

MEMORANDUM

To: Crypto Task Force Meeting Log
From: Crypto Task Force Staff
Re: Meeting with Representatives of The Digital Chamber

On February 3, 2025, Crypto Task Force Staff met with representatives from The Digital Chamber. Representatives from Sidley Austin LLP, BakerHostetler LLP, and Chapman and Cutler LLP were also in attendance.

The topic discussed was approaches to addressing issues related to regulation of crypto assets. The Digital Chamber representatives provided the attached documents, which were discussed during the meeting.



2025 SEC Digital Asset Policy Priorities

Prepared By: The Digital Chamber's Token Alliance Leadership Committee

The Digital Chamber would like to thank the members of the Token Alliance Leadership Committee and our advisors for their support in developing these priorities.

DAY 1

The Interim Chair, when named, and President-elect Trump's Chair, Paul Atkins, need to issue clear public statements resetting the SEC's relationship with digital asset market participants, setting out the SEC's priorities associated with blockchain technology and digital assets, and start the process of regaining the trust of the global digital asset community. The next step is directing each SEC division to prioritize and allocate resources to address the following action items.

Corporation Finance

Critical: Rescind 2019 Framework for "Investment Contract" Analysis of Digital Assets.

- The list of considerations is overly broad, lacks prioritization from most to least important, and is impractical to properly apply.
- Additionally, the staff has been unwilling to engage with market participants to issue no-action letters that could offer needed clarity on the framework or the application of securities laws to digital assets more broadly.

Critical: Formally state that the Hinman Speech is not SEC guidance and is not to be relied on.

- This speech includes factors that are not relevant to or required by the Howey test and has created confusion in the market.
- Additionally, this speech improperly created a winner/loser dynamic.

Trading and Markets

Critical: Formally withdraw and reconsider the proposed amendments to Rule 3b-16.

These rules propose to expand the definition of "exchange" to encompass Decentralized Finance (DeFi) market participants and a potentially wide variety of other market participants who fall into the undefined concept of "communications protocol system."

Enforcement

Critical: Initiate an immediate review of all existing digital asset-related investigations, Wells notices, and in-process litigation cases.

Critical: Issue a clear statement outlining the Commission's provisional enforcement approach to digital assets.

Critical: Seek stays for ongoing litigation cases that do not involve actual fraud, investor loss, or risk of imminent harm, allowing time to finalize the Commission's approach.

Important: Consider whether new cases and investigations should only be brought in cases of real fraud or imminent loss, no more theory cases.

Investment Management

Critical: Formally withdraw and reconsider the proposed Safeguarding Rule.

These rules as proposed are unworkable for many asset classes, particularly digital assets, and the proposed concept of eliminating state banks and trusts from the definition of qualified custodian has no basis or justification. The SEC must formally withdraw these proposed rules.

OCA

Critical: Rescind SAB 121 and, if necessary, publish a revocation order in the Federal Register.

- SAB 121 imposes undue burdens on digital asset custodians by requiring them to hold assets on their balance sheets, creating accounting challenges and deterring innovation in the digital asset space. Rescinding the Bulletin and publishing a revocation order in the Federal Register will restore a balanced regulatory approach.
- Issued by SEC staff in March 2022.
- In 2023, GAO found that SAB 121 was a rule under the APA and improperly issued.
- Congress passed bi-partisan legislation to repeal in May 2024, vetoed by Biden.
- SEC staff has been providing selective exemptive relief to a few market participants from SAB 121 with absolutely no transparency and outside the standard no-action letter process.

Corporation Finance

Critical: Issue No-Action Letters, Exemptive Relief or Commission Statements – listed in order of priority:

- State that certain technology functions on a blockchain network are not securities transactions;
- Define when a digital asset implicates the securities laws with a provisional definition or test (more precise than Howey). If an investment contract approach is employed, define (a) when a digital asset is part of an investment contract, and (b) when transactions involving digital assets constitute an investment contract;
- State that certain categories of digital assets are not securities – e.g., native DLT tokens, stablecoins, and NFTs such as digital collectibles, art, and music;
- Provide no-action relief that investment contracts are not equity securities under the '33 Act and '34 Act;
- Provide transparency on staff's analysis on why BTC is not a security and why ETH was deemed not to be a security by staff in 2020, including a path on how other tokens can be analyzed under a consistent framework;

- Provide a clear analysis around staking and which staking activities do not constitute securities transactions.

Critical: Commence efforts on rulemaking proposal for Token Safe Harbor Proposal:

Along lines of Commissioner Peirce's efforts if the investment contract analysis is employed.

- The market needs clear rules to understand when a token sale is no longer an investment contract and the network is sufficiently decentralized;
- Include guidance on when a token is pre-sale of a commodity and therefore there is no investment contract in the first instance, as opposed to when an investment contract is created with underlying digital assets.

Critical: Issue no-action relief or Commission Statements to specific market participants and then commence efforts on rulemaking proposal for specific disclosure standards for investment contracts with underlying digital assets or digital assets that implicate the securities laws, depending on which approach is taken.

FIRST 30 DAYS

- The current '34 Act reporting regime clearly does not work for these types of assets;
- We need a new set of disclosure standards that take into account the unique characteristics of digital assets and the features of those assets that are important to investors.
- Excellent progress has already been made here by the industry on a disclosure framework that we fully support. It has currently been published for comment by the GDCA. We're happy to provide a copy of the document if helpful.

Trading and Markets

Critical: Commence efforts on guidance, no-action relief, and rulemaking proposal for digital asset market infrastructure for broker-dealers.

- There's currently no clear way for broker-dealers to trade or custody digital asset securities absent SPBD designation. SPBD does not work since it only permits a digital asset security (definition unclear), and prohibits non-security digital asset and traditional securities.

- Broker-dealers should be permitted to accept payment for digital security transaction with crypto. This is particularly true if a broker-dealer is facilitating trading in digital asset securities. The payment leg of a digital security transaction needs to be effected on a blockchain rather than through fiat rails.
- Provide guidance on control locations for digital securities pursuant to Rule 15c3-3 under the Exchange Act to include the ability for a trust company or another broker-dealer to act as a good control location which is permitted under the rule but not allowed for digital securities in an SPBD.

Critical: In connection with above, commence review on regulatory basis and real-world implications of the Special Purpose Broker Dealer Safe Harbor – expires 12/25.

- Imposes significant additional constraints and obligations on broker-dealers seeking to provide services around digital asset securities.
- Only two were approved in four years of a five-year safe harbor.
- A clear example of technology-specific regulation since none of these obligations apply to broker-dealers interacting with certificated or book-entry securities.

THE DIGITAL CHAMBER

- Existing broker-dealers and new broker-dealers should be able to support traditional securities, digital securities, and digital assets.
- The custody risks and SIPC concerns can be addressed through disclosures instead of an SPBD.

Critical: Approve 19b-4 amendments to allow market makers for spot digital asset ETFs to directly purchase digital assets for in-kind contributions of ETF shares and receive digital assets for in-kind redemptions of ETF shares.



FIRST 30 DAYS

Enforcement

Critical: Use discretionary enforcement authority in cases where there is no real fraud or investor loss or that are theory-based, such as secondary trading cases where the theory is that most digital assets are securities, and ask courts to dismiss the case or settle the case provided the SEC clearly has jurisdiction.

- Allow “No admit/No deny” settlements.
- Limit penalties to nominal fees where appropriate.
- Limit SEC appeals on theory-only cases.

Critical: Use discretionary enforcement authority to issue Termination Letters on Wells notices and formally end all investigations related to digital assets that are not based on fraud or imminent loss.

Important: Revisit the size of the Crypto Unit.

- Outsized Crypto Assets unit staff number needs to be reallocated, or the name and focus of the unit needs to be changed, to increase industry trust.

Investment Management

Critical: Put an immediate end to Division’s practice of limiting Registered Investment Company investments into OTC-traded and Canadian exchange-traded spot crypto funds and futures funds.

- IM has been improperly limiting RICs from making these investments since 2015/2016 despite an absence of statutory or rules-based authority.
- RICs that push back are told that the staff will direct the full force of the SEC’s enforcement division their way.
- Directives are generally provided orally and not in writing.

Critical: Formally state that the 2018 “Engaging on Fund Innovation and Cryptocurrency-related Holdings” Letter from former Director Dalia Blass, which limits or prohibits investment companies from providing exposure to digital assets, is no longer guidance that must be followed.

Critical: Provide no-action relief or Commission Statement that self-custody of digital assets is permitted under Custody Rules until a qualified custodian exists to support a specific digital asset.

OCA

Important: Provide guidance to accounting firms that audit the financials of issuers of SEC-registered investment contracts and digital asset securities, as well as SEC-regulated entities with non-securities digital asset holdings.



Corporation Finance

Critical: Finalize the definition of when a digital asset implicates the securities laws with a definition or test (more precise than Howey), that is coordinated with the CFTC, Congress, and the Administration.

Critical: Issue Proposed Rules for Token Safe Harbor as described above.

Critical: Provide a reasonable path to registration for digital asset-related businesses and issuers seeking to issue digital assets that implicate the securities law.

- Staff routinely blocks or slows registration statements of companies operating in the digital asset space.
- Companies face years of delay or refusal to approve.
- Corp Fin isn't honoring MJDS path for crypto-related businesses – comments coming from IM claiming that companies holding digital assets are investment companies and from the crypto office asking for in-depth legal analysis of why assets purchased on non-US crypto exchanges are not securities.

Critical: Propose specific disclosure standards for digital assets that implicate the securities laws

- The SEC's approach around ABS products provides a good roadmap for the type of approach that is needed here.

Critical: Approve amended rule filings to allow In-Kind Contributions for spot BTC and ETH ETFs

- The SEC required that issuers remove this element as a condition to approval with no clear explanation
- In-kind contributions are a standard feature of similar listed products in Canada and other highly regulated jurisdictions.
- Market makers and other participants often buy baskets of the securities underlying an ETF to create ETF shares. Consistent with the idea that broker-dealers need to be able to transact in digital assets, they need to be able to purchase BTC and ETH in the spot markets for ETF share creation purposes.

DAYS 30 TO 90

Important: Approve additional spot ETF applications for other digital assets – BITW, SOL, XRP, etc.

- Reinstitute approving applications in the order they are received. Permitting market forces, such as first-mover advantage influences, market dynamics, and participant behavior, encourages innovation and the creation of new products that increase investor choices.

Trading and Markets

Critical: Propose digital asset market infrastructure for broker dealers

- Currently no clear way for broker dealers to trade or custody digital asset securities absent SPBD designation and tokenized traditional securities.
- Broker-dealers should be permitted to accept payment for digital security transactions with crypto. This is particularly true if a broker-dealer is facilitating trading in digital asset securities. The payment leg of digital security transactions needs to be effected on a blockchain rather than through fiat rails.

- Consider whether the SEC/staff should provide guidance on control locations for digital securities pursuant to Rule 15c3-3 under the Exchange Act.

Critical: Propose practical regulation governing exchanges that list both digital assets that implicate the securities laws and non-security digital assets (similar path of Reg ATS, using 1934 Act Section 36 exemptive authority).

Critical: Approve national securities exchanges and clearing agencies that are seeking to support registered digital asset securities or investment contracts.

Critical: Revisit assessment of Section 6(b)(5) obligations imposed by T&M on National Securities Exchanges seeking to list spot digital asset ETFs. Under the "Winklevoss Standard" created in 2018 for Bitcoin ETFs, these Exchanges are required to have surveillance-sharing agreements with a regulated futures market of significant size. Rely instead on the requirements of the 1994 ISG letter setting forth the standards for Comprehensive Surveillance Sharing Agreements, the requirements for which may all be met by exchanges such as Coinbase, Kraken, Gemini, and Crypto.com.

Critical: Commence rulemaking efforts to propose a framework and pathway for the development of a national securities exchange capable of trading investment contract digital assets and digital asset equity securities that register with the SEC.

- No path to exchange registration under current rules for any market participant looking to undertake this process.

Critical: Issue No-Action Letter or Exemptive Relief from clearing agency registration for certain post-technology functions on a blockchain in connection with executed securities transactions.

Important: Approve 19b-4 applications for additional spot ETF applications for other digital assets – BITW, SOL, XRP, etc.

Important: Allow spot digital asset ETF issuers to stake tokens to validator nodes to earn staking rewards for investors.



DAYS 30 TO 90

Enforcement

Critical: Continue efforts to right-size Enforcement's focus on the digital asset industry to help build trust in the global community.

Investment Management

Critical: Commence efforts on rulemaking to expand Qualified Custodian definition to formally include state-chartered trusts and potentially other entities.