July 17, 2026

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets (Release Nos. 33-11412; 34-105020; File No. S7-2026-09)

Dear Ms. Countryman:

I. Executive Summary

GSR International Limited and its group (collectively, "GSR" or "we") respectfully submit this comment in response to the Commission's interpretive release entitled *Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets* (Release Nos. 33-11412; 34-105020) (the "Release") and the associated solicitation of public comment. GSR provides institutional-grade liquidity for crypto assets through two core business lines: over-the-counter ("OTC") trading and market making ("MM"). GSR entities are licensed by or registered with leading regulators across the world, including the Monetary Authority of Singapore, the UK Financial Conduct Authority, the U.S. Financial Crimes Enforcement Network, and state money transmission regulators across the United States. When engaging in OTC and MM activity, GSR transacts crypto assets as principal for its own account and does not act as agent, fiduciary, or financial advisor for its clients.

While the Release recognizes that most crypto assets are not themselves securities, it also takes the position that an investment contract may subsist across secondary market transactions in a non-security crypto asset (referred to herein as "attachment") until the representations or promises made by the asset's issuer in connection with its initial sale are fulfilled or publicly abandoned (referred to herein as "separation"). Where attachment persists, the Release would characterize subsequent secondary transactions as securities transactions requiring registration or an applicable exemption—even though the asset itself is not a crypto asset security.

The Release's attachment/separation framework creates acute uncertainty for non-issuer liquidity providers like GSR, particularly in connection with OTC and MM activity. Given the lack of a clear, objective standard for determining when a non-security crypto asset "separates" from an investment contract, GSR cannot ascertain in real time whether any given purchase or sale of a crypto asset may be considered a securities transaction, and therefore whether GSR may inadvertently be engaging in unregistered securities activity.

While we do not believe that any crypto asset with respect to which GSR undertakes OTC or MM activity is attached to an investment contract, we have no way of being certain about this given that statements we are unaware of may have been made in the past, or new statements may be made in the future, and any such statement could "attach" to the relevant crypto asset. If one or more crypto assets that are the subject of GSR's OTC or MM transaction were deemed to be attached to an investment contract, it would raise the question whether GSR must register as a broker-dealer in the United States. As a result of this untenable position, we are obliged to re-evaluate our ability to continue providing liquidity in the U.S. for many widely traded crypto assets.

Accordingly, GSR respectfully requests that the Commission issues rulemaking or formal guidance establishing a broker-dealer registration safe harbor for firms that engage in MM and OTC trading of non-security crypto assets ("OTC/MM Firms"). The safe harbor should apply regardless of whether an investment contract may previously have attached to, or has not yet separated from, those assets.

II. GSR's Business Model

This comment letter focuses on GSR's OTC trading and MM activity.

A. OTC Trading

GSR's OTC business serves as a source of bilateral liquidity for institutional participants in digital asset markets, which include issuers seeking liquidity support, centralized exchanges partnering to enhance market quality, financial institutions requiring tailored liquidity solutions and deep market infrastructure, payment companies integrating digital asset on- and off-ramps, and asset managers deploying digital asset strategies at scale.

When engaging in OTC trading, GSR operates as principal—not as agent, fiduciary, or financial advisor—and transacts for its own account, engages in price discovery, price quoting, order taking, and trade execution across digital assets and fiat currencies. GSR's execution infrastructure is designed to minimize market impact and source deep liquidity. GSR manages the risk inherent in principal trading through hedging and structured derivatives transactions to reduce potential market impact and minimize its own exposure.

B. Market Making

GSR supports a range of market participants in MM activity. Exchanges engage with GSR to enhance the depth and quality of their order books and to drive sustainable trading activity across markets. Further, issuers engage GSR from launch through growth to ensure robust secondary-market liquidity, orderly price discovery, and reduced volatility for the relevant crypto assets. As with GSR's OTC trading activity, GSR conducts its MM activity exclusively as principal and does not act as agent or broker on behalf of the issuers or exchanges for which it provides liquidity. Rather, GSR assumes inventory risk by holding positions across hundreds of crypto assets and manages that risk through hedging and adoption of a delta-neutral approach that avoids directional speculation.

III. The Release's Attachment/Separation Framework Presents Significant Challenges for OTC/MM Firms and Will Harm U.S. Liquidity and Disclosure

The Release's attachment/separation framework creates significant challenges for OTC/MM Firms. As explained below, the framework is legally unsettled, operationally impracticable for non-issuer market participants, and likely to produce market outcomes that undermine the Commission's own policy objectives.

A. The Framework Lacks Clear Legal and Operational Standards

1. Relevant Case Law Remains Unsettled

The Release introduces the position that an investment contract may persist across secondary market transactions in a non-security crypto asset until any issuer representations or promises are fulfilled or publicly abandoned. That position is novel and, to date, untested in court in the context of secondary trading by non-issuers. Moreover, pre-crypto *Howey* jurisprudence is largely confined to issuer-led fundraising schemes and does not address secondary transactions involving parties other than the fundraising issuer, and the early crypto asset cases have produced conflicting outcomes for secondary sales.

In *SEC v. Ripple Labs, Inc.*, the court held that programmatic sales of XRP on secondary exchanges did not satisfy *Howey*, while primary sales to institutional purchasers did, and thus drew a distinction between direct purchases of crypto assets from the issuer of the assets and the trading of the assets between third parties on the secondary market.[1] In *SEC v. Terraform Labs Pte. Ltd.*, a different judge in the same court declined to draw that distinction, holding that *Howey* turns on the economic reality of the offering rather than on how the asset reaches the buyer.[2] In *SEC v. Binance Holdings Ltd.*, the court rejected the theory that a crypto asset itself becomes the "embodiment" of an investment contract for all purposes, holding that *Howey* is inherently a facts-and-circumstances specific test that applies to each offering of alleged securities separately and requires an examination of the entirety of the circumstances surrounding each offering.[3] As enforcement priorities shifted, most major secondary-transaction cases were withdrawn before final decisions on the merits, leaving the jurisprudential record unsettled.

2. The Release Does Not Provide Clear Standards

The Release does not define key terms—such as what constitutes a "representation or promise" and whose statements are attributable to the issuer—that are fundamental to the attachment/separation analysis. While that flexibility is consistent with the facts-and-circumstances nature of *Howey* jurisprudence, it has always operated against the issuer, which is the fundraising party with full knowledge of its own statements and conduct. However, when applied to a non-issuer liquidity provider, the same flexibility produces the opposite of clarity. It is unresolved whether remarks by foundations, affiliated labs, prominent venture backers with governance rights, or third-party promoters should be imputed to the issuer. This further muddles

[1] *SEC v. Ripple Labs, Inc.*, 682 F. Supp. 3d 308 (S.D.N.Y. 2023).
[2] *SEC v. Terraform Labs Pte. Ltd.*, 684 F. Supp. 3d 170 (S.D.N.Y. 2023).
[3] *SEC v. Binance Holdings Ltd., et al.*, No. 23 Civ. 1599, ECF No. 248 (D.D.C. June 28, 2024).

the attachment/separation analysis, cautioning against imposing on third-party non-issuers a duty to classify each crypto asset they encounter in their daily OTC/MM activity.

3. OTC/MM Firms Cannot Reasonably Obtain the Information Necessary to Apply the Framework

Even if the governing standards were settled, the facts needed to apply them are not, as a practical matter, available to OTC/MM Firms. Assessing attachment would require continuously monitoring an issuer's communications across white papers, blogs, social media, governance forums, conference remarks, and community updates (collectively, "Issuer's Communications") and making a determination whether any Issuer's Communications constitute representations or promises that would be attached to the relevant crypto asset. While GSR maintains a unified framework to evaluate various categories of risks related to trading crypto assets (including, among others, reputational, financial-crime, and regulatory), Issuer's Communications are constantly changing, may not be widely disseminated, and are completely outside an OTC/MM Firm's control. Continuous monitoring of Issuer's Communications across hundreds of crypto assets is not operationally feasible. Further, determining the nature of any Issuer's Communications require subjective legal judgments about whether a given statement rises to the level of a representation or promise of essential managerial efforts that would attach to the relevant crypto asset—judgments that OTC/MM Firms are not positioned to make reliably at the scale and speed at which they transact.

The Release offers two pathways to separation: (1) the issuer fulfills the essential managerial efforts it represented or promised it would undertake; or (2) the issuer publicly abandons those commitments. Both are entirely issuer-driven and may occur gradually or silently—through incremental milestone completion, governance transitions, or the quiet abandonment of roadmap items. Absent any registry, database, or authoritative public notice through which third parties can confirm that separation has occurred, an OTC/MM Firm that transacts across hundreds of crypto assets simply cannot be certain, at the time of any given trade, whether separation has occurred without reconstructing the entire Issuer's Communications history and making a subjective judgment about whether evolving market expectations have shifted each time it transacts in the crypto assets.

B. The Framework Does Not Fit the Role of OTC/MM Firms

1. The Economic Relationship Between OTC/MM Firms and Issuers Is Distinct from the Investor Relationship Addressed by *Howey*

Howey requires an examination of the economic realities of a particular transaction, including whether the purchaser is relying on the essential managerial efforts of others. GSR does not participate in the market as a passive investor purchasing assets based on an issuer's representations or development commitments. It acts as a principal liquidity provider under negotiated commercial arrangements and actively manages inventory, pricing, hedging, and counterparty risk. The value of positions held by GSR may, like the value of any traded asset, be influenced by developments involving an issuer or network. But that fact alone does not characterize GSR's transactions as investments made in reliance on the issuer's managerial efforts. GSR's economic results depend materially on its own market-making activity, risk management, capital deployment, and execution capabilities. Accordingly, GSR's role is distinct from the issuer-purchaser relationship that lies at the core of *Howey*.

It is important to note that GSR is a bilateral counterparty that assumes inventory risk, holds positions across many assets, and manages a portfolio through hedging and risk management. Contrasted with a technology interface provider, such as a non-custodial wallet provider, GSR must evaluate attachment risk not just to determine whether to make an asset "discoverable" on a platform, but to assess whether each individual trade—potentially thousands per day across hundreds of assets—constitutes a securities transaction that could trigger broker-dealer registration. As such, the operational burden on GSR is greater than the burden on an interface provider.

Moreover, the market harm from GSR withdrawing liquidity is more direct: an interface provider that restricts asset availability reduces users' choices, but a principal liquidity provider that ceases quoting two-sided markets eliminates the liquidity itself—widening spreads, reducing order book depth, and degrading execution quality for all market participants. Therefore, viewed as a whole, the operational and legal challenges facing OTC/MM Firms are distinct from—and in many respects more acute than—those facing interface providers.[4]

2. The Framework Creates Significant Compliance Risk for OTC/MM Firms

Howey has never required a non-issuer, non-purchaser third party to make ongoing factual determinations of the attachment or separation of an investment contract to an asset—determinations that OTC/MM Firms are not able to make. Requiring OTC/MM Firms to do so would have the same practical effect as imposing a standard impossible to satisfy.

OTC/MM Firms are thus left in an untenable position, as they risk inadvertently trading assets that could be deemed attached to an investment contract at any time—due to statements made without their knowledge and the potentially indeterminate nature of any statements they are aware of.

[4] In April 2026, the Staff of the Division of Trading and Markets of the Commission issued a statement (the "Statement") addressing certain covered user interfaces (defined as an interface provided by a website, browser extension, or other software application that may be embedded in a wallet or separately available for download, designed to assist users engaging in user-initiated crypto asset securities transactions on blockchain protocols (or smart contracts) utilizing the user's self-custodial wallet). The Statement provided that, subject to strict conditions such as transactions remain user-initiated, the Staff "will not object" to operation of covered user interfaces that facilitate end-user activity involving crypto asset securities without broker-dealer registration under Section 15(a) of the Securities Exchange Act of 1934. While the Statement is a welcome step, it is silent on the treatment of interface providers that facilitate user activities involving a non-security crypto asset to which an investment contract has attached but not separated according to the Release. (*See* Staff Statement Regarding Broker-Dealer Registration of Certain User Interfaces Utilized to Prepare Transactions in Crypto Asset Securities, April 13, 2026, available at https://www.sec.gov/newsroom/speeches-statements/staff-statement-regarding-broker-dealer-registration-certain-user-interfaces-utilized-prepare-staff-statement-regarding-broker-dealer-registration-certain-user-interfaces-utilized).

C. The Framework Creates Perverse Incentives Against Transparency and Will Reduce U.S. Liquidity and Market Quality

Under the Release, as attachment is tied to the specificity of an issuer's promises about essential managerial efforts, projects that publish detailed roadmaps and technical plans face greater attachment risk than opaque ones. That result is internally inconsistent with the Release's stated goal of encouraging better disclosure and providing greater clarity for market participants. This is because an issuer that publishes a detailed roadmap with specific milestones creates a clearer eventual path to separation, but also a longer and more uncertain period of attachment during which secondary-market liquidity providers bear heightened legal risk. The effect is that issuers are incentivized to remain vague, and liquidity providers are penalized for trading assets issued by transparent projects.

From GSR's perspective, as an OTC/MM Firm, this framework perversely makes well-documented, high-disclosure projects riskier to trade than opaque ones. Thus, distorting GSR's asset-coverage decisions and reducing liquidity for precisely the projects that have done the most to meet the Commission's disclosure expectations. This leads to the shrinking of U.S. liquidity, routing of institutional flow to offshore venues, widening of spreads, and ultimately degrading execution quality for U.S. institutions.

IV. The Commission Should Adopt a Safe Harbor for OTC/MM Firms

As discussed above, the Release's attachment/separation framework creates substantial legal uncertainty, operational challenges, and unintended market consequences for all OTC/MM Firms operating in the U.S. crypto asset markets. Commission-level relief is therefore necessary to preserve lawful liquidity provision and avoid unnecessary disruption to the U.S. crypto asset markets. GSR requests that the Commission adopt a safe harbor confirming that OTC/MM Firms transacting in non-security crypto assets are not required to register as broker-dealers under Section 15(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), solely because they transact in non-security crypto assets to which an investment contract may have attached and not yet separated. The Commission's exemptive authority under Section 36 of the Exchange Act, together with its interpretive authority, is well-suited to provide this relief.

A. Proposed Safe Harbor and Eligibility Conditions

The safe harbor would apply to principal transactions by OTC/MM Firms in non-security crypto assets that satisfy the following conditions:

> **1. No asset-status representations**: The OTC/MM Firm does not make affirmative representations to counterparties that a specific asset is or is not subject to an investment contract, or that a specific transaction is or is not a securities transaction.
>
> **2. No actual knowledge of Commission or judicial action**: At the time of a trade, the OTC/MM Firm does not have actual knowledge of a publicly announced Commission enforcement action or final judicial determination that the non-security crypto asset being traded is subject to

an investment contract that has not separated. Constructive knowledge based on diffuse public statements should not defeat reliance; a short implementation window (*e.g.*, up to 10 days) to remove an asset upon acquiring actual knowledge would apply.

3. Transparent role and conflicts disclosures: The OTC/MM Firm discloses, in plain terms, that it transacts as principal, may internalize orders or pre-hedge to manage risk, and determines prices in its discretion based on market and risk factors; and it maintains policies to address material conflicts.

4. No issuer fundraising or investor-placement activity: The OTC/MM Firm does not participate in the relevant crypto asset issuer's offering or other transaction principally intended to raise capital from investors. The sourcing of crypto assets from the issuer or its affiliates for *bona fide* secondary-market liquidity provision would not, by itself, constitute participation in such an offering or transaction.

5. Recordkeeping and escalation: The OTC/MM Firm maintains policies and procedures reasonably designed to monitor, at reasonable intervals, public Commission or judicial actions affecting covered assets and to escalate and pause trading upon gaining actual knowledge of a disqualifying action.

B. Scope and Limitations of the Safe Harbor

The safe harbor would cover OTC and MM transactions by OTC/MM Firms in non-security crypto assets, including those to which an investment contract may have attached and not yet separated within the meaning of the Release.

The safe harbor would not affect obligations applicable to activity involving crypto asset securities, which would remain governed by the federal securities laws. It would not limit the Commission's anti-fraud authority under Section 10(b) of the Exchange Act and Rule 10b-5 thereunder with respect to any transaction. Nor would it preempt obligations imposed by other federal regimes, including the Commodity Exchange Act, the Bank Secrecy Act, or any future market-structure legislation enacted by Congress.

V. Conclusion and Request for Engagement

GSR supports the Commission's goal of bringing clarity to secondary markets, and submits this letter on behalf of the broader community of OTC/MM Firms that face the same challenges under the Release's attachment/separation framework. These intermediaries engage with non-security crypto assets every day, and their trading is essential for the liquidity provision in the U.S. markets.

Commission-level action is urgently needed. Without the proposed safe harbor, OTC/MM Firms across the industry—not only GSR—face a serious risk: if a crypto asset they trade were deemed to be attached to an investment contract, they could be required to register as broker-dealers in the United States. That risk will increasingly push firms to curtail their coverage of the U.S. markets, driving institutional flow offshore and reducing investor protection.

The Release is the first comprehensive articulation of the attachment/separation framework. Pairing a novel interpretive framework with an administrable safe harbor for secondary-market liquidity providers mirrors the Commission's prior approaches—such as Rules 144, 15a-6, and 10b5-1—that translated fact-intensive standards into workable pathways for non-issuers. A safe harbor here would reduce uncertainty costs, preserve lawful liquidity, and mitigate incentives to move activity offshore.

The safe harbor would also serve as a sensible interim measure while Congress advances market-structure legislation, including the Clarity Act, that may establish a comprehensive framework for digital commodity spot markets and significantly expand CFTC jurisdiction. Rather than forcing liquidity providers to make irreversible registration decisions based on an interpretive framework that Congress may supersede, the safe harbor would preserve the status quo for bona fide principal trading pending legislative resolution.

GSR appreciates the Commission's effort to provide clarity through the Release and welcomes the opportunity to discuss these proposals with the Commission and its staff.

Respectfully submitted,

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