesses have been created to try to create 'networks' that are claimed to not be collective for-profit undertakings issuing unregistered securities to the public.

However, nearly all these networks, similar to Bitcoin and pass the Howey Test:

1. Investment of Money: They create digital assets and sell them to raise capital to finance the operation of the network ecosystem on an ongoing basis.
2. Common Enterprise: They organize their participants into a common enterprise for processing transactions on their chains.
3. Create an expectation of Profit: They entice investors to join their enterprises either as miners or tokenholders with the offer of profit.
4. Efforts of Others: They use collective coordination software for asset issuance, profit sharing, distribution of digital assets, and to support management decision making.
5. Efforts of Others: They, collectively, whether miners alone or together with tokenholders, make management decisions to choose and maintain a set of rules for asset issuance, profit sharing, asset distribution, and decision making.

As a result, most other network tokens are securities in themselves under the Howey Test and transactions of these assets also are securities transactions under the Howey Test.

The SEC staff should consider asking foundations and other vehicles related to these networks to report on their tokens to support full and fair disclosure for investors and the public.

4. Common to all these network token schemes is the idea that decentralization transforms the responsibility for an action

Many believe that Bitcoin and other network tokens are decentralized and as a result, two things are true:

1. Securities laws should not apply because there is not an identifiable issuer.
2. Decentralization somehow removes the harms that the securities laws were designed to address.

Neither of these are true.

Securities laws should apply because there is no decentralization in the Bitcoin network

In the “Framework for “Investment Contract” Analysis of Digital Assets,”⁶ the SEC Staff writes that a “reliance on others” can come from “essential tasks or responsibilities performed and expected to be performed by an AP [active participant].”

The Staff then writes: “An AP creates or supports a market for, or the price of, the digital asset. This can include, for example, an AP that: (1) controls the creation and issuance of the digital asset; or (2) takes other actions to support a market price of the digital asset, such as by limiting supply or ensuring scarcity, through, for example, buybacks, “burning,” or other activities.”

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<https://www.sec.gov/about/divisions-offices/division-corporation-finance/framework-investment-contract-analysis-digital-assets>

The activities described as being done by the AP are exactly the activities done by the for-profit collective that runs the Bitcoin network. The network takes collective action, coordinated by software, to:

1. Control the creation and issuance of Bitcoin.
2. Limit the supply growth of Bitcoin to ensure scarcity.

Instead of looking for an AP, the staff should look to a token network and ask, “is there a group, coordinated by software for decision making and other collective activities, making capital raising decisions that historically have been performed by a single entity (such as a general partner)?”

If so, instead of seeing a decentralized network, what the Staff should see when it looks at Bitcoin is a highly coordinated, clever scheme through which a large number of people make collective decisions for a single for-profit collective. Consider ‘direct democracy’ or ‘shareholder voting’ as similar mechanics in which many dispersed individuals use a system to coordinate central decision making. Once a decision is made for the Bitcoin network, the software helps the individual miners and tokenholders enforce the decision. This is not unlike a government implementing the will of the people after an election.

With this in mind, the Staff should ask, “does the mechanism by which shareholders vote and the structure of the organization dedicated to implementing shareholder decisions transform the nature of the shareholder actions, rights, responsibilities?”

In the case of Bitcoin (and other network tokens), I argue no - this is just one of the “countless and variable schemes devised by those who seek the use of the money of others on the promise of profits.” Using software to coordinate large groups of people for decision making does not fundamentally change the fact that there are large groups of people making a decision.

Decentralization does nothing to address the harms that the securities laws were intended to address

According to the Legal Information Institute at Cornell Law School: “The development of federal securities law was spurred by the stock market crash of 1929, and the resulting Great Depression. In the period leading up to the stock market crash, companies issued stock and enthusiastically promoted the value of their company to induce investors to purchase those securities. Brokers in turn sold this stock to investors based on promises of large profits but with little disclosure of relevant information about the company. In many cases, the promises made by companies and brokers had little or no substantive basis, or were wholly fraudulent. With thousands of investors buying up stock in hopes of huge profits, the market was in a state of speculative frenzy that ended in October 1929, when the market crashed as panicky investors sold off their investments en masse.

In response to this calamity and at President Franklin Roosevelt's instigation, Congress enacted laws to prevent speculative frenzies like those in the 1920s. After a series of hearings that brought to light the severity of the abuses leading to the crash of 1929, Congress enacted the Securities Act of 1933 (the "Securities Act"), and the Securities Exchange Act of 1934 (the "Exchange Act").⁷

Reading between the lines, Congress sought to:

1. Address enthusiastic promotion with little disclosure.
2. Limit promises made by companies and brokers with little or no substantive basis.
3. Reduce speculative frenzies related to such promotion.

Decentralization does not address any of these harms - in fact, depending on the circumstances, it may make these harms more likely.

When there is no or little disclosure, rumors and falsehoods spread

When there is a central voice sharing details about the prospects of a company, all investors can look to that voice for clear, fraud free information. However, when there is no single voice, all members of a for-profit collective might be looked at for information. Without holding any of those members responsible for their information, rumors and falsehoods are more likely to spread, particularly if any member of that collective believes a particular rumor or falsehood might drive a financial return for them as an individual or the collective as a whole.

Free speech laws restrict harmful speech when it presents a clear and present danger. Consider yelling fire in a crowded building when there is no fire - an example of sharing a rumor and falsehood on which many listeners might be expected to act. Would anyone say, "it's actually OK to yell fire, so long as it is done in a decentralized manner?" Just the same, if the securities laws do not tolerate a CEO to yell, "my stock is going to \$1M" on an earnings call, why should the securities laws tolerate members of a for-profit collective shouting "Bitcoin is going to \$1M" on X?

Only full and fair disclosure can ensure investors can effectively assess whether a comment on X is a rumor, a falsehood, or a reasonable estimate from the for-profit collective promoting a token.

Decentralized promises are just as worthless as pre-1929 broker promises and just as harmful as fraud from centralized entities

In 1929, it might be said that there was a 'decentralized' network of brokers and promoters who made promises to investors. Those promises induced investors to buy into speculative assets which in turn crashed in 1929. These actions would likely be deemed securities fraud today.

⁷ https://www.law.cornell.edu/wex/securities_law_history

In 2025, there is a decentralized network of Bitcoin miners and tokenholders making promises to investors about the utility and future value of Bitcoin. These promises are inducing investors to buy into Bitcoin. It remains to be seen if it crashes (again).

Consider the case of a single person who breaks into a building vs. a decentralized angry mob that breaks into the building. In both cases, harmful activity occurs. In both cases, individuals could be assigned responsibility for their actions.

In the same way, decentralization does nothing to transform the harm of fraud, falsehoods, and rumors. The act of spreading these harms is simply accelerated by the perception that “in the mob, you won’t be held responsible for your actions.” However, the Staff’s current position suggests that decentralization is a valuable objective from avoiding securities rules and is therefore promoted by the current regulatory position. Instead of being net-positive for investors, the current regulatory perspective on decentralization is encouraging more harm as more projects seek to claim decentralization and the perceived advantage of spreading falsehoods that comes from it.

Decentralization is leading to a return to the speculative frenzies that the securities laws were put in place to help address

While speculative frenzies are not illegal, the ability of for-profit collectives to hide in the regulatory blindspot proposed by decentralization supporters is leading to a repeat of the speculative frenzies that full and fair disclosure was meant to prevent.

Consider the “L1” trade that many venture capitalists engage in. First, a “decentralized” blockchain is planned. VCs acquire substantial positions in the network tokens of the blockchain. The network is built with some “decentralization” features and is claimed to be decentralized. Next, VCs and the developers arrange for exchanges to list the network token for public sales because they claim the network is decentralized and the token not a security (and therefore the exchange does not need to be registered or follow securities laws). Promoters are engaged to hype the network token launch and make false promises to investors. Finally, the token is publicly sold to retail, at which point the VC investors unload their positions in a disguised unregistered public offering claiming that there is a decentralized network and that the securities laws cannot apply to the network token of a decentralized network.

Because decentralization has created this on-going belief that if a blockchain based project starts off as or reaches decentralization, the securities rules do not apply, the harms of the pre-1929 markets are returning. Staff should no longer look to decentralization as a factor in establishing whether full and fair disclosure is required by the for-profit collectives launching, creating, and promoting Bitcoin and other network tokens.

Concluding remarks

The Staff should look again at Bitcoin and other network tokens as well as rethink the industry’s exploitation of decentralization as a “get out of securities laws free card.”

The Commission should challenge its Crypto Task Force to wrestle with these issues, particularly the dangerous belief that Bitcoin is a commodity and not a security issued by a single for-profit collective and draw new conclusions about how Bitcoin and other network tokens should be regulated to protect the investing public. We've all seen where the perception of no responsibility for actions taken in a decentralized group (e.g., angry mob) can go.