



May 1, 2025

BY ELECTRONIC SUBMISSION

Commissioner Hester M. Peirce
Crypto Task Force
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Application of the Federal Securities Laws to the Digital Asset Market

Dear Commissioner Peirce:

Jump Crypto Holdings LLC writes in response to the SEC Crypto Task Force’s request for comments on a proposed safe harbor from federal securities registration requirements for offers and sales of digital assets. *See* Comm’r Hester M. Peirce, *There Must Be Some Way Out of Here*, SEC Statement (Feb. 21, 2025), [tinyurl.com/ms66vzw5](https://www.sec.gov/statement/peirce-20250221) (“*Some Way Out*”). The Jump Trading Group is one of the largest, most active traders in the world; each day, Jump participates in hundreds of markets around the globe, and its employees play leading roles at world exchanges and other industry organizations.¹ Through Jump Crypto, in addition to being one of the largest market participants, Jump has been working to build the next frontier in crypto infrastructure for the last 5 years. Jump is therefore uniquely situated to comment on the development and structure of crypto markets, and wishes to bring to bear its broad, cross-asset expertise on the important questions the Crypto Task Force has raised about the development and trading of digital assets.

In this letter, Jump offers two recommendations for the Commission’s consideration, both of which would promote the Task Force’s goal of developing fair, orderly, and efficient markets. *First*, the Commission should clarify that, as a matter of statutory interpretation, most digital assets and digital-asset transactions are not investment contracts under current law. The Task Force has rightly identified a serious misfit between the federal securities laws and digital assets, and frustrating lack of clarity for market participants. Those problems stem almost entirely from the Commission’s misguided efforts under prior leadership to shoehorn digital assets into the statutory definition of “investment contract” in the first place. Most digital assets and digital-asset transactions today are not “investment *contracts*” for the simple reason that they are not contracts at all—they lack any forward-looking contractual obligations between an investor and entrepreneur. The Commission should promptly adopt this straightforward and common sense interpretation of the securities laws through an interpretive rule or guidance document.

In addition, regardless of whether the Commission interprets the term “investment contract” to exclude most digital assets in this manner, it should independently exercise its substantive

¹ For example, Dave Olsen, the President and Chief Investment Officer of Jump Trading Group, is a member of the Commodity Futures Trading Commission’s Global Markets Advisory Committee.

exemptive authority, 15 U.S.C. § 78mm, to make clear that digital assets and digital-asset transactions that lack forward-looking contractual obligations are not subject to the requirements of the federal securities laws. Statutory interpretation aside, that would be good policy. It would provide clarity to businesses and investors, ensure that crypto firms are not subject to unworkable registration and disclosure requirements, allow important capital formation for critical digital-asset market infrastructure and trading activity to return to the United States, and give Congress a clean slate on which to legislate, if necessary.

Second, if the Task Force proceeds with its proposal to establish a narrower, time-limited safe harbor from registration requirements, it should look to the well-established concept of “control”—rather than ownership (as some have proposed)—to determine whether that safe harbor should end after three years or instead continue indefinitely. In assessing control, the Commission should ask whether the underlying protocol remains under centralized authority—that is, whether any person or group of persons under common control has unilateral authority to make changes to the protocol. If the protocol is not under such control at the end of the safe-harbor period, the digital asset native to that protocol and any transactions in that asset should remain exempt from the securities laws’ registration requirements. The safe harbor’s limits should be based on principles that promote open-source systems, and this proposed test would best advance those objectives. To be clear, this control-based proposal is meant solely to delineate the scope of the Task Force’s proposed safe harbor. It is not necessarily the framework *Congress* should adopt for regulating digital assets, though traditional concepts of control may bear upon certain proposed legislative frameworks as well.

The Commission’s adoption of either or both recommendations would provide regulatory clarity while establishing a strong foundation for future market innovations in digital assets that enhance market efficiency and protect investors in the United States.

I. As A Matter Of Law And Policy, Most Digital Assets Should Not Be Subject To The Securities Laws

The SEC should clarify that most digital-asset transactions are not investment contracts. The Task Force has correctly identified the serious mismatch between the federal securities laws and digital assets. *See, e.g., Coinbase, Inc. v. SEC*, 126 F.4th 175, 209 (3d Cir. 2025) (Bibas, J., concurring) (“The ’33 and ’34 Acts fit crypto awkwardly”). But that misfit stems from a foundational interpretive error made by the Commission under prior leadership—namely, the notion that the securities laws apply to most digital-asset transactions. Once that error is cleared away, a safe harbor along the lines the Commission is considering becomes largely unnecessary.

In the last few years, the Commission’s overly broad assertion of authority over digital assets stemmed from a basic misunderstanding of the statutory term “investment contract.” 15 U.S.C. § 77b(a)(1). The Commission treated the term as if it granted the agency authority to regulate all “investments” simpliciter. But the statutory text is clear that an “investment contract” *is a contract*. Moreover, Congress borrowed the term “investment contract” from state blue-sky laws, which were uniformly understood to require (among other things) a contractual relationship between the investor and promoter and forward-looking obligations running between them. *See SEC v. W.J. Howey Co.*, 328 U.S. 293, 298 (1946).

In two early cases, the Supreme Court considered whether a particular contract qualifies as an *investment* contract in view of all the facts and circumstances. *See, e.g., Howey*, 328 U.S. at 298-301; *SEC v. C. M. Joiner Leasing Corp.*, 320 U.S. 344, 349 (1943). But neither case derogates from the statute’s plain meaning and history, which require a contract as a threshold requirement. In *Howey*, the contract requirement was easily satisfied by the orange-grove-management contracts at issue there. 328 U.S. at 300. The so-called *Howey* test—whether there is “an investment of money in a common enterprise with profits to come solely from the efforts of others”—addresses the distinct question whether a *particular* contract (or set of contracts) is of the “investment” variety. *Id.* at 301. *Howey* did not erase the statutory “contract” requirement altogether. *Joiner* is to similar effect. In holding that the oil well lease there qualified as an “investment contract,” the Court looked to economic inducements made by promoters in conjunction with the assignment of the leases. 320 U.S. at 349-50. But as in *Howey*, there was no doubt that *Joiner* involved a contract—an oil well lease—to begin with. *See id.* at 348 (“[a]n agreement to drill”).

Under this common sense and plain meaning interpretation of the definition of a security in the securities laws, most digital assets are not investment contracts because they are not contracts. They are simply assets. Like gold, sneakers, trading cards, or comic books, people might purchase some digital assets as investments. But that does not make digital assets investment *contracts*. And even if purchased as investments, many purchases of digital assets would still not satisfy *Howey*’s investment test because, for example, many digital assets are decentralized and therefore are not a “common enterprise” run by a “manage[r]” or “promoter.” 328 U.S. at 298, 300-01. Similarly, most transactions in digital assets (*e.g.*, secondary-market sales on exchanges) are not investment contracts because they are unaccompanied by forward-looking contractual obligations running between the purchaser and the developer (even if they involve contracts between the purchaser and seller).

To be sure, digital assets can be the *subject* of an investment contract—for example, if an investor acquires tokens from a developer as part of a financing agreement. But in that event, the financing agreement between the investor and the developer is the investment contract, not the tokens themselves. In addition, a digital asset conceivably could be programmed to embody contractual rights between a buyer and seller (making it an investment contract) or might qualify as another form of security (*e.g.*, tokenized stock). But a plain-vanilla digital asset or sale of that asset is not itself an investment-contract security. If there is no contract, the answer is clear: There is no “investment contract.” Only if there is a contract with forward-looking obligations between the buyer and the promoter should the SEC look to *Howey*, *Joiner*, and their progeny to determine whether the underlying contract is of the investment variety. It is that simple.

If this proper interpretation of “investment contract” were adopted and prevailed, it would eliminate the need to create a safe harbor along the lines the Commission is contemplating. Instead, the correct interpretation would cut directly to the root of the problem: The federal securities laws are mismatched for digital assets because most of those assets (and transactions in them) are not securities at all. The Commission can—and should—adopt that interpretation of “investment contract” as its official position through an interpretive rule or a guidance document, and to the extent any regulatory gap needs closing, allow Congress to craft a comprehensive regulatory regime for the crypto industry; continuing to shoehorn digital assets into the securities framework makes little sense. And it leads to arbitrary, inefficient outcomes, with the legality of digital-asset

projects hinging on officials’ subjective interpretation of a vague, indeterminate facts-and-circumstances test. A rule grounded in the proper reading of the securities laws—focused on whether there is an investment “contract”—would, by contrast, be easy to apply and produce predictable outcomes for which market participants could plan against.

The Commission should expressly exempt most digital-asset transactions from the securities laws to promote innovation, competition, capital formation, and investor protection. An interpretive rule or guidance document would not fully solve the problem because private litigants might urge courts to reject the Commission’s interpretation of “investment contract.” See *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024). Thus, regardless whether the Commission adopts an official interpretation of “investment contract” as applied to digital assets, the Commission should issue a notice-and-comment rule using its exemptive authority, 15 U.S.C. § 78mm, to categorically exempt from the securities laws any digital assets that are not contracts but nevertheless may be deemed “investment contracts,” as well as any transactions involving those assets that are unaccompanied by forward-looking contractual obligations running between the purchaser and the developer. That approach would effectively adopt the proper understanding of “investment contract,” as applied to digital assets, through an exercise of the Commission’s *substantive* exemptive authority, rather than through the Commission’s interpretation of the statute. A valid substantive rule promulgated under the Commission’s exemptive authority would be binding until rescinded.

Exercising the Commission’s exemptive authority in that way would be “appropriate in the public interest, and ... consistent with the protection of investors,” 15 U.S.C. § 78mm(a)(1)—regardless of the best reading of “investment contract.” The Commission’s past attempts to shoehorn digital assets into an ill-fitting framework designed decades ago have devastated the crypto industry and harmed investors. Uncertainty about where the Commission’s jurisdiction over digital assets begins and ends has hindered crypto innovation and forced companies offshore while creating confusion among investors about when the protections of the securities laws apply.² Exemption is also appropriate in light of the clear misfit between digital assets and the Commission’s existing rules and requirements. See *Coinbase*, 126 F.4th at 209-10 (Bibas, J., concurring). Because existing registration and disclosure rules are unworkable for digital-asset firms, treating most digital assets as securities does not result in—and in fact undermines—investor protection, efficiency, competition, and capital formation. By contrast, exempting most digital assets from the securities laws would acknowledge the fundamental differences between digital assets and the types of entities and products for which the Commission’s rules are designed, and the practical need for an exemption that these differences give rise to.

Exercising the Commission’s exemptive authority in this way would promote the growth and depth of key digital-asset-market infrastructure projects and trading activity in the United States. The Commission’s previous posture of “regulation by enforcement” stalled core market

² See, e.g., Carol R. Goforth, *Political Reality and Crypto Regulation*, 26 Chapman L. Rev. 599, 621 (2023) (“The lack of regulatory certainty has been described as a ‘massive barrier’ to responsible innovation in the crypto ecosystem.”); *What Is the Howey Test & Does Crypto Pass?*, Embroker (Apr. 3, 2025), tinyurl.com/yvzeuj38 (noting that “[e]ntrepreneurs interested in utilizing digital assets ... need to be diligent,” “[g]iven the numerous regulations and potential for severe penalties” and “host of confusing and complicated regulatory challenges”).

infrastructure projects that often addressed longstanding challenges such as interoperability, scalability, speed, and integrity. Additionally, as trading activity decreased in the United States, market participants shifted resources to subsidiaries abroad. These moves led to an exodus of talent and capital from the United States. For example, open-source market data demonstrates a substantial increase in trading volumes and venture activity outside of the United States from January 2023 to January 2025. *See, e.g.*, Nhat Hoang, *Electric Capital: 81% of Crypto Developers Now Based Outside the US*, BeInCrypto (Nov. 1, 2024), tinyurl.com/ffd6c78r; Medha Singh, *India Leads in Crypto Adoption for Second Straight Year, Report Shows*, Reuters (Sept. 11, 2024), <https://tinyurl.com/n9csuvth>. Ensuring that core infrastructure building and trading activity returns to the United States will preserve long-term U.S. leadership in the space and create an innovative environment promoting capital formation and investment. Moreover, fostering these developments domestically enhances the United States' ability to regulate and guide digital-asset-related activities, achieving the Task Force's broader goals of protecting investors and maintaining fair, orderly, and efficient markets.

By exiting the business of regulating most digital-asset transactions as securities, the Commission would also put the question of potential federal regulation squarely before Congress, which alone has authority to craft a comprehensive regulatory regime for the crypto industry and is currently considering how to do so.³ And it would provide clarity to markets and investors—and across the Executive Branch. Federal commodities, fraud, and consumer-protection laws (among others) would continue to apply to crypto transactions, and the market and investors would know to whom to turn (*e.g.*, the Department of Justice).

Because an exercise of the Commission's exemptive authority requires an assessment of the "public interest," 15 U.S.C. § 78mm, the Commission must "also consider ... whether the action will promote efficiency, competition, and capital formation," *id.* § 78c(f). As the Commission has recognized, therefore, it must conduct a cost-benefit analysis in exercising its exemptive authority. *See Bus. Roundtable v. SEC*, 647 F.3d 1144, 1148 (D.C. Cir. 2011); *Am. Petroleum Inst. v. SEC*, 953 F. Supp. 2d 5, 10 (D.D.C. 2013). Any cost-benefit analysis must be conducted against a proper baseline, comparing the world of the exemptive rule against a default status quo. *See American Equity Inv. Life Ins. Co. v. SEC*, 613 F.3d 166, 178 (D.C. Cir. 2010).

Here, that baseline analysis is potentially complicated by the Commission's previous inconsistent insistence that digital assets are covered "investment contracts." To guard against an arbitrary-and-capricious challenge, the Commission should assess the costs and benefits of its exemption against *both* the Commission's prior approach under which all or most digital assets were regulated as securities, and against alternative interpretive approaches that would result in fewer digital assets being regulated as securities. In other words, an exemption should not assume the correctness of the foregoing interpretation of "investment contract" that, while the best reading of the statute, might be rejected by some courts.

³ *See, e.g.*, Financial Innovation and Technology for the 21st Century Act, H.R. 4763, 118th Cong. (2023); Digital Asset Market Structure and Investor Protection Act, H.R. 5745, 118th Cong. (2023); Lummis-Gillibrand Responsible Financial Innovation Act, S. 2281, 118th Cong. (2023); BRIDGE Digital Assets Act, H.R. 9579, 118th Cong. (2024).

II. If The Commission Opts To Establish A Narrower Safe Harbor, The Commission Should Define Decentralization Based On “Control”

Jump respectfully submits that the interpretative statement and exemptive rule described above would be the best means of furthering long-term stability and efficiency, competition, and capital formation in the crypto sector. But while we believe this approach is preferable, Jump agrees that the safe harbor suggested by the Task Force would be a significant, welcome improvement over the status quo.

The Safe Harbor’s Limits Should Be Based On “Control.” If the Task Force opts to establish a narrower, time-limited safe harbor from registration requirements, the Commission should look to the well-established concept of “control” to determine whether a particular digital asset must exit the safe harbor. As the Task Force has noted, the purpose of such a safe harbor would be to provide developers sufficient time to create functional protocols and digital assets free from inapt registration and disclosure requirements that would otherwise hinder the protocols’ development, and to provide a continuing exemption from federal securities laws for those protocols that successfully reach maturity by the end of the safe-harbor period. The Task Force asked commenters to address, among other issues, whether “decentralization” should be “used as an indicator of network maturity,” whether “dispersion of control” is “a better framework than decentralization,” and “[i]f so, how should ownership of governance tokens and voting rights be considered in assessing dispersion of control?” *Some Way Out*.

In Jump’s view, decentralization and dispersion of control are tightly related concepts. Decentralization should be defined as the absence of control, and “control” should be defined in terms of whether any person or group of persons under common control has *unilateral authority* to make protocol changes. If no such person or controlled group of persons may exert such unilateral authority over the protocol at the end of the safe harbor period, the securities laws should not apply to any digital assets based on that protocol. And that is so even when a party (including an original development team) is engaged in ongoing efforts to develop the protocol.

Under this view, the quintessential mechanisms for dispersing control are consensus methods of governance, such as validation-based or token-based governance. A validation-based approach generally requires a quorum of third parties, none of whom have unilateral control, to make key protocol changes. The Bitcoin and Ethereum blockchains are the paradigmatic examples of protocols that have achieved a dispersion of control in this way; network changes to those blockchains require consensus among thousands of nodes or validators. This can be, and has been, shown by the many examples of open-source blockchains forking into entirely new blockchains (with corresponding network tokens). But other comparable models have worked as well. This is especially true for core infrastructure projects, which play an indispensable role in the blockchain ecosystem, but often operate under distinct governance structures compared to other protocols. Wormhole, for instance, is a decentralized protocol that enables transfers of messages cross-chain, allowing for a variety of functions including the effective movement of assets across different blockchains. *See Infrastructure*, Wormhole, tinyurl.com/5devt5vj. Wormhole “relies on a set of 19 distributed nodes that monitor the state on several blockchains”—called Guardians—with action by two-thirds of the Guardians required to make a protocol change. *See Guardians*, Wormhole, tinyurl.com/4hame9z9. So long as no one controls two-thirds of the Guardians, no person or controlled group of persons may unilaterally alter the Wormhole protocol.

Other projects have achieved a dispersal of control by replacing a centralized decisionmaker with automated smart contracts that aggregate the votes of token holders. Uniswap, for example, is a decentralized exchange that operates through both smart contracts and token-based governance. Smart contracts govern the functionality of the protocol and are almost entirely immutable, meaning that no one can modify the core functionality of the Uniswap protocol. Uniswap also has a governance token (UNI) that allows holders to control some aspects of the protocol, including whether to charge users fees to use the application. *See* Uniswap Governance Protocol, tinyurl.com/3jf4sary. The Uniswap DAO has over 310,000 voting members, and a proposed protocol change must successfully pass through multiple stages of voting to become effective. *See* Uniswap, CoinMarketCap, tinyurl.com/kdzjk7kt. In this way, Uniswap has ensured that no single person or controlled group of persons may unilaterally make changes to the protocol.⁴

To be clear, validation-based and governance-based mechanisms are not the *only* possible means of dispersing control in a blockchain-based system—they are simply illustrative examples that prove the concept. Experimentation in governance is ongoing and the technology underlying digital assets is rapidly changing, so the Commission should not articulate a “control” standard that relies on specific mechanisms or technologies. Rather, the Commission should adopt a technology-neutral principle that a lack of unilateral control over the protocol exempts digital assets based on that protocol from the securities laws.

A “Control” Test Based On Unilateral Authority Is Superior To Alternatives. The proper approach to “control” should be based on principles that promote open-source, innovative, and functional systems. Decentralization is not an end in itself. While decentralization can advance transparency and prevent any one entity from exerting undue influence over the system, it can also lead to coordination challenges and potentially hinder the efficiency of the networks. *See, e.g.,* Navin Sregantan, *What is the Blockchain Trilemma*, DBS (Nov. 28, 2023), tinyurl.com/yedjny99. Moreover, older protocols tend to exhibit a greater degree of decentralization, and a highly restrictive conception of control could thus tend to favor incumbents and create barriers to entry by exempting them, but not new entrants, from the federal securities laws. These barriers could threaten the development of newer systems—particularly in the core infrastructure space—that aim to address critical issues like interoperability, scalability, speed, and integrity. Solving these challenges would significantly enhance the utility and adoption of blockchain systems, while also tackling longstanding problems such as information asymmetries across market participants. These systems, if scaled, have the potential to challenge entrenched incumbents in a community-driven, democratized way. Any safe-harbor proposal should aim to balance those competing considerations and not require an approach to decentralization so restrictive that it elevates absolute decentralization over other competing considerations.

Judged against those factors, an approach that focuses on absence of unilateral control by a central actor is a better, more efficient solution than potential alternatives. One alternative that

⁴ Governance tokens, like other digital assets, are not “investment contracts” because they do not involve any contractual obligations, let alone between a token holder and a developer. Rather, a governance token gives a holder code-based rights to participate in the underlying protocol’s governance.

has been suggested, for instance, is that the Commission should exempt from the securities laws only those digital assets based on fully autonomous immutable protocols governed only by the rules of smart contracts. See *Some Way Out* (citing *SafeHarbor X: Proposed Safe Harbor – Exemption for Qualifying Distributions of Autonomous Cryptotokens*, tinyurl.com/txs2d7uc). Although this test is well-intended, it is too restrictive. It would limit application of the securities laws to digital assets only when they are based on protocols that operate “according to predefined rules in an automatic, transparent, and deterministic manner.” Andreessen Horowitz, *Comments on the SEC Crypto Task Force’s Questions Concerning the Security Status of Crypto Assets* 8 (Mar. 13, 2025). Such a rigid rule may be easy to administer, but it would also come with significant costs: It would stifle innovation, hamper competition by favoring incumbent protocols (again, because decentralization tends to improve over time), and impair the ability of new protocols addressing preexisting infrastructure shortcomings to continue to develop through open-source innovations. Networks need not reach that degree of decentralization to be deserving of an exemption from the “securities” laws.

Another proposal that has been made is to assess decentralization based on whether the development team owns a specific percentage of tokens. The percentage of token ownership could, in some circumstances, serve as a *proxy* for the degree to which a single person may unilaterally influence protocol changes. But it would be difficult to craft any *ex ante* rule that would appropriately apply across the board, as different token-based governance protocols may have different voting thresholds and procedures. And an exact ownership threshold would be ill-suited to evaluating the extent of decentralization of validation-based protocols, which are not governed by voting rights tethered to tokens. Given the variety of technologies to which a safe harbor may apply, the better solution is to adopt a more flexible principles-based standard based on whether any person or controlled group of persons may exercise unilateral control to change the protocol.

Yet another possibility for assessing a network’s maturity would be to ask whether a party (including an original development team) is engaging in ongoing efforts contributing to the system’s development. In Jump’s view, however, that consideration should play no role in the analysis. Although such efforts may reflect the network’s maturity in some sense, they are irrelevant to the core attribute of well-developed, public blockchains—lack of unilateral control. Ongoing efforts by developers to improve a protocol—which occur even in the most decentralized systems (*e.g.*, Bitcoin)—should be encouraged, not penalized.

Although a control-based test is the proper approach for delineating the scope of the Task Force’s proposed securities safe harbor, it is not necessarily the framework that Congress should adopt for regulating digital assets. In Jump’s view, any new federal digital-asset legislation should make clear that the vast majority of digital assets are commodities rather than securities. Still, aspects of a traditional control-based framework may inform certain commodities-based legislative approaches more effectively than imprecise ownership-based tests. Under the Lummis-Gillibrand market structure bill, for example, control concepts could inform when a commodity graduates from an “ancillary asset” potentially subject to disclosure requirements to a mature digital asset commodity. *Cf.* Lummis-Gillibrand Responsible Financial Innovation Act, S. 2281, 118th Cong. § 9804(b) (2023). Additionally, under the House-passed Financial Innovation and Technology for the 21st Century Act (FIT21), a strict control-based test could provide a tangible and objective bright-line standard for delineating jurisdiction between the SEC and the CFTC. Such a framework would help prevent regulatory outcomes where identical or otherwise fungible digital

assets are subject to conflicting requirements—such as being traded on separate systems governed by differing disclosure rules and compliance obligations with the potential of assets to move back and forth between regimes. A clear control-based test in either legislation will provide the certainty to entrepreneurs and software developers necessary to foster an environment in the United States conducive to multi-year project commitments.

Implementing The Safe Harbor. The Task Force appears to be contemplating the exercise of the Commission’s exemptive authority to establish this narrow, time-limited safe harbor. That approach would be justified for many of the same reasons explained above. The safe harbor would advance the “public interest,” 15 U.S.C. § 78mm, by giving regulated parties greater certainty about the rules of the road and incentivizing innovation in crypto protocols. It would also be “consistent with the protection of investors.” *Id.* When no one person or controlled group may unilaterally change an open-source protocol, applying the federal securities law’s registration and disclosure regimes would offer no real additional protection. The information asymmetries motivating those registration and disclosure regimes do not exist for open-source decentralized networks, and “the ability to identify an issuer or promoter to make the requisite disclosures becomes difficult, and less meaningful.” William Hinman, *Digital Asset Transactions: When Howey Met Gary (Plastic)*, SEC (June 14, 2018), [tinyurl.com/3hy9xjwk](https://www.sec.gov/spotlight/3hy9xjwk). Moreover, digital assets under the safe harbor would remain subject to federal fraud, consumer-protection, and commodities laws, among others.

In exercising its exemptive authority, as discussed above, the Commission should carefully consider the costs and benefits of the proposed safe harbor against a variety of baselines. And the Commission should make clear that transactions do not necessarily come within the SEC’s jurisdiction merely because they fall outside any promulgated safe harbor.

In addition, because it will take time for the Commission to exercise its exemptive authority in this way, in the interim the Commission should issue an interpretive rule or guidance document explaining that a dispersal of control renders the securities laws inapplicable as a matter of law. As already discussed, under a proper interpretation of “investment contract,” most digital assets and digital-asset transactions do not qualify as securities because they are not contracts. But even putting that aside, a transaction in a digital asset can be an investment contract only if it involves “an investment of money in a common enterprise with profits to come solely from the efforts of others.” *Howey*, 328 U.S. at 301. A digital asset does not satisfy that test when no one has unilateral control over the protocol underlying the asset because, under those circumstances, there is no “common enterprise” run by a “manage[r]” or “promoter.” *Id.* at 298, 300-01; *see Coinbase*, 126 F.4th at 209 (Bibas, J., concurring) (recognizing that “fully decentralized” networks “certainly d[o] not work like a security”). Former Director Hinman recognized as much in his seminal 2018 speech concluding that Bitcoin and Ethereum are not securities because no “central third party” controls those networks. Hinman, *supra*. The Commission should adopt that position as its own and clarify that the lack-of-control principle applies beyond Bitcoin and Ethereum.

In sum, the Commission can avoid the line-drawing problems that may afflict a narrow, time-limited safe harbor by cutting to the heart of the problem and deeming most digital assets and

digital-asset transactions beyond the purview of the securities laws. The Commission should effectuate that result in the near term through an interpretive rule or a guidance document, and it should independently exercise its exemptive authority to more durably achieve the same result.

If the Commission opts instead to proceed with a narrower, time-limited safe harbor, it should define the safe harbor's limits based on the well-established concept of "control." The Commission should reject more rigid conceptions of "control" requiring a fully autonomous system governed only by the rules of smart contracts or based on less effective specific token-ownership thresholds. Again, the Commission should adopt that position using its exemptive authority and issue an interpretive rule or guidance in the shorter term explaining that this view flows directly from *Howey*.

The Commission's adoption of either of these proposals would provide regulatory clarity while establishing a strong foundation for future market innovations in digital assets that both enhance market efficiency and protect investors in the United States.

Respectfully,



Daniel Gerhardstein
Head of Policy
Jump Crypto

cc: Hon. Paul S. Atkins, Chairman, SEC
Hon. Mark T. Uyeda, Commissioner, SEC
Hon. Caroline A. Crenshaw, Commissioner, SEC