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April 23, 2025

By Email

Commissioner Hester M. Peirce
Chair of SEC Crypto Task Force
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-0213

RE: Asset-Based Classification; Decentralization; Regulatory Status of Technology Functions; Treatment of Infrastructure Providers

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

Our client, Owl Explains powered by Ava Labs, Inc. (“Ava Labs”), welcomes the establishment of the Crypto Task Force and appreciates the Commission’s efforts to foster industry engagement, transparency, and regulatory clarity in this rapidly evolving and innovative space. Owl Explains further applauds the valuable guidance¹ already released and offers its contributions to those efforts.

I. Background

Ava Labs is a Brooklyn-based technology company formed in 2018 with the aim of advancing blockchain and related technologies in order to foster greater adoption of this database layer of the internet.² The Avalanche Primary Network was launched by a diversified group of validators in September 2020, bringing its novel consensus mechanism and the ability to create custom blockchains to the world. Owl Explains is a project created by the legal team at Ava Labs with the goal of becoming a trusted educational resource for regulators, policymakers, and other stakeholders interested in learning about blockchain technology, crypto assets, and Web3.* Owl

* Hereinafter, we refer to Ava Labs and Owl Explains jointly as “Owl Explains.”

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Explains also provides primers that illustrate the technology that underpins the Avalanche Primary Network.

The Avalanche Primary Network is powered by the proof-of-stake based Avalanche consensus³ and is secured by a distributed set of independently operated validators located around the globe who secure the network and authenticate transactions.⁴ The Avalanche protocol also affords users the ability to build interoperable, custom layer-1 blockchains.⁵

The native token of the Avalanche Primary Network is AVAX, which serves as the unit of account and means by which resources are allocated on the network through, among other things, paying “gas” and other fees and staking to operate validator nodes.

To date, Avalanche community members have utilized the network and AVAX tokens to build and operate around 100 custom layer-1 blockchains, create almost 785,000 Smart Contracts, and execute nearly 1.5 billion transactions.⁶ The Avalanche protocol has been adopted for various use cases by participants across the world from the public and private sectors, including:

- **Tokenized securities and other finance related use cases,**⁷ including tokenized fund interests and other securities by financial institutions like BlackRock, Franklin Templeton, Apollo Global Management, and KKR, as well as a decentralized reinsurance marketplace and the deployment of smart contracts capable of pricing and executing bilateral trades.
- **Cross-border payments,**⁸ with companies like StraitsX and Fonbnk utilizing Avalanche to simplify cross-border payments in Southeast Asia and Sub-Saharan Africa, enabling otherwise unbanked users to access cost-effective and secure payment solutions.
- **Ticketing and consumer programs,**⁹ where Avalanche technology powers platforms by Tixbase, Sports Illustrated, and SK Planet, connecting users to NFT-based ticketing and loyalty rewards programs.
- **Privacy, Security, and Data Integrity,**¹⁰ with a wide range of entities—the California DMV, Deloitte, Chainlink, Balcony, and J.P. Morgan—relying on Avalanche technology to support blockchain-based applications that require privacy and security and combat real-world fraud.

II. Responses to Certain Requests for Information

Owl Explains appreciates the opportunity to respond to Commissioner Hester M. Peirce’s February 21, 2025, statement soliciting public input on various questions related to developing workable regulation of blockchain technology and crypto assets (the “Statement”).¹¹ In particular, this letter:

- Sets forth a high-level framework for token classification based on the nature of the asset;
- Discusses an asset-based approach for evaluating tokens under federal securities laws, and assesses a technology-based test focused on decentralization;
- Explains technology functions inherent to the operation of blockchains (the “Technology Functions”) and why they do not constitute or result in securities; and
- Explains why infrastructure providers on blockchain networks are not securities intermediaries.

A. Token Classification Based on the Nature of the Asset

Owl Explains applauds the goal of, and does not underestimate the challenges in, creating comprehensive regulatory classification for crypto assets. In keeping with legal concepts that have developed over centuries, Owl Explains proposes a classification system based on the nature of the asset, service, or function that the crypto asset represents.¹² For purposes of this discussion, we use the shorthand “asset” to describe any asset, service, arrangement, bundle of rights or interests, item, or thing that might be digitally represented through tokenization or otherwise exist as a token. In other words, “asset” is meant to capture the substance of what a token entitles its holder to or enables its holder to do.

1. An Asset-Based Approach to Token Classification

The rationale underlying an asset-based approach is based on what tokens are and how the law has traditionally treated the representation of assets.¹³

Although blockchain is a new technology, the function of tokenizing assets is not.¹⁴ Tokenization is simply the representation of an asset in a convenient form allowing for establishment of possession and/or ownership and transfer of the asset, including transactions involving the asset.¹⁵ Tokenization on a blockchain is a different technological means by which assets and/or ownership are recorded.

When it comes to laws and regulations, treating all tokens the same simply because they are recorded on a blockchain makes as little sense as treating a sketch, an ID card, a receipt, and a stock certificate the same merely because they are printed on paper. The core consideration should be the substantive nature of the asset, not the means by which it is represented.

Each token should be treated according to what it actually represents—just as regulators do with anything written on paper or any physical asset. By looking at a token’s functions, features, and associated rights, interests, and obligations, we can determine its utilization, valuation, and classification (including for legal/regulatory purposes) based on the asset it represents. Using the paper analogy, consider:

- **Title:** A paper deed of title to a home provides evidence of ownership of the asset, so it represents the bundle of rights that reflects ownership of the home.
- **Tickets:** Paper tickets to a concert or sporting event gives the right to attend an event and sit in the assigned seats. The same is true if the ticket is digitally represented in an app on your phone.
- **Financial instruments:** Shares of stock were once represented with paper certificates. To hold a paper share certificate denominating ownership of 100 shares of Corporation X was to possess the bundle of rights, economic, and governance interests associated with being a stockholder. Today, an investor has the same share ownership with electronic recording of one's beneficial ownership.

Each of these assets and many more can easily be represented on a blockchain through tokenization without changing the nature of the asset, just as they formerly were represented on paper.¹⁶ It is also of no consequence whether or not the blockchain network such asset sits on is decentralized—the nature of the technology that stores and secures the token representing the asset does not change the nature of the asset itself, just as the type or color of the paper on which the assets were recorded do not change their essential nature. This view has already been adopted by the Financial Accounting Standards Board,¹⁷ the Internal Revenue Service,¹⁸ the Commodities Futures Trading Commission,¹⁹ and the Federal Reserve.²⁰

Recent SEC interpretations on stablecoins and meme coins have recognized that the nature of the asset is paramount by looking at the functions and features of the respective types of tokens to conclude that they were not securities.²¹ We recommend that the Commission more fully adopt this approach—namely, issue guidance to the effect that tokenization using blockchain technology does not change the nature of the asset—to avoid the confusion and reregulation that would result if the technology platform where an asset is recorded determines the nature of the asset.

2. Proposed Token Categories

Law, regulation, and guidance should be consistent across regulatory agencies and across different technologies: the same asset, however represented, should have the same legal and regulatory treatment. These principles are reflected in efforts to modernize the Uniform Commercial Code (“UCC”), not only in the 2022 Amendments introducing Article 12 and a legal framework for “controllable electronic records,” but also with broader recognition of digital representations of items, such as electronic documents of title and chattel paper in Article 9 and tokenized securities in Article 8.²² With these changes, the UCC effectively recognizes that digitization does not change the nature of an asset and has no effect on the way it should be treated for commercial purposes. The SEC should similarly look to the nature of an asset when determining whether a particular crypto asset (to use the language of the Statement) is a security within its jurisdiction, just as it does with any other type of asset, however represented.

To that end, Owl Explains proposes the following token categories that represent the vast majority of use cases.

- **Physical asset tokens:** Any digital representation of a tangible asset (*e.g.*, gold coins, Air Jordans, cups of coffee vs. coffee cups, etc.) created and maintained on a blockchain (also known as “DLT” for distributed ledger technology).
- **Services tokens:** Any digital representation of services (*e.g.*, cleaning services, personal performances vs. concert tickets, legal services, etc.) to be provided by one or more persons/entities to other person(s)/entities. This category also includes music and purely digital art files (the intellectual property underlying the music or digital art file may be an intangible asset token, discussed next, if not transferred with the file).
- **Intangible asset tokens:** Any digital representation of intangible assets (*e.g.*, bonds, intellectual property rights, government benefits, loyalty points programs, etc.).
 - **Security tokens:** These tokens are a type of intangible asset token representing any asset that meets the definition of a security under the Securities Act of 1933, as amended (the “Securities Act”), or the Securities Exchange Act of 1934, as amended (the “Exchange Act,” and, together with the Securities Act, the “Securities Acts”).²³
- **Native DLT Tokens:**²⁴ A category of tokens that are integral to the functioning of a blockchain protocol (*e.g.*, BTC, ETH, SOL, AVAX, etc.). This category might be a subset of intangible asset tokens in the sense that these tokens are a bundle of rights and interests intrinsic to a protocol with no physical item involved, although some may have an element of services (*e.g.*, when the token is used to permission use of the network). We treat native DLT tokens separately, however, because intangible asset tokens must be associated with something that exists (or can exist) distinct from the protocol that creates and maintains the token. Native DLT tokens have no existence or purpose without the associated protocol. An explanation for why native DLT tokens are not investment contracts can be found below in Section II.B.²⁵
- **Stablecoins:** A narrow category of tokens that do not fall within any other category and are designed to maintain stable value against some underlying reference, usually fiat currencies, or linked asset or pool/basket of assets. This category should not be broadened such that it swallows all other categories.²⁶

3. An Asset-Based Test Aligns with Securities Law Principles

The foregoing categories are based on the nature of the asset and do not change based on the technology used to record an asset. The federal securities laws have always regulated certain assets as securities, regardless of the underlying technology. Whether the asset is recorded on paper, a centralized database (including a centralized blockchain), or a decentralized blockchain network should not matter for purposes of token classification and any applicable laws and regulations.

Decentralization, on the other hand, is a technology-based test, not an asset-based test. Accordingly, we do not favor a classification system that elevates decentralization above the nature of the asset.

This does not, of course, mean that decentralization is never relevant to the application of securities law, including with respect to the application of the *Howey* test. It does, however, mean that single-minded focus on decentralization or any other technological arrangement is not workable in assessing the nature of an asset and whether it is a security.²⁷ With that in mind, we lay out our views on decentralization below, but urge the SEC to consider that the application of *Howey* should not be exclusively based on the technology used to represent an asset or effect transactions in it. We further note that, as indicated by the asset-based token classification scheme laid out above, *Howey* is often not implicated at all because the nature of the asset makes clear that the asset is not a security. In those instances, decentralization (or centralization) cannot convert a non-security into a security or otherwise change the classification of the asset, simply because the relevant blockchain used to tokenize the non-security asset is decentralized (or centralized).

a. *Defining Decentralization*

We understand that various decentralization definitions have been proposed over the course of time, including in draft legislation and by commentators. We favor a simple definition for assessing when a system is decentralized:

- No single point of failure;
- No single source of truth; and
- No single authority capable of or responsible for altering data.

This definition focuses on transaction finality and immutability of records (including recordation of transfers) without reliance on a central authority or intermediary, but rather on a functioning consensus mechanism.

More complex definitions have tried to set specific parameters for elements such as token sales and holdings, governance rights, responsibility for software development and updating the code, marketing and disclosures activities, and actions in connection with launching the protocol. These and other matters *may* be factors to evaluate the elements under our definition, but unless they interfere with or allow for changes in ownership by a central authority, we do not believe they are relevant to a determination of whether a network is decentralized.

b. *Potential Applicability of Decentralization in the Context of Securities Law*

Even if a definition were readily agreed upon, there are serious questions about the use of decentralization as *the* test for token classification, for whether an investment contract exists, or as a dividing line between the jurisdiction of the SEC and the CFTC. First, as the discussion in the

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prior section makes clear, existing law is asset-based, not technology-based, so there is no definition in existing law for decentralization or recognized basis for when and how such a concept would apply. If the intention with imposing decentralization as *the* test is to revamp the *Howey* test, develop a completely new test, or otherwise change existing law, legislation would likely be required.

Second, using decentralization as the exclusive test would misread *Howey*,²⁸ its progeny, and other relevant case law. Under *Howey*, an arrangement (“contract, transaction or scheme”) is considered an investment contract if it involves an investment of money in a common enterprise with the expectation of profits stemming primarily from the management efforts of others.²⁹ In other words, *Howey* instructs that we should look to the nature of the asset—in this case, an arrangement—when determining whether an investment contract exists. Nowhere under *Howey* or its progeny is the paper or technology being used to record the arrangement relevant to the analysis. As such, using a technology-based test is not grounded in law.

Third, a decentralization-based test disregards the nature of the underlying asset, a cornerstone of the law and practical understanding. There are many assets that are recorded on centralized systems or on functional blockchain networks that, by their nature, do not meet any definition of a security (*e.g.*, concert tickets, titles to property, loyalty points). A concert ticket that is recorded on a piece of paper, centralized database, or a decentralized blockchain network is still a concert ticket. We do not need to contemplate the nature of the technology it resides on in order to determine how it should be classified and regulated. The presence or absence of centralization is irrelevant when classifying those assets; it is based on the nature of the asset as applied to current law.

That being said, decentralization might, under certain circumstances, be an appropriate *factor* in a test to determine the existence of a security, for example in defeating the “efforts of others” portion of the *Howey* test. But supplanting *Howey* with a test that looks to decentralization alone will force an entire industry to chase decentralization, and is the equivalent of picking winners and losers because some projects simply will not be able to operate on a decentralized system. And it will defy commonsense understanding of what assets are. No one, even after *Howey*, takes the view that oranges are securities. It is entirely unworkable to say that, when represented on a centralized database, oranges are securities, but when represented on a decentralized database, they are not.

We have also seen arguments that “control” (sometimes called “technological control”) should be the relevant test. Our concerns with a test based on these ideas is the same—ultimately, tests that ignore the nature of an asset do not work and risk dragging all manner of assets and technology providers under the SEC’s jurisdiction, often with conflicting results or, in some instances, causing too many issuers or intermediaries to exist for the same asset or action. Control, however, is closely related to decentralization, and may be a factor in determining if a security exists when applying the *Howey* test. But a test based on the nature of an asset—the asset-based approach described above—is the best path forward because it comports with existing law and

practical understanding, and allows decentralization and control to be factored in when relevant to assessing whether an investment contract exists under *Howey* for purposes of the federal securities laws.

B. Technology Functions Do Not Implicate Federal Securities Laws

This section addresses two related issues: the status under the federal securities law of Native DLT Tokens and of the Technology Functions in which Native DLT Tokens and other tokens are used.

Native DLT Tokens are not investment contracts or other types of securities because they are integral to the functionality of a network and are not issued by a legal entity as a security. Technology Functions are not securities transactions nor do they result in investment contracts, because they involve use of the token's intrinsic technical features, which have nothing to do with a legal entity's capitalization or a passive investment. For purposes of this letter, Technology Functions include a transaction or other activity in which a token is transferred or otherwise used on a protocol in accordance with its design as an integral part of the operation of that protocol.

The intrinsic features represented by Technology Functions often involve network security and allocation of resources on the protocol, both of which are core to the functioning of the technology. This is particularly the case with respect to Native DLT Tokens. Most importantly, networks cannot exist without their associated Native DLT Tokens because they are inextricably linked to the functionality and security of their respective protocols.

And while the uses for, and rights provided by, Native DLT Tokens may vary from network to network, all have one thing in common: they are not securities, whether investment contracts or otherwise. They are, by their nature, utilized in connection with the day-to-day functionality of their respective networks on a consumptive basis and do not bestow the legal rights or interests commonly associated with securities (*e.g.*, claims on the assets, revenues, or profits of a legal entity in exchange for the provision of capital to be used by that entity). They are used and created to allocate scarce resources by providing incentives for network security and other desired behaviors, a medium of exchange and unit of account, and rights to services with respect to the network, among other functions.

The nature of the Native DLT Token asset is functionality, not investment.³⁰ It is designed to be actively used by the holder in the Technology Functions integral to the workings of the protocol. It is intended for participatory action on the network, to help in network operations. As such, Native DLT Tokens cannot be investment contracts under *Howey*.

Tokens used in Technology Functions are no less a part of the core technology features of blockchain protocols that facilitate security and resource allocation than hardware, communications, cybersecurity, and software. Just as activities and transactions related to the latter are not considered securities transactions, so it should be with tokens used in Technology Functions. It bears repeating, moreover, that it is of no consequence whether Technology

Functions utilizing tokens are performed on a decentralized network or otherwise—that aspect of network technology does not change the nature of the underlying token itself or its use.

Examples of Technology Functions include but are not limited to:

- Staking tokens and operating a validator node or delegating tokens to a validator;
- Receiving or distributing staking rewards in connection with validating transactions and/or securing the protocol;
- Locking tokens (*e.g.*, in a smart contract), including wrapping, bridging, and staking;
- Minting and burning tokens;
- Payments of transaction or other fees on the protocol;
- Other participation in the operation or testing of the protocol;
- Claiming or otherwise receiving tokens through an Airdrop or similar mechanism; and
- Sending, receiving, or otherwise transferring tokens on the protocol for any related purposes.

As explained, Technology Functions are an integral part of the operation of a protocol and, as such, do not implicate the federal securities laws. This is true for Native DLT Tokens that, as demonstrated above, are not themselves securities; so the activities, by definition, cannot involve a securities transaction.³¹

But it is also true that Technology Functions more generally do not involve an investment contract or the offer and sale of a “security” within the meaning of the Securities Acts. The “economic reality”³² of Technology Functions does not entail the investment of money in a common enterprise with profits derived solely from the efforts of others, nor do they involve the capital structure of a legal entity or a note.³³

Rather, Technology Functions perform critical roles integral to the operation of the protocol and provide critical infrastructure that underpins blockchain networks. Staking tokens and the tokens that are minted as staking rewards, for example, are a vital component of the validation mechanism of many networks. Without their contribution, network security and reliability would falter. The role of Technology Functions with respect to the protocol is no less intrinsic than the role internet service providers, communications protocols, hardware makers, web browsers, or the internet generally play in traditional securities markets. Those technology providers and their functions have never been regulated under the federal securities laws. For the same reasons, Technology Functions, and the persons who perform them, should not be regulated under the securities laws, merely by dint of the fact that they are part of a protocol.³⁴

There is no security or securities transaction in the context of Technology Functions. There is only individual action to make each protocol work.

C. Infrastructure Providers on Blockchain Networks Are Not Securities Intermediaries

Notwithstanding that blockchain technology has revolutionized the way transactions in assets—including securities—are conducted, participants who provide and maintain the infrastructure that allows blockchain networks to function are not engaged in activities subject to regulation under the federal securities laws. These infrastructure activities include, without limitation, hardware, software, and communications providers; miners, validators, delegators and node operators; and providers of APIs/RPCs, block explorers and other data (collectively, “Infrastructure Providers”).

Providing this essential infrastructure in connection with transactions on a blockchain does not transform these Infrastructure Providers into securities intermediaries (*e.g.*, investment advisors, clearing agencies, transfer agents, national securities exchanges and/or brokers-dealers),³⁵ any more than building hardware, developing software, and facilitating communications transforms those who provide that infrastructure to the traditional markets into regulated intermediaries. First, if the crypto assets underlying the transactions are not securities, then there is no transaction in securities under the U.S. federal securities laws and no need to look for a securities intermediary. Second, long-standing guidance from the SEC reflects that even when infrastructure is used for securities transactions, the Infrastructure Providers are not regulated because they are engaging in administrative and technological actions, not the functions of a broker, dealer, investment adviser, or other enumerated intermediary.

1. Infrastructure Providers Are Not Securities Intermediaries When Securities Are Not Involved

A securities intermediary is only present when securities are the underlying asset, in keeping with the asset-based approach of the federal securities laws. Under the relevant laws and regulations, all intermediaries are defined as persons who engage, in one activity or another, with securities. As discussed above, proper token classification demonstrates that many tokens are not themselves securities.³⁶ Recently, the SEC has acknowledged that is the case.³⁷ Commissioner Peirce, for instance, in her speech at the Annual DC Blockchain Summit, stated “many crypto assets themselves are not securities.”³⁸ As such, when Infrastructure Providers facilitate transactions involving non-security tokens, such as Native DLT Tokens, they cannot be said to be involved with securities. Accordingly, the law does not require that they be regulated as securities intermediaries simply for transacting in crypto assets.

2. Infrastructure Providers Performing Technology Functions in Securities Markets Should Not Be Regulated As Securities Intermediaries

The SEC has consistently afforded no-action relief to technology companies which provide infrastructure rather than serve as intermediaries, even when they support platforms that transact

in securities. By way of illustration, we point to the series of no action relief from broker-dealer registration given to technology providers:

- **Neptune Networks Ltd. (March 4, 2020)**:³⁹ Neptune operates a “passive” fixed-income data connectivity platform that distributes indicative bond quotes and trading interest from participating dealers to institutional investors. Neptune’s network only provides market data and messaging. The platform does not execute trades or route orders, and it does not handle trade payments or securities. Neptune received relief from broker-dealer registration in connection with operating a “fixed income data connectivity network,” so long as it refrained from effecting trades.
- **S3 Matching Technologies LP (July 19, 2012)**:⁴⁰ S3 developed an electronic order routing platform linking registered broker-dealers to one another. S3’s platform did not have discretion concerning where orders were sent. The platform simply transmitted orders according to the routing logic provided by the sending broker. In finding that S3 was simply a linkage for order routing from one registered broker-dealer to another, and not engaged in broker-dealer activity itself, the relief also highlighted that S3 did not handle customer funds or securities, did not trade for its own account, and charged only fixed or usage-based fees, rather than receiving transaction-based compensation.
- **GlobalTec Solutions/CommandTRADE (December 28, 2005)**:⁴¹ GlobalTec’s subsidiary CommandTRADE offered a trade order management system (“OMS”) that allowed traders to transmit orders to executing broker-dealers. The no-action relief rested on the technology nature of the offering as well as the fact that CommandTRADE did not charge fees based on transaction volume or value (instead, they only charged flat or tiered tech fees); did not hold or access customer funds or securities; did not participate in execution, settlement or order matching; and did not solicit or recommend transactions or brokers.

As with the three situations above, blockchain Infrastructure Providers supply the passive infrastructure layer that facilitates the functioning of the network, not intermediary services. They do not engage in archetypal intermediary activities like custodial services or securities, recommending or soliciting trades or portfolio allocations, or executing, clearing, and settling transactions. For example, the miner and validator functions involve the reviewing, verifying, and recording of information—nothing more, nothing less. Similarly, other Infrastructure Providers are not interacting with customers, holding assets, or otherwise responsible for trading. They simply provide the technology (hardware, software, communications, data) layer that makes it possible for networks to function and, if applicable, for the intermediaries to conduct their activities. As at least one court has already held with respect to self-custody wallets, they “simply provide[] the technical infrastructure for users to arrange transactions” and therefore are not brokers, even where the entity hosting the wallet has, at times, received a commission.⁴²

The recent interpretation by the Division of Corporation Finance (“CorpFin”) relating to Proof-of-Work miners not coming within the purview of the federal securities laws eloquently

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makes the point that infrastructure activities are not intermediary (or issuer) functions within the meaning of the Securities Acts.⁴³ In detailing its rationale, CorpFin explained that individual miners and mining pools are not engaging in securities transactions because “[b]y adding . . . computational resources to [a] network, [they are] merely . . . engaging in an administrative or ministerial activity to secure the network, validate transactions, and add new blocks, and receive Rewards.”⁴⁴

While CorpFin limited its statement to Proof-of-Work mining, the same principles should be extended to all Infrastructure Providers, including validators in Proof-of-Stake protocols. Proof-of-Stake is an alternative to Proof-of-Work that achieves at least the same level of network security without engaging in the energy-intensive computational puzzles of Proof-of-Work.⁴⁵ While Proof-of-Work networks rely on miners, Proof-of-Stake networks rely on validators who post stake to prove their right to participate in proposing and validating blocks. Validators are a type of “node”—“an individual computer or device that participates in the operation and maintenance of a blockchain network.”⁴⁶

Like Proof-of-Work miners, validators maintain the shared ledger and ensure the overall security and integrity of the network. Validators are no less Infrastructure Providers than miners simply because they stake tokens in connection with implementing the consensus and validation process. Like miners, validators receive staking rewards in the form of newly minted tokens and, at times, other fees, in exchange for providing services that ensure the overall functioning and integrity of the network. We urge the Task Force, CorpFin, and the Division of Trading and Markets to issue an interpretation related to Infrastructure Providers for Proof-of-Stake next.

As demonstrated, Infrastructure Providers do not engage in activities that are the hallmarks of a regulated intermediary even if tokenized securities are trading on the network.⁴⁷ Their involvement is limited to maintaining and enhancing the blockchain network’s infrastructure, ensuring its functionality and security. As such, Infrastructure Providers performing those tasks should not come within the regulatory ambit of the federal securities laws.

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We appreciate the opportunity to provide comments on these important issues. We look forward to discussing these topics in a formal meeting with the Crypto Task Force and answering any questions you may have. Please use Lilya Tessler, Partner, Sidley Austin LLP (ltessler@sidley.com or 214-969-3510) and Lee A. Schneider, General Counsel of Ava Labs (lee@avalabs.org or 914-439-2991) as your contacts with regard to this letter. Thank you for your attention to this matter.

Sincerely,



Lilya Tessler

cc:

Hon. Paul Atkins, Chairman

Hon. Hester M. Peirce, Commissioner, Chair of the Crypto Task Force

Hon. Mark Uyeda, Commissioner

Hon. Caroline Crenshaw, Commissioner

Hon. Caroline D. Pham, Acting Chair, Commodity Futures Trading Commission

Hon. Kristin N. Johnson, Commissioner, Commodity Futures Trading Commission

Hon. Christy Goldsmith Romero, Commissioner, Commodity Futures Trading Commission

Hon. Summer K. Mersinger, Commissioner, Commodity Futures Trading Commission

Rep. French Hill, Chairman of the House Committee on Financial Services

Rep. Maxine Waters, Ranking Member of the House Committee on Financial Services

Rep. Glenn Thompson, Chairman of the House Committee on Agriculture

Rep. Angie Craig, Ranking Member of the House Committee on Agriculture

Sen. John Boozman, Chairman of the Senate Committee on Agriculture, Nutrition, and Forestry

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Sen. Amy Klobuchar, Ranking Member of the Senate Committee on Agriculture, Nutrition, and Forestry

Sen. Tim Scott, Chairman of the Senate Committee on Banking, Housing, and Urban Affairs

Sen. Elizabeth Warren, Ranking Member of the Senate Committee on Banking, Housing, and Urban Affairs

Hon. Bo Hines, Executive Director of the President's Council of Advisers on Digital Assets of the White House

Lee A. Schneider, General Counsel, Ava Labs, Inc.

Endnotes and Appendix

¹ See SEC Div. of Corp. Fin., *Staff Statement on Meme Coins*, U.S. Sec. & Exch. Comm'n (Feb. 27, 2025), <https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme-coins> (“A meme coin does not constitute any of the common financial instruments specifically enumerated in the definition of ‘security’ because, among other things, it does not generate a yield or convey rights to future income, profits, or assets of a business. In other words, a meme coin is not itself a security[.] . . . The offer and sale of meme coins does not involve an investment in an enterprise nor is it undertaken with a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others.”) [hereinafter *Statement on Meme Coins*]; SEC Div. of Corp. Fin., *Statement on Certain Proof-of-Work Mining Activities*, U.S. Sec. & Exch. Comm'n (Mar. 20, 2025), <https://www.sec.gov/newsroom/speeches-statements/statement-certain-proof-work-mining-activities-032025> [hereinafter *Statement on Certain Proof-of-Work Mining Activities*]; SEC Div. of Corp. Fin., *Statement on Stablecoins*, U.S. Sec. & Exch. Comm'n (Apr. 4, 2025), <https://www.sec.gov/newsroom/speeches-statements/statement-stablecoins-040425> [hereinafter *Statement on Stablecoins*].

I. Background

² See *The Future of Digital Assets: Providing Clarity for the Digital Asset Ecosystem*, House Comm. on Fin. Serv. (Jun. 13, 2023), <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=408851>.

³ See Team Rocket *et al.*, *Scalable and Probabilistic Leaderless BFT Consensus through Metastability* (Aug. 24, 2020), https://cdn.prod.website-files.com/5d80307810123f5ffbb34d6e/6009805681b416f34dcae012_Avalanche%20Consensus%20Whitepaper.pdf.

⁴ See *What is Staking?*, Avalanche, <https://build.avax.network/docs/nodes/validate/what-is-staking>.

⁵ See *Avalanche L1s*, Avalanche, <https://build.avax.network/docs/avalanche-l1s>.

⁶ See *Avalanche L1s Overview*, Avalanche, <https://stats.avax.network/dashboard/overview/>.

⁷ Find further information concerning these use cases below:

- Apollo Global Management and Securitize: <https://www.prnewswire.com/news-releases/apollo-and-securitize-announce-partnership-and-launch-tokenized-access-to-credit-fund-on-aptos-avalanche-ethereum-ink-polygon-and-solana-networks-302364212.html>; <https://www.prnewswire.com/news-releases/apollo->

[and-securitize-announce-partnership-and-launch-tokenized-access-to-credit-fund-on-aptos-avalanche-ethereum-ink-polygon-and-solana-networks-302364212.html](https://www.avax.network/blog/blackrock-launches-digital-liquidity-fund-build-on-avalanche-via-securitize).

- BlackRock and Securitize: <https://www.avax.network/blog/blackrock-launches-digital-liquidity-fund-build-on-avalanche-via-securitize>.
- Citi on-chain pricing smart contracts: <https://www.citigroup.com/global/insights/on-chain-pricing-smart-contracts>.
- Colombian Neobank Littio leverages OpenTrade to offer interest-bearing USD accounts to local customers: <https://www.avax.network/blog/colombian-neobank-littio-opentrade-interest-bearing-usd-accounts-avalanche>.
- Diamond Standard: <https://www.avax.network/blog/diamond-standard-leverages-oasis-pro-and-avalanche-to-make-diamonds-an-investable-asset-class>.
- Franklin Templeton: <https://www.avax.network/blog/franklin-templeton-launches-tokenized-money-market-fund-benji-avalanche>.
- Homium: <https://www.avax.network/blog/homium-issues-first-home-equity-loans-on-avalanche>.
- Intain: <https://www.avax.network/blog/intain-launches-avalanche-subnet-to-usher-in-new-era-for-multi-trillion-dollar-securitized-finance-market>.
- Misyon Bank: <https://thedefiant.io/news/tradfi-and-fintech/misyon-bank-launches-tokenization-solution-on-avalanche>.
- ParaFi: <https://securitize.io/learn/press/parafi-tokenizes-fund-on-securitize-platform-with-avalanche>.
- Re – a decentralized reinsurance marketplace: https://coverre.com/members?redirect=for_us_customers.
- Republic Note: <https://www.avax.network/blog/republic-selects-avalanche-for-its-profit-sharing-digital-asset>.
- Wine Capital Fund: <https://www.avax.network/blog/wine-capital-fund-leverages-oasis-pro-and-avalanche-to-make-fine-wine-an-investable-asset-class>.

⁸ Find further information concerning these use cases below:

- StraitsX: <https://www.avax.network/blog/straitsex-leverages-avacloud-and-avalanche-to-simplify-cross-border-payments-in-southeast-asia>.
- Fonbnk: <https://www.avax.network/blog/fonbnk-builds-avalanche-on-ramp-for-cross-border-payments-in-emerging-markets>.
- Visa powered cryptocurrency card: <https://www.avalanchecard.com/>.

⁹ Find further information concerning these use cases below:

- Tixbase & Sports Illustrated: <https://www.avax.network/blog/nft-tix-migrates-to-avalanche-and-announces-global-festival-partnerships>; <https://www.avax.network/blog/avalanche-to-power-si-tickets-nft-platform-box-office>.
- SK Planet: <https://decrypt.co/198091/south-koreas-dreamus-puts-nft-tickets-avalanche-events-kpop-concerts>.

¹⁰ Find further information concerning these use cases below:

- California DMV combats title fraud: <https://www.reuters.com/technology/california-dmv-puts-42-million-car-titles-blockchain-fight-fraud-2024-07-30/>.

- Close as You Go, a Deloitte project: <https://www.owlexplains.com/en/podcast/ep-9-how-deloitte-is-using-smart-contracts-to-accelerate-disaster-relief/>.
- Crop insurance smart contracts, by Lemonade: <https://www.owlexplains.com/en/podcast/ep-8-how-lemonade-is-using-smart-contracts-to-revolutionize-crop-insurance/>.
- Kinexys by J.P. Morgan: <https://www.avax.network/blog/avacloud-selected-to-participate-in-kinexys-by-j-p-morgans-project-epic---exploring-privacy-and-identity-solutions-for-institutions>.
- Real estate tokenization by Balcony: <https://www.owlexplains.com/en/podcast/ep-29-balcony-revolutionizing-and-tokenizing-real-estate/>.
- Real-time corporate actions data on-chain by Chainlink: <https://www.prnewswire.com/news-releases/chainlink-and-8-major-market-participants-launch-ai-powered-corporate-actions-initiative-to-address-unstructured-data-challenge-for-the-financial-industry-302281824.html>.

Other real-world use cases of the Avalanche Network:

- Film fundraising by Pressman Film and Republic: <https://www.avax.network/blog/legendary-pressman-film-leverages-republic-investment-platform-and-avalanche-network-to-transform-independent-film-financing>.
- Off the Grid, a blockchain based video game: <https://www.avax.network/blog/gunzilla-launches-aaa-shooter-on-an-avalanche-subnet>.

II. Responses to Certain Requests for Information

¹¹ See Comm’r Hester M. Peirce, *There Must Be Some Way Out of Here*, U.S. Sec. & Exch. Comm’n (Feb. 21, 2025), <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-rfi-022125> [hereinafter *The Statement*].

A. Token Classification Based on the Nature of the Asset

¹² See Lee Schneider & Sylvia Sanchez, *Understanding and Classifying Blockchain Tokens*, 8 The Int’l J. of Blockchain L., Glob. Blockchain Bus. Council art. III, (Mar. 2024), https://assets.ctfassets.net/eynrhjw8vyk9/6rJQPJfWcdGgp3MYBEndOd/1ccd9500c4ce4dd4939b444ce044a2171/Owl_Explains_-_IJBL_Volume_VIII.pdf.

¹³ See Lilya Tessler, Erika Cabo & Andrew Sioson, *A Primer: Understanding Tokenized Real-World Assets*, Owl Explains (Dec. 9, 2024), <https://www.owlexplains.com/en/articles/a-primer-understanding-tokenized-real-world-assets/>.

¹⁴ The form of tokenizing assets has, however, changed over time, becoming increasingly technology-based.

¹⁵ Intuitively, we understand that physical objects are unique (*i.e.*, we readily recognize that the pencil in our hand is distinct from the pencil on the table). That is not the case with digital objects. Tokenization (as opposed to mere digitization) allows digital assets to be unique, so possession or transfer can happen the same way they do for physical assets.

¹⁶ See *Ep 39: Tokenizing Securities for Decentralized Finance Applications*, Owl Explains (Oct. 9, 2024), <https://www.owlexplains.com/en/podcast/ep-39-tokenizing-securities-for-decentralized-finance-applications/>.

¹⁷ See Letter from Ava Labs to Hilary Salo, Tech. Dir. of Fin. Acct. Standards Bd., *Re: Intangibles-Proposed Accounting Standards Update: Accounting for and Disclosure of Crypto Assets* (Jun. 6, 2023), https://assets.ctfassets.net/eynrhjw8vyk9/4wrVHYKkCVtzJEI03nxkkC/76eedd4f63cd194a530b2754f4c39695/02_Comment_Letter_to_FASB.pdf [hereinafter *Letter from Ava Labs to Hilary Salo*].

¹⁸ See Letter from Ava Labs, *IRS Notice 2023-27: Treatment of Certain Nonfungible Tokens as Collectibles*, (Jun. 16, 2023), https://assets.ctfassets.net/eynrhjw8vyk9/5aVYYUvIcYkt9w0ZWXhRv/0e194c6dee80e8e969464e1adc43e4d9/04_Comment_on_Treatment_of_certain_nonfungible_tokens_as_collectibles.pdf.

¹⁹ See CFTC’s Global Markets Advisory Committee Advances Recommendation on Tokenized Non-Cash Collateral, Release No. 9009-24, Commodity Futures Trading Comm’n (Nov. 21, 2024), <https://www.cftc.gov/PressRoom/PressReleases/9009-24>.

²⁰ See Letter from Ava Labs to Francesca Carapella, *Owl Explains’ Public Comment on Federal Reserve Board Finance and Economics Discussion Series Paper 2023-060 “Tokenization: Overview and Financial Stability Implications”* (Nov. 14, 2023), https://assets.ctfassets.net/eynrhjw8vyk9/2cKHBHU5GRuFXzrHout4l/3bbf7157fleacef4f163acddcc565f15/07_Public_Comment_on_Tokenization_Overview_and_Financial_Stability_Implications.pdf.

²¹ See *Statement on Meme Coins*, *supra* note 1; *Statement on Stablecoins*, *supra* note 1.

²² See *2022 Amendments to the UCC*, Unif. L. Comm’n., <https://www.uniformlaws.org/committees/community-home?CommunityKey=1457c422-ddb7-40b0-8c76-39a1991651ac&5f3d6ce4-bbc3-44da-ac7d-7c92de9acbfa=eyJsaWJyYXJ5Z5W50cnkiOiI0MjRjNDliZC1jNGRmLTQyMGEtYWJjOS0yNjgxZGZkNWVkyMmYifQ%3D%3D> (last visited Apr. 22, 2025). Note that we use the term “tokenized securities” for ease of reference. Article 8 of the UCC refers instead to “uncertified securities that may be transferred by the use of tokens” or “the use of tokens to facilitate transactions in Article 8 securities.” *See id.*

²³ See Securities Act of 1933, 15 U.S.C. §§ 77a–77aa (2018); Securities Exchange Act of 1934, 15 U.S.C. §§ 78a–78qq (2018).

²⁴ “A native token is the primary digital asset and currency of a specific blockchain. It is essential for the blockchain’s operations. Native tokens facilitate transactions and pay for transaction fees. They also reward miners or validators who secure the blockchain. Unlike non-native tokens, native tokens are integral to the blockchain’s core functions... [and] are created directly on their respective blockchains. They are essential for the blockchain’s operations.” *Native Token*, CoinAPI.io, <https://www.coinapi.io/learn/glossary/native-token>, (last visited Apr. 14, 2025).

²⁵ See Lee Schneider, *Oranges Are Not Securities And Neither is SOL*, *Crowdfund Insider* (Jul. 12, 2022), <https://www.crowdfundinsider.com/2022/07/193572-oranges-are-not-securities-and-neither-is-sol/>.

²⁶ *Statement on Stablecoins*, *supra* note 1.

²⁷ See *SEC v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946). Note that we do not agree with the use of the phraseology “offered and sold as a security,” because it suggests that an asset that does not otherwise meet the definition of a security can somehow be converted into a security by virtue of the manner of its offer and sale. There is no support in the federal securities laws for such a characterization. Instead, we point to accurate language recognizing that an asset may be “offered as part of or subject to” an investment contract, which is a security. *See e.g.*, SEC Div. of Corp. Fin., *Offerings and Registrations of Securities in the Crypto Asset Markets*, U.S. Sec. & Exch. (Apr. 10, 2025), <https://www.sec.gov/newsroom/speeches-statements/cf-crypto-securities-041025>; Comm’r Hester M. Peirce, *Let’s Talk Disclosure: Division of Corporation Finance’s Statement on Offerings and Registration of Securities in the Crypto Asset Markets*, U.S. Sec. & Exch. Comm’n (Apr. 10, 2025), <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-offerings-registration-041025>.

²⁸ See *Howey*, 328 U.S. at 301.

²⁹ See *SEC v. Life Partners*, 87 F.3d 536, 545 (D.C. Cir. 1996).

B. Technology Functions Do Not Implicate Federal Securities Laws

³⁰ See generally, *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837 (1975).

³¹ The SEC has repeatedly conceded that crypto assets do not constitute securities. In *SEC v. Ripple Labs, Inc.*, the SEC noted that it was not arguing “that the asset underlying [the alleged] investment contracts [*i.e.*, crypto assets] were necessarily a security” and further noted that “the SEC does not seek appellate review of any holding relating to the fact that the underlying assets here are nothing but computer code.” Plaintiff’s Memorandum of Law in Support

of Motion to Certify Interlocutory Appeal at 16, *SEC v. Ripple Labs, Inc.*, 682 F. Supp. 3d 308 (S.D.N.Y. 2023) (No. 1:20-cv-10832). In a hearing on a motion for temporary restraining order in another notable matter, *SEC v. Binance Holdings Ltd.*, Staff conceded that “[t]he crypto asset, as we briefed . . . is simply a line of code[.]” 738 F. Supp. 3d 20, 56 (D.D.C. 2024). Federal courts taking up the question of whether a crypto asset constitutes a security have come to the same conclusion: tokens themselves are not securities. *See SEC v. Telegram Grp. Inc.*, 448 F. Supp. 3d 352, 379 (S.D.N.Y. 2020) (ruling that the token at issue in that case, on its own, is “little more than [an] alphanumeric cryptographic sequence.”); *SEC v. Ripple Labs, Inc.*, 682 F. Supp. 3d 308, 324 (S.D.N.Y. 2023) (concluding that “a digital token, is not in and of itself a ‘contract, transaction[,] or scheme’ that embodies the *Howey* requirements of an investment contract”).

³² *See Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967).

³³ *Cf. Howey*, 328 U.S. at 301.

³⁴ *See* Instinet Corp., SEC Staff No-Action Letter, [1993-2001 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 78,997 (Sept. 8, 1989). There, the SEC staff noted that “the technology that has led to the development of automated trading and information systems was not envisioned when Congress passed the Act[,]” but, nevertheless, “persons regularly engaged in the securities business have long used certain traditional communications devices, such as the mail, telephone and teletype, to facilitate securities transactions. The Commission has never sought and does not now seek to assert regulatory jurisdiction over these traditional forms of communication. They were in existence when the Act was passed, and Congress obviously did not consider them to be broker-dealers or securities exchanges.”

C. Infrastructure Providers on Blockchain Networks Are Not Securities Intermediaries

³⁵ *See, e.g.*, 15 U.S.C. § 78c(a)(4) (defining “broker” as “any person engaged in the business of effecting transactions in securities for the account of others”); 15 U.S.C. § 78c(a)(5) (defining “dealer” as “any person engaged in the business of buying and selling securities . . . for such person’s own account through a broker or otherwise”); 15 USC § 78c(a)(25) (defining “transfer agent” as “any person who engages on behalf of an issuer of securities” in countersigning securities upon issuance, monitoring the issuance of securities, registering the transfer of such securities, exchanging or converting such securities, or transferring record ownership of securities.); 15 USC § 78c(a)(23) (defining “clearing agency” as “any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities”).

³⁶ *See Letter from Ava Labs to Hilary Salo, supra* note 17.

³⁷ *See The Statement, supra* note 11 (noting that crypto assets which are not securities are “the biggest category” in a potential classification scheme for tokens).

³⁸ Comm’r Hester M. Peirce, *Miles To Go: Remarks before The Digital Chamber’s 8th Annual DC Blockchain Summit*, U.S. Sec. & Exch. Comm’n (Mar. 26, 2025), <https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-dc-blockchain-summit-032625>.

³⁹ *See Neptune Networks Ltd.*, SEC Staff No-Action Letter, 2020 WL 1042613 (Mar. 4, 2020).

⁴⁰ *See S3 Matching Technologies LP*, SEC Staff No-Action Letter, 2012 WL 2948910 (Jul. 19, 2012).

⁴¹ *See GlobalTec Solutions, LLP*, SEC Staff No-Action Letter, 2005 WL 6395276 (Dec. 28, 2005).

⁴² *SEC v. Coinbase, Inc.*, 726 F. Supp. 3d 260, 306 (S.D.N.Y. 2024).

⁴³ *See Statement on Certain Proof-of-Work Mining Activities, supra* note 1. We note, however, that the statement would have been even more helpful and instructive if issued in conjunction with other relevant Divisions, such as those that regulate intermediaries. *See, e.g.*, Comm’r Caroline A. Crenshaw, “Stable” Coins or Risky Business?, U.S. Sec. & Exch. Comm’n (Apr. 4, 2025), https://www.sec.gov/newsroom/speeches-statements/crenshaw-statement-stablecoins-040425?utm_medium=email&utm_source=govdelivery.

⁴⁴ *See Statement on Certain Proof-of-Work Mining Activities, supra* note 1.

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⁴⁵ See Kose John *et al.*, *Proof-of-Work versus Proof-of-Stake: A Comparative Economic Analysis* (Dec. 16, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3750467. See also *The Fundamentals: What Is Staking?*, Owl Explains (Mar. 11, 2025), <https://www.owlexplains.com/en/articles/the-fundamentals-what-is-staking/>.

⁴⁶ Michelle Legge, *What is a Node?*, Koinly (Nov. 9, 2023), <https://koinly.io/crypto-glossary/node/>.

⁴⁷ See *S3 Matching Technologies LP*, *supra* note 40; see also *GlobalTec Solutions, LLP*, *supra* note 41.