



May 9, 2025

By email to crypto@sec.gov

Commissioner Hester M. Peirce
SEC Crypto Task Force
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20002
Attention: Taylor Asher, Chief Policy Advisor

**Mysten Labs’ Response to “There Must Be Some Way Out of Here”:
The Paramount Importance of Utility to the Security Status of Digital Assets**

We write in response to the Crypto Task Force’s (the “**Task Force**”) February 21, 2025 request for public commentary (the “**Task Force Request**”) on many of the most important regulatory questions faced by the digital asset industry. In particular, Mysten Labs, Inc. (“**Mysten Labs**”, “**we**”, “**our**” or the “**Company**”) respectfully submits the following responses and analysis to assist the Task Force in evaluating (i) the most important factor that should determine whether digital assets are “securities” under the U.S. federal securities laws and (ii) under what circumstances the Commodity Futures Trading Commission (the “**CFTC**”) is better and more appropriately situated to regulate certain digital assets.

Before we begin, we offer our sincerest “thank you” for inviting public comment on these industry defining questions and more broadly for the renewed effort by the Securities and Exchange Commission (the “**Commission**”) and the staff of the Commission (the “**Staff**”) to consider sensible, principles-based approaches that ensure both the protection of the public and the clear value to the world resulting from innovation in our industry. As a leading blockchain infrastructure software development company, we welcome the new Task Force and greatly appreciate the Commission and Staff’s efforts to engage in a sincere and thoughtful manner with our industry to foster transparent communication and promote regulatory clarity in this rapidly evolving and innovative space. We also thank the Staff for the helpful guidance released to date and offer our assistance to further action by the Commission and Staff.

I. EXECUTIVE SUMMARY

At its core, our response focuses on three concepts that we consider to be of utmost importance to preserving the industry’s ability to innovate and grow:

- First, that the utility and real-world use case for a particular digital asset is an essential consideration and should be a primary determining factor in whether

the asset should be deemed a “security” under the U.S. federal securities laws.

- Second, that the critically important threshold question of whether a particular digital asset is a security should be determined according to a practical, usable and reasonable legal standard that can be understood and applied by laypersons and the public at large. Put another way, the Commission should avoid excessively complicated, multi-part, multi-factor, esoterica which inevitably chills innovation and sows doubt in the industry. In our view, one such test should be whether a given asset has, or will reasonably have in the future, meaningful utility and a real-world use case, whatever that may be.
- Third, that digital assets with utility and a real-world use case are more appropriately regulated by the CFTC.

Crucially, we believe that all of these concepts balance the protection of the public and the integrity of markets with the equally important objective of fostering innovation and growth, and further believe that our proposals are consistent with current law and the historic allocation of regulatory responsibilities between the Commission and the CFTC. Put simply, we do not believe that our discussion below represents (or requires) the making of new law. Of course, to the extent the U.S. Congress, federal courts or the Commission do elect to adopt new statutory, common law or rule-based approaches to the regulation of digital assets, we would propose that such new paradigms consider and implement the below discussion.

II. BACKGROUND: MYSTEN LABS AND SUI

Mysten Labs is a California-based blockchain infrastructure company and the creator of, among others, the Sui blockchain. With a team of world-class engineers and researchers, Mysten is looking to reshape how the internet, finance and ownership will operate. Our team of experts previously worked on the Diem project at Meta, and have a deep understanding of blockchain technology and the limitations of traditional blockchains, including excessive network congestion, inaccessibility for ordinary folks, limited control over assets, and smart contract security. We designed Sui to overcome these limitations.

Sui is performant. Sui has the lowest end-to-end latency of any blockchain, and latency remains low even under heavy load. A novel object-oriented data model enables Sui to obtain best-in-class transaction throughput with processing speeds up to 297,000 transactions per second. Unlike traditional blockchains, which focus on account-based transactions, Sui’s object-based approach enables seamless creation, ownership, and tracking of any kind of digital asset. The combination of these features and superior performance make Sui ideal for use cases at scale, such as real-time payments systems, supply chain logistics, tokenizing real-world assets and digital identity systems.

Sui employs zkLogin, an innovative authentication scheme that simplifies user onboarding by allowing users to access and send transactions on the Sui blockchain by logging in privately with an email or social media account. This eliminates the complexity of setting up clunky cryptocurrency wallets, making Sui utility readily accessible to ordinary users. Sui also supports sponsored transactions, which enable applications to pay for gas on behalf of their users. The combination of these two features allows applications to hide blockchain elements from users and provide a simple, familiar experience, which is essential for builders seeking to onboard users who may be discouraged by the complexity of blockchain-based computing.

Sui leverages the Move programming language, which eliminates significant security issues endemic to other blockchains. To date, Sui has never suffered a major smart contract hacking incident. Sui continues to maintain an impeccable operational and security record.

Sui powers a variety of real-world applications, including decentralized finance, non-fungible tokens, gaming/metaverse, enterprise solutions, payments and privacy-preserving secure data storage. None of these applications would be possible without the existence of the SUI token, the native unit of value on the Sui blockchain. Sui addresses key performance, accessibility, programmability, and security problems, making it the natural choice for builders that require operations at scale.

III. THE CRITICAL IMPORTANCE OF UTILITY TO THE TAXONOMY OF DIGITAL ASSETS

We begin by addressing the first question posed by the Task Force Request, which relates to the status of digital assets as “securities” under the U.S. federal securities laws and which expressly acknowledge the complexity and difficulty of the existing application of law to our nascent industry. At the outset, the Task Force Request posits a helpful and thoughtful taxonomy of digital assets, focusing on four categories. Our commentary is directed to the final category (“all crypto assets, which are not securities . . . and are currently the biggest category.”). We believe in the strongest terms that this statement is correct – that the “biggest category” is non-security assets – and pose below what we believe to be a critical factor that should determine a category of assets that fall into that category (utility).

Before we address the specific questions set forth in the Task Force Request, we set the table with our agreement that the application of many of the “statutes and rules” making up the U.S. federal securities laws “may present challenges to firms seeking to innovate with crypto assets and blockchain technology.” We think this is inevitably true, with the understanding that innovation must also be balanced with the protection of the public and market integrity. To that end, we propose what we believe to be a reasonable approach to implement that necessary balance: digital assets that have, or will reasonably have in the future, meaningful utility and real-world use are commodities and not securities, and the federal commodities laws and the CFTC are the more appropriate source of regulation for those assets.

We begin by highlighting the fact that the Commission’s regulatory regime is issuer-focused, which is not a good fit for many digital assets, and particularly so for digital assets that are intended to be used by the public for non-investment purposes (whatever those purposes may be). Prior commentary by other industry participants in response to the Task Force Request has already highlighted what we believe to be a critical distinction between assets that should be regulated as securities and assets that are commodities: issuer-based classification versus asset-based classification.¹ Indeed, most of the statutory and rule-based provisions of the federal securities laws are responsibilities of, and relate to, the issuer of a security: issuers must, for example, file forms to register offers and sales of securities with the Commission under the Securities Act of 1933 (the “**Securities Act**”), file forms to register classes of securities under the Securities Exchange Act of 1934 (the “**Exchange Act**”) and file various forms and otherwise comply with various provisions of issuer-focused actions like periodic and current reports, tender offers, shareholder meetings, and corporate governance.² These forms, and the relevant requirements under these provisions, involve detailed, complex and thorough disclosure and considerations of facts and circumstances that inevitably relate back to the issuer. Audited financial statements, description of business, descriptions of officers and directors and corporate governance, etc. are relevant to traditional business and investments in those businesses, and the federal securities correctly focus on the business itself (the issuer). Much of this information is helpful and relevant to investors in traditional securities because the value of the asset is inextricably linked to the financial condition and results of operations of the business, and accordingly investors need access to, and the Commission requires, detailed discussion of the issuer of the securities.

In many ways, this issuer-focused approach misses the mark for blockchain-based assets that are intended to be used by the public – unlike investment assets, the nexus to the issuer may be significantly attenuated and the most important characteristics of the asset to investors are likely to be those of the asset itself. Moreover, because the existing framework is issuer-focused, much of the recent dialogue (and much of the commentary to the Task Force Request) has focused on centralization vs. decentralization and the concept of control. This is, in our view, the inevitable path of the issuer-focused approach, where assets are evaluated to determine whether there is sufficient control, or centralization, to find the issuer that becomes subject to the requirements and responsibilities of the federal securities laws.

But this approach, while relevant and helpful, is not sufficient. Many assets with meaningful and important use that are not appropriate for regulation by the Commission are not sufficiently decoupled from an enterprise to be decentralized. Indeed, the use

¹ See, e.g., Re: Security Status of Certain Crypto-Asset (Token) Transactions (April 28, 2025); Recommendations to the Crypto Task Force to Propose a Framework and Address “Security Status” and “Scoping Out” (April 23, 2025); Re: Response to RFI of Crypto Task Force (March 24, 2025); CHANGE IS CALLING: A CONTEMPORARY COMMISSION TO CONFRONT CRYPTIC CRYPTO CONDITIONS (April 11, 2025).

² We of course recognize that disclosure and certain requirements of the federal securities laws also relate to the asset itself (the relevant security) – for example, the portion of a Securities Act registration statement that describes the nature of the security sold.

case itself is often inextricably linked with an enterprise or project—not the financial results of the enterprise, but the existence of the enterprise and the products and services it provides. A simple analogy is existing “usable” assets created and marketed by a business that are not linked to the up-and-down financial results of the business: airline miles, baseball cards, Chuck-E-Cheese tokens, loyalty points, etc. Although the existence of the creator of the asset – and its continued involvement to maintain the system that supports the use case – may be relevant to the use of that asset, the exceptionally detailed and complex current and periodic disclosures and other requirements of the federal securities laws that are intended to track timely the financial performance of the creator of the asset are simply not relevant relative to characteristics of the broader ecosystem in which those assets can be deployed. We therefore believe that it is critical for the Commission to focus on utility as an additional—if not primary—category in its taxonomy of digital assets.

And to be clear, the Commission recognizing this taxonomy does not mean that assets with utility are beyond the reach of regulators. We discuss in Section IV below, the reasons why we believe the CFTC is the more appropriate regulator for digital assets that have utility and real-world use cases. Simply put, the CFTC regime – which is asset-focused, and not issuer-focused – is better suited to this task.

We now turn to the specific question set forth in the Task Force Request. For ease of reference, we copy that language below and address the question in turn:

- 1. What type of regulatory taxonomy would provide a predictable, legally precise, and economically rational approach to determining the security status of crypto assets and transactions in such assets without undermining settled approaches for evaluating the security status of non-crypto assets and transactions?*

As described above, we believe strongly that the most appropriate approach to a taxonomy of digital assets addresses the question of utility: assets that have, or will reasonably have in the future, meaningful utility and real-world use cases should not be deemed “securities” for purposes of the federal securities laws. We agree, of course, that the regulatory taxonomy should be predictable, legally precise, and economically rational. To that end, we think the taxonomy must avoid complex, multi-factor or multi-part legal tests (which inevitably result in almost no usable test at all) in favor of a workable, principles-based approach that focuses on whether a particular asset is linked to the financial results and operations of a business. Assets that have a meaningful use case and that do not have such a nexus are simply inappropriate for the issuer-based approach of the federal securities laws and are instead more appropriate for the CFTC’s asset-based approach.

We also believe that this taxonomy should not necessarily foreclose the fact that speculation or fundraising may go hand-in-hand with utility. It is of course a reality of every business that products and services may be offered to fund the operations of that business, and that third-parties may ultimately choose to speculate on the value of products. Take for example a producer of fine wine – pre-sale of future wine deliveries

can fund the production of current vintages, and consumers may ultimately choose to speculate on whether the value of future vintages will increase over time. But that does not undercut the inherent reality of the relationship between the producer and those customers, or the fact that the wine is ultimately a good intended for use (consumption). As discussed below, the CFTC is better positioned to evaluate when speculation may overcome the use case and require additional regulation, particularly when speculators create financial instruments that are de-coupled from the usable product itself.

Similarly, we believe that transferability, liquidity and fungibility are not inherent reasons to regulate an asset like a financial asset. The existence of transferability or markets for digital assets are often confused with inherent speculative intent and purpose, and to the extent such concerns exist, we believe the CFTC is better positioned to make those determinations. Indeed, as noted in our introduction above, we believe that existing law recognizes this fact and that, accordingly, our proposed taxonomy does not require new law.

Although an exhaustive analysis of the complex history of the definition of the term “security” is beyond the scope of this response, we do want to address how the concept of utility is consistent with existing precedent. The Commission and the Staff have regularly acknowledged the role utility must play in the evaluation of digital assets. For example, in the Staff’s April 2019 Framework for “Investment Contract” Analysis of Digital Asset—an unfortunately unworkable multi-factor test—utility is clearly included as a factor relevant to the *Howey* discussion. Unfortunately, we think these prior efforts were unworkable precisely because they were so complicated. There are simply too many different forms utility and real-world use might ultimately take, and indeed many of which do not yet presently exist. In our view, the Commission should avoid putting itself in the position of speculating about the potential universe of use cases for digital assets and should instead focus on implementing a taxonomy that stands the test of time and leaves room for valuable innovation.

In brief, the most relevant aspect of the investment contract test set forth in *Howey* to our proposed taxonomy is the requirement that the purchaser have a “reasonable expectation of profit.” Assets that have meaningful utility (or that will reasonably have it in the future) can be distinguished from securities for exactly that reason: when assets have a real-world use case, the motivation of the reasonable purchaser is different than financial assets linked to the results of operations and financial condition of a business (or other financial obligations like debt). Although it is difficult (perhaps impossible) to predict with certainty the precise motivation of each and every purchaser or potential of a given asset, and certainly true that even the most benign and usable assets may invite some degree of speculation (see, e.g., the “Beanie Babies” craze of the 1990s), assets that have two relevant primary characteristics: (i) that have, or may reasonably have in the future, meaningful utility or a real-world use case and (ii) that are not expressly linked or have a direct nexus to the real-time financial results of a business are best understood to not invite the reasonable “expectation of profit” contemplated by *Howey*.

IV. DIGITAL ASSETS AND REGULATORY AGENCIES: WHICH SANDBOX?

We continue by addressing the second section of the Task Force Request, which relates to whether the Commission should “scope out” categories of digital assets that are more appropriately outside of the Commission’s regulatory authority. For ease of reference, we copy the introductory language below and address the concept generally in turn.

Scoping Out

The Commission may be able to provide greater clarity to investors and other market participants by identifying categories of crypto assets (and transactions) that do not fall within its authority. In some cases, these types of crypto assets may be within another regulator’s authority. In determining what falls outside the Commission’s authority, the Commission should look to the economic reality of what is being offered or sold. Simply saying something is not a security does not mean it is not a security.

We agree strongly with both premises: first, that the Commission can, and indeed must, provide greater clarity to investors and other market participants by identifying categories of digital assets that do not fall within its authority, and second, that the Commission should look to the economic reality of the asset when making this determination. We also agree, and recognize, that tautological statements about the status of an asset are not helpful—the Commission should therefore implement a taxonomy of digital assets consistent with law and historic principles of the allocation of regulatory responsibility between regulatory agencies.

Although a comprehensive discussion of the history of the allocation of responsibility is beyond the scope of this response, it is certainly true, and we acknowledge, that both the Commission and the CFTC have, and will continue to have, a significant role in the regulation of digital assets. Many individual assets are likely to be structured like securities (whether debt or equity, and likely myriad variations of both), and the Commission and the U.S. federal securities laws will be essential to the protection of investors in those markets. This response, however, is intended to highlight a category of assets that we believe to be fundamentally inconsistent with the Commission’s mission and the requirements of the federal securities laws.

As discussed above, we believe that assets which have, or reasonably will have in the future, utility or real-world use cases are more appropriately classified as commodities subject to regulation by the CFTC. These assets, which are decoupled from the direct impact of the day-to-day results of operations and financial condition of a business, are more appropriately overseen under an asset-focused approach and are not suitable to the Commission’s issuer-focused approach. We need not reinvent the wheel: rather than design from the ground up a new set of federal securities laws to fit these assets, we believe that the existing federal commodities laws are well-equipped to balance the protection of the public with fostering much-needed innovation.

Indeed, the CFTC’s jurisdictional approach is a natural fit for assets with real-world utility. Anti-fraud jurisdiction and anti-manipulation jurisdiction of spot transactions and markets ensures that the public is adequately protected against projects that fail to meet their obligations or responsibilities (and abusive behavior by third-parties), and, to the extent that markets desire to create more complex instruments to speculate in utility assets outside of their intended use case, the CFTC’s registration jurisdiction and day-to-day oversight of derivative products is a well-tailored approach to ensuring the public good. Even where the additional layer of registration jurisdiction may not be appropriate (in our view, for assets with meaningful utility and a real-world use case) the CFTC’s day-to-day fraud and anti-manipulation is not toothless, as evidenced by the substantial number of fraud cases brought by the CFTC in recent and past years across asset classes. Anti-fraud and anti-manipulation jurisdiction ensures that users and markets for usable assets have access to important information about products through relevant disclosure and provides a tailored regime without the more burdensome registration responsibilities that are more appropriate for systemically risky or highly speculative assets.

Unlike the issuer-based approach of the federal securities laws, the CFTC evaluates and regulates assets (derivatives and other products) based on their structure and terms, including the role of market participants and intermediaries in the markets for those assets. The CFTC is also well-versed in addressing structures that do not involve derivatives but which raise the risk of speculative abuse. For example, the CFTC’s regulation of transactions in commodities involving margin, financing, and leverage as retail commodity transactions provides necessary and appropriate protections for certain categories of commodity transactions. We therefore believe that the Commission should cede authority over assets with meaningful utility to the more appropriate regulator – the CFTC.

* * * * *

We sincerely appreciate the opportunity to comment on these important issues.

Respectfully submitted,



Sylvia Favretto
General Counsel, Mysten Labs