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May 27, 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: Supplemental Submission Proposing a Nature of the Activity Test to Determine Whether Infrastructure Providers Need to Register as Securities Intermediaries

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

Our client, Owl Explains powered by Ava Labs, Inc. ("Ava Labs"), appreciates the Crypto Task Force's continued engagement with our April 23, 2025[1] submission (the "First Submission") and the opportunity to follow up on the productive discussion from our meeting with the Crypto Task Force on April 29, 2025.[2] We provide this supplemental submission to further build on that discussion and respond to certain questions raised during that meeting.

In Section II.A. of our First Submission, we propose a token classification system based on the nature of the asset, service, or function that a crypto asset represents.[3] There, we explained that, in keeping with the manner in which the law has traditionally treated the representation of assets, each token should be treated according to the functions, features, and associated rights, interests, and obligations that it actually represents, just as regulators do with any physical asset or assets recorded on paper.[4] For years, we have used the short hand "nature of the asset test" to describe this approach to token classification.

During our meeting on April 29, 2025, we received a number of questions concerning how you might create a legal framework to determine when and whether the Technology Functions[5] and activities of Infrastructure Providers[6] are activities that trigger registration requirements for securities intermediaries. In the course of that discussion, we put forth the concept of a nature of the *activity* test—a test that looks to the underlying activity and applies existing securities laws to

classify the regulatory status of the activity or actor. Here, we elaborate on the nature of the activity test we outlined during our meeting, and demonstrate how that test aligns with existing statutory definitions, the *Howey* framework,[7] and decades of SEC Staff no-action guidance for analogous activities.

I. Regulatory Classification Based on the Nature of the Activity Test

Though blockchain technology is new, the notion that certain activities and services essential to the functioning of the financial markets do not trigger registration requirements, is not. Historically, the SEC has drawn clear distinctions in this regard, granting no-action relief to technology providers whose roles are passive and do not involve discretion, solicitation, or custody of customer assets. When making these distinctions, the SEC has traditionally looked to the functions performed by technology providers and evaluated whether those activities fall within the contours of certain activities defined[8] under the Securities Exchange Act of 1934[9] or the Investment Advisers Act of 1940[10] (together, the "Securities Acts") and are akin to the services provided by those defined entities.[11] In determining the latter, the SEC has evaluated various factors, developed over decades of application of the Securities Acts to the evolving technologies and services employed in the financial markets.[12]

As discussed during our meeting and outlined in our First Submission, when determining whether an Infrastructure Provider should be regulated as a securities intermediary, we should look to the nature of the activity performed by the Infrastructure Provider and employ these factors to evaluate whether it is analogous to the archetypal activities that are the hallmarks of a regulated securities intermediary. Notably, if the crypto assets underlying the activities performed by the Infrastructure Provider are not securities, then there is no transaction in securities under the U.S. federal securities laws and no need to evaluate whether the Infrastructure Provider is a securities intermediary.[13] If the underlying crypto assets are securities, then we should apply the nature of the activity test and ask whether the functions and features of the activity are like those of a broker, dealer, investment adviser, or other enumerated securities intermediary.[14]

In other words, the nature of the activity test would apply the factors traditionally employed by the SEC when determining whether to grant no-action relief to an Infrastructure Provider and ask whether their activities and services are in line with those traditionally observed of brokers, dealers, and other securities intermediaries. To illustrate, when determining whether an Infrastructure Provider should be required to register as a broker, the nature of the activity test would balance the following factors and ask whether the relevant Infrastructure Provider is:

- Engaging in a regular business of buying or selling securities for the accounts of others;
- Receiving transaction-based compensation;
- Actively soliciting securities transactions;
- Operating as an intermediary between buyers and sellers of securities;

- Participating in key points of distribution in a securities transaction;
- Finding investors or customers for, making referrals to, or splitting commissions with registered securities intermediaries or issuers; or
- Custodying customer funds or securities.

With respect to whether an Infrastructure Provider is acting as a dealer, the nature of the activity test would similarly balance the following factors and ask whether it is:

- Regularly buying and selling securities for its own account as part of its business;
- Holding itself out as willing to buy and sell particular securities;
- Writing derivatives contracts that are securities;
- Providing liquidity or making markets in securities; or
- Earning revenue from a bid-ask spread.

As to whether an Infrastructure Provider is serving as an investment advisor, the relevant factors should ask whether it is:

- Providing advice or analysis about securities;
- Issues reports or analysis regarding securities; or
- Receives compensation that represents a clearly definable charge for providing investment advice.[15]

Notably, none of the factors listed here and traditionally evaluated when determining whether an activity triggers registration as a securities intermediary concern the type of technology used to provide the activity or service. This is due, in large part, to the fact that these tests and guidelines have existed since the days when the securities markets only used paper to record stocks in certificated form. When the markets evolved to begin recording stocks digitally, these factors did not change. We believe the same should hold true today for securities recorded and traded on a blockchain. By looking to the facts and circumstances of each Infrastructure Provider's activities and applying these existing legal and regulatory principles, a nature of the activity test ensures that Infrastructure Providers are not misclassified merely because their activities take place on the blockchain, involve crypto assets, or provide technology infrastructure for securities markets, preserving regulatory clarity and consistency and avoiding overreach into areas where securities laws were never intended to apply.

As our First Submission makes clear, Infrastructure Providers perform essential administrative and technological functions that enable blockchain networks to operate. Applying the factors already employed by the SEC, these activities, by themselves, do not rise to the level of "effecting a securities transaction" or any other activity that triggers a registration requirement as a securities intermediary. Undoubtedly, there will be certain circumstances in which an Infrastructure Provider's activities could veer into such territory. In the event that is the case, a

facts-and-circumstances analysis applying these existing guidelines will readily parse that out and avoid the need for new tests or metrics that will potentially sweep all Infrastructure Providers into regulatory regimes solely because of the nature of the technology they employ.

II. The Nature of the Activity Test Aligns with SEC No-Action Relief

As detailed in our First Submission and discussed in our meeting, the SEC has consistently granted no-action relief to technology companies that provide essential, neutral infrastructure rather than act as intermediaries, even when their platforms support securities transactions. Notably, we have not seen no-action relief issued for traditional transmittal services like couriers or the U.S. Mail, even though their activities undoubtedly involved the transmittal of paper stock certificates or the transfer of funds before digital recording and electronic transmission was possible. These functions have never been regulated under the federal securities laws and they have never been required to register—for good reason. While their role is intrinsic and vital to the regular functioning of the financial markets, their conduct is neutral and does not resemble any of the activities performed by actors traditionally regulated as securities intermediaries.

Where technology providers' activities approached those of securities intermediaries, the SEC has nevertheless issued no-action relief over several decades, determining that these actors were not functioning as brokers, dealers, investment advisers, or any other kind of securities intermediary. The key takeaway from these letters is clear: acting as a passive or neutral conduit—without receiving transaction-based compensation,[16] exercising discretion over counterparties or investments, or engaging in other hallmarks of intermediary activity—does not constitute effecting securities transactions.[17] A full list summarizing the relevant no-action relief letters can be found at Appendix A.

With respect to broker-dealers, the SEC has granted no-action relief to technology service providers whose roles were passive and neutral, typically limited to providing technical linkages, communications platforms, or messaging systems between securities intermediaries, investors, and financial institutions.[18] In these cases, the SEC's letters were brief, emphasizing that as long as the applicants did not engage in archetypal broker-dealer activities—such as receiving transaction-based compensation, holding customer funds or securities, recommending or soliciting orders, or participating in negotiations—the agency would not recommend enforcement action. The SEC's stance is exemplified in its no-action relief to Swiss American Securities Inc. ("SASI"), where the technology provider, Streetline, was described as playing a "passive role" and being "invisible to the ultimate users," limited to technical functions on behalf of SASI.[19] The SEC has repeatedly granted relief where applicants highlighted the invisibility, passivity, or "rigorous neutrality" of their platforms.[20] This approach is further illustrated in the "electronic bulletin board" no-action letters summarized herein, where platforms merely posted information without participating in negotiations, serving only as forums for information exchange.[21]

Applying this logic, Infrastructure Providers on blockchain networks—such as miners and validators—should be similarly situated. Infrastructure Providers are invisible and indiscriminate

in verifying, recording, and enabling transactions, with users unable to know which miner or validator will process their transaction. Miners and validators cannot recommend or solicit trades; their only possible influence is signaling support or opposition to network-wide proposals. Their compensation is typically not transaction-based. In the event that it is, because the rewards and network fees are the same and not linked to the successful execution of a securities transaction, the Infrastructure Provider does not know whether they are validating a successful securities transaction, unwinding a securities transaction, or simply recording other data associated with a transaction. It is more often the case that they receive predetermined block rewards, such as the fixed four-year block rewards on Bitcoin.[22]

In the investment adviser context, the SEC has also granted no-action relief to technology providers whose systems merely connected parties seeking research, financial models, or other objective information, without controlling communications or providing investment advice. For example, SEC Staff has noted there is no need to register as a securities intermediary when a platform acts "merely as [a] . . . passive communications conduit[,] as evidenced by [its] lack of control over the dispatching and contents of [] messages."[23] Similarly, non-profit organizations operating matching systems for investors and entrepreneurs received relief, as they did not receive outcome-based compensation, participate in negotiations, or provide advice. This longstanding practice should extend to Infrastructure Providers, who, like miners and validators, cannot provide advice or participate in negotiations. Their only role is to validate and record transactions, with compensation determined by the network, unrelated to the details of specific transactions and unaffected by whether or not they are validating a securities transaction.

Ultimately, Infrastructure Providers should be afforded the same level of no-action relief that technology platforms have received under existing securities laws. The technology platforms named in those SEC no-action letters passively facilitated securities transactions or provided necessary infrastructure to parties seeking to invest or in need of capital, yet the SEC afforded those platforms no-action relief due to the passive nature of the activities that they were performing. As previously discussed, moreover, Infrastructure Providers are not interacting with securities of any kind, they are merely acting as invisible participants who conduct neutral functions that keep blockchain networks operating, agnostic of who is seeking to use the network or their purpose for doing so.

III. Conclusion

Infrastructure Providers should not be swept into regulatory regimes based solely on their proximity to securities recorded as blockchain-based assets. Just as mail couriers, internet service providers, and web browsers are not treated as securities intermediaries merely for facilitating access to the financial markets, validators and other protocol contributors should not be regulated as securities intermediaries because crypto assets—some of which may be securities—are transacted on the networks they support. In order to preserve legal and regulatory coherence and support innovation and blockchain technology adoption, the nature of the activity, not the

underlying technology or asset class, should govern the regulatory analysis applied to these entities.

* * *

We appreciate the opportunity to provide comments on these important issues. We look forward to further discussing these topics 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

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.

APPENDIX A

Broker-dealer No-action Relief Letters

- Swiss American Securities Inc. (May 28, 2002)[24] – Swiss American Securities Inc. ("SASI"), a registered broker-dealer, planned to contract with Streetline, Inc. ("Streetline"), an affiliated technology service provider, to implement an electronic platform that permits foreign financial institutions to place and route all U.S. securities orders to be executed through it by SASI. Streetline's role was limited to strictly technical functions: Streetline was responsible for developing, customizing, and maintaining SASI's website infrastructure and ensuring its proper functioning. Streetline planned to receive a website development and maintenance fee per client order. SEC Staff afforded no-action relief to SASI based on "the many safeguards that should prevent Streetline from being in a position where it could solicit transactions in securities" and was premised on the condition that Streetline could not engage in activities including: exercising discretion over SASI's website, identifying itself on SASI's website, marketing the services, negotiating agreements, becoming a party to the agreements between SASI and the foreign financial institutions, recommending particular securities to customers, participating in customer account management, or resolving disputes or answering questions involving brokerage accounts or related securities transactions. Quoting from SASI's inquiry letter, the SEC Staff noted that "Streetline would play a passive role with respect to the securities activities" and "Streetline will perform the work only in its capacity as a contractor for SASI." Therefore, the Staff concluded that "[i]n essence, Streetline should be invisible to the ultimate users of the website and will be restricted to operating on behalf of SASI when performing technical functions."

- Evare, LLC (Nov. 30, 1998)[25] – Evare, LLC ("Evare") sought to establish and operate a computer system through which professional money managers (investors), registered broker-dealers, and custodians could connect to existing trade execution systems for online communication. Registered brokers would provide pricing and other relevant information to the system. However, any follow-up actions related to transactions after each communication would not be handled by the system; instead, these responsibilities would fall to the managers, brokers, and custodians using the platform, using whatever means they determined. Evare would not participate in, regulate, or control any transactions or settlements communicated through the system, nor would it handle securities or transmit funds. Evare would charge brokers and managers a flat annual license fee for system access, as well as a usage fee for each interaction with the system. Custodians would be charged only a usage fee. Evare asserted that it did not meet the definition of "broker" under Section 3(a)(4) of the Exchange Act because, among other reasons, it "[would] be completely passive as to the investment decisions made by a Manager" and "[would] not perform any brokerage function for its customers, but

[would] merely provide a forum for Brokers and Managers to communicate regarding potential securities transactions." Based on these representations, the SEC Staff granted no-action relief by noting the following facts: Evare would not hold, have access to, or handle manager's funds or securities, recommend or endorse specific securities, become involved (other than by routing messages) with the financial services offered by broker-dealers, make any statement about, or endorsement or recommendation of any kind of, any broker-dealer to any manager, or receive compensation based on the size, value, or occurrence of securities transactions. Notably, Evare receives compensation per "interaction" with its system which does not depend on the "size, value, or occurrence of securities transactions." Evare argued, and the SEC Staff did not object, that such fees are not transaction-based compensation typically charged by brokers.

- Broker-to-Broker Networks (Dec. 1, 2000)[26] – Broker-to-Broker Networks, Inc. ("Broker-to-Broker Networks") developed an order delivery and messaging system designed exclusively for brokers to communicate with each other and with their respective settlement agents. To initiate a communication, an originating broker could choose from a list of fulfilling brokers and enter information about proposed transactions, which would be transmitted to designated fulfilling brokers. The system was also capable of performing certain data conversion or translation services that are strictly clerical or ministerial in nature to facilitate inter-market trades. Broker-to-Broker Networks received compensation from system usage solely in the form of annual fees from originating brokers and nominal excess usage charges for interactions with the system that exceeded specified volume limits; none of which was contingent upon the completion of a securities trade. As Broker-to-Broker Networks represented, "[t]he payment structure . . . reflects the Company's intent for the System to be rigorously neutral as to the effectuation of transactions and to allocate among users their respective share of the costs of operating the System at the service levels demanded in a commercially rational manner." In granting the no-action relief, the SEC Staff noted a list of sixteen safeguards provided by Broker-to-Broker Networks, including: fees to be charged were independent of the size, value, or completion of any transaction that was consummated through the system; Broker-to-Broker Networks would not recommend or endorse specific securities nor become involved with the financial services; Broker-to-Broker Networks would not hold itself out as providing any securities-related financial service; Broker-to-Broker Networks would refrain from making any statement about any broker-dealer; and the system would not automate trading desk activities such as pricing, position, risk management, or trading analysis. This letter reflects that compensation that is not directly tied to the size, value, or occurrence of securities transactions should not be deemed "transaction-based compensation."

- Charles Schwab & Co., Inc., (Sept. 18, 1997)[27] – Charles Schwab & Co., Inc. ("Schwab"), a registered broker-dealer, sought to make available information provided

by two data providers (Standard & Poor and First Call, collectively the "Providers") on its website upon a customer's request. This information included not only historical data about public companies but also specific securities recommendations, such as ratings and industry consensus recommendations. Schwab further proposed paying the Providers the greater of a base monthly fee or a variable fee calculated by multiplying a nominal fixed-dollar amount by the number of active customer households (*i.e.*, customer households that engaged in at least one online securities trade in a given month). The amount of the variable compensation would not depend on the number or frequency of online trading activities on Schwab, nor on any specific customer account. Schwab represented that the Providers would not be involved in the financial services as they would not participate in account management, answer questions or engage in negotiations involving brokerage accounts or related securities transactions; accept orders, select among broker-dealers, or route orders for customers to markets for executions; handle customer funds or securities; effect clearance and settlement of customer trades; or extend credit to any consumer related to securities transactions with Schwab. Schwab acknowledged that the compensation received by the Providers is "in a remote way based on executed trades." In granting no-action relief to the Providers, the SEC Staff did not preclude the possibility that such a fee structure might be transaction-based. However, the Staff noted that Schwab "contend[ed] that from a public policy standpoint the Providers should not be subject to broker-dealer registration where . . . the compensation that they receive is only in a remote way based on executed trade."

- Charles Schwab & Co., Inc., (Nov. 27, 1996)[28] – Schwab sought no-action relief for America Online, Compuserve, and Microsoft from broker status for making Schwab's service available to subscribers of these online service providers, for activities such as displaying Schwab's icon through an online menu on these providers' websites. These online service providers would receive a nominal flat fee for each order transmitted to Schwab, which would "not vary depending on the number of shares or the value of the underlying securities comprising a customer order transmitted to Schwab, nor [would] the amount of this fee vary depending upon whether the order results in an executed trade." The proposed arrangements included several safeguards: Schwab, as a broker, would be responsible for the accuracy of advertisements on these user interfaces; employees of the online service providers would not describe Schwab's services to subscribers, recommend specific securities, or answer any questions involving brokerage accounts or securities transactions; Schwab would be solely responsible for opening, maintaining, administering, or closing Schwab accounts; the service providers would not handle customer funds or securities. In its letter, Schwab contended that since the per-transaction nominal flat fees paid to online service providers are not related to the value of the customers' completed transactions, and in combination with the safeguards adopted, the online service providers should not be required to register as broker-dealers. The SEC Staff recommended not to take enforcement action against these arrangements based on the facts presented.

- Center for Environmental Policy, Economics and Science (Jan. 26, 1996)[29] and Venture Match of New Jersey (Jun. 11, 1988)[30] – Both Center for Environmental Policy, Economics and Science ("CEPES") and Venture Match of New Jersey ("VMNJ") are non-profit organizations that maintained "matching" services between accredited investors and entrepreneurs seeking investment. Both CEPES and VMNJ permitted entrepreneurs to enter certain information regarding its business, and allowed accredited investors to enter their investment preferences. CEPES further proposed measuring the correlation between entrepreneur and investor profile's correlation on a scale of zero to four stars. Neither organization would be involved in any subsequent negotiation between the parties. Both entities proposed receipt of an annual subscription fee from entrepreneurs and investors subscribed to the service, which would be unaffected by the outcome of particular matches or the quality of the respective platform's matchmaking. CEPES further proposed charging investors a nominal handling fee of $5 to provide entrepreneur contact and introduction information. These fees were designed solely to cover administrative costs. In both letters, the SEC Staff ultimately afforded no-action relief by noting, among other factors, the lack of correlation between the amount of the fee collected and the outcome or quality of the matching system.

- Real Goods Trading Corp. (Jun. 24, 1996),[31] Perfect Data Corp. (Aug. 5, 1996),[32] Flamemaster Corp. (Oct. 29, 1996),[33] & Portland Brewing Co. (Dec. 14, 1999)[34] – The SEC Staff considered several cases involving public companies— Real Goods Trading Corp. ("RGTC"), Perfect Data Corp. ("PERF"), Flamemaster Corp. ("FAME"), and Portland Brewing Co. ("PBC")—that sought to establish "off the grid" trading systems for their own common stock. RGTC, PERF, and FAME's common stocks were traded at national securities exchanges at the time of their respective no-action letter; PBC was registered under Section 12(g) of the Exchange Act – as there was no established market for its stock at the time it submitted the inquiry letter. Each of these companies proposed creating a platform where interested buyers and sellers could post: their contact information, the number of shares they wished to buy or sell, the price at which they were willing to transact, and the date the information was posted. The systems were designed to facilitate direct negotiations between buyers and sellers, with no involvement from the companies themselves in the negotiation process. All four companies also represented that they would not: (1) receive any compensation for creating or maintaining their respective systems; (2) receive any compensation for the use of their respective systems; (3) be involved in any purchase or sale negotiations arising from their respective systems: (4) give advice regarding the merits or shortcomings of any particular trade; (5) use their respective systems, directly or indirectly, to offer to buy or sell securities, except in compliance with the securities laws, including any applicable registration requirements; or (6) receive, transfer or hold funds or securities incidental to operating their respective systems. Based on these representations the SEC Staff granted no-action relief for these four companies by

reciting the facts. RGTC, PERF, FAME, and PBC all represented that broker-dealer registration "would not provide the Participants with any additional protection."

Investment Adviser No-action Relief Letters

- EJV Partners, L.P. (Dec. 7, 1992)[35] – EJV Partners ("EJV") developed a computer system that combined databases of publicly available, historic and real-time bond information with mathematical formulae and models. The system also allowed customers to transmit their own proprietary products, such as financial models and research reports, to other customers. The system had no control over or access to the messages sent between clients. EJV proposed charging customers a monthly per-terminal fee that was unrelated to a customer's portfolio. In granting the no-action relief, the SEC Staff noted, by paraphrasing EJV's argument, that even if customers of EJV might engage in investment advisory activities through its software system, the software system "[would] act merely as a passive communications conduit[,] as evidenced by its lack of control over the dispatching and contents of the messages."

- Farmland Industries, Inc. (Aug. 26, 1991)[36] – Farmland Industries, Inc. ("Farmland") was a federation of agricultural cooperatives that intended to establish a computer-based information system as an information source for members seeking to buy or sell Farmland stock. This two-way information system processed the following information: (1) names, addresses, and phone numbers of interested buyers and sellers, (2) the number of shares offered or sought, and (3) the price per share, which would be established by the interested parties. Farmland stated it would refrain from, among other representations, (1) participating in any purchase or sale negotiations, stock evaluations, or advice regarding the merits or shortcomings of any particular trade in Farmland stock; (2) receiving any fee for maintaining the information system; (3) providing information regarding the manner in which transactions would be completed; or (4) holding funds or securities as an incident of operating the system. The SEC afforded Farmland no-action relief based on these representations.

- Reuters Information Services, Inc. (Jan. 17, 1991)[37] – Reuters Information Services, Inc. ("Reuters") developed an interactive video information network, which broadcasted daily programs to sophisticated subscribers, such as banks, broker-dealers, exchange floors, and institutional investors in the financial services industry. The network would broadcast third-party programs sponsored by officers of public companies and representatives of government agencies, during which subscribers were permitted to phone in and pose their own questions to a presenter or panelists. The network would also broadcast Reuters programs that consisted of one-on-one and panel or roundtable discussions between a Reuters moderator and Reuters journalists or independent financial or economic analysts. Subscribers were to pay a monthly subscription fee and a one-time installation charge for equipment. The SEC Staff determined it would not recommend enforcement action against either third-party

programs or Reuters programs. In particular, for third-party programs, the SEC Staff noted Reuters' own representation, stating that "Reuters will furnish production facilities, moderators, and other support personnel, a communications network, and a subscriber base to unaffiliated program presenters" and "neither Reuters nor its moderators will be engaged in the business of advising others as to the value of securities . . . nor will they be issuing or promulgating analyses or reports concerning securities." With respect to Reuters programs, the SEC Staff noted Reuters' argument that the program contained only "disinterested commentary and analysis . . . of general and regular circulation" and thus qualified for the publisher's exception under Section 202(a)(11)(D) of the Advisers Act.

- Technology Capital Network (June 5, 1992),[38] Capital Resources Network (Apr. 23, 1993),[39] Venture Capital Network, Inc. (May 7, 1984),[40] & Center for Environmental Policy, Economics and Science (Jan. 26, 1996)[41] – No-action relief has been afforded in multiple similar instances in which non-profit organizations provide matching systems between sophisticated investors and entrepreneurs seeking out investments. All four of the organizations cited here allow entrepreneurs to publish their information on their respective websites for investors to inspect. They also provided "matching systems" by which investors could select preferred areas of business and financial conditions of the target and be automatically matched by the system to entrepreneurs in their respective databases. Entrepreneurs were charged an administrative fee solely to cover the costs of running their non-profit organizations. The SEC Staff has determined that providers of such matching services are not required to register as investment advisers, provided the following conditions, among others, are met: (1) the provider does not charge any fee other than those designed to cover administrative costs of the service, (2) the provider will not handle any funds or securities in order to effect matching transactions, (3) no employees would receive compensation based on the outcome of the matching activities, (4) the network or its employees would not engage in negotiations between entrepreneurs and investors, and (5) the entities would retain their non-profit status.

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[1] *See* Lilya Tessler, Sidley Austin LLP on behalf of Ava Labs, Inc. and Owl Explains, *RE: Asset-Based Classification; Decentralization; Regulatory Status of Technology Functions; Treatment of Infrastructure Providers*, Sec. & Exch Comm'n (Apr. 23, 2025), https://www.sec.gov/files/ctf-written-sidley-austin-ava-labs-04232025.pdf.

[2] *See* Crypto Task Force Staff, *Re: Meeting with Representatives of Sidley Austin LLP and Ava Labs*, Sec. & Exch. Comm'n (Apr. 29, 2025), https://www.sec.gov/files/ctf-memo-sidley-austin-ava-labs-042925.pdf.

[3] *See* Lee Schneider & Sylvia Sanchez, *Understanding and Classifying Blockchain Tokens*, 8 The Int'l J. of Blockchain L. art. III, Glob. Blockchain Bus. Council, (Mar. 2024), https://assets.ctfassets.net/eynrhjw8vyk9/6rJQPJfWcdGgp3MYBEndOd/1ccd9500c4ce4dd4939b44ee044a2171/Owl_Explains_-_IJBL_Volume_VIII.pdf.

[4] *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/.

[5] In our First Submission, we describe Technology Functions as including but 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.

[6] In our First Submission, we define Infrastructure Providers as engaging in activities including, without limitation, hardware, software, and communications providers; miners, validators, delegators and node operators; and providers of APIs/RPCs, block explorers, and other data.

[7] *See SEC v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946).

[8] *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").

[9] *See* Securities Exchange Act of 1934, 15 U.S.C. §§ 78a–78qq (2018).

[10] *See* Investment Advisers Act of 1940, 15 U.S.C. §§ 80b-1 to 80b-21 (2018).

[11] *See* Div. of Trading and Mkt., *Guide to Broker-Dealer Registration*, Sec. & Exch. Comm'n (last updated Dec. 12, 2016), https://www.sec.gov/about/divisions-offices/division-trading-markets/division-trading-markets-compliance-guides/guide-broker-dealer-registration#II

[12] *See id*.

[13] *See* Lilya Tessler et al., *supra* note 1.

[14] *See id*.

[15] Staff of the Inv. Adviser Regul. Off., Div. of Inv. Mgmt., SEC, *Regulation of Investment Advisers by the U.S. Securities and Exchange Commission* (Mar. 2013), https://www.sec.gov/about/offices/oia/oia_investman/rplaze-042012.pdf [hereinafter "SEC Investment Adviser Outline"].

[16] We note that transaction-based compensation should not be confused with earning rewards or network fees from a blockchain protocol. Earning a transaction-based fee is one of many factors in evaluating whether an intermediaries' activities are involved in effecting a securities transaction, including soliciting securities transactions in order to earn the transaction-based fee. Infrastructure Providers do not engage in this activity. Generally, the rewards and fees earned by Infrastructure Providers are untethered from any underlying transaction involving securities. Infrastructure Providers, moreover, usually do not even have knowledge of whether the network rewards or fees are being earned in connection with a securities transaction. *See* Appendix A for SEC no-action letters issued to entities receiving fees in connection with the execution of securities transactions that were found not to rise to the level of transaction-based compensation.

[17] *See* Appendix A for summaries of the facts and circumstances underlying these SEC no-action letters.

[18] *See id.*

[19] *See* Swiss American Securities, Inc., SEC Staff No-Action Letter, 2002 WL 32081579 (May 28, 2002).

[20] *See, e.g.*, Evare, LLC, SEC Staff No-Action Letter, 1998 WL 958015 (Nov. 30, 1998) ("[Evare] will be completely passive as to the investment decisions made by a Manager . . . [and] will not perform any brokerage function for its customers, but will merely provide a forum for Brokers and Managers to communicate regarding potential securities transactions."); *see also* Broker-to-Broker Networks, Inc., SEC Staff No-Action Letter, 2000 WL 1886745 (Dec. 1, 2000) ("[t]he payment structure . . . reflects the Company's intent for the System to be rigorously neutral as to the effectuation of transactions and to allocate among users their respective share of the costs of operating the System at the service levels demanded in a commercially rational manner.")

[21] *See* Real Goods Trading Corp., SEC Staff No-Action Letter, 1996 WL 422670 (Jun. 24, 1996); PerfectData Corp., SEC Staff No-Action Letter, 1996 WL 480429 (Aug. 5, 1996); Flamemaster Corp., SEC Staff No-Action Letter, 1996 WL 762990 (Oct. 29, 1996); Portland Brewing Co., SEC Staff No-Action Letter, 1999 WL 1261289 (Dec. 14, 1999).

[22] SEC Div. of Corp. Fin., *Statement on Certain Proof-of-Work Mining Activities*, U.S. Sec. & Exch. Comm'n, n.6 (Mar. 20, 2025), https://www.sec.gov/newsroom/speeches-statements/statement-certain-proof-work-mining-activities-032025.

[23] EJV Partners, L.P., SEC Staff No-Action Letter, 1992 WL 372147 (Dec. 7, 1992).

[24] Swiss American Securities, Inc., SEC Staff No-Action Letter, 2002 WL 32081579 (May 28, 2002).

[25] Evare, LLC, *supra* note 20.

[26] Broker-to-Broker Networks, Inc., *supra* note 20.

[27] Charles Schwab & Co., Inc., SEC Staff No-Action Letter, 1997 WL 1724480 (Sept. 18, 1997).

[28] Charles Schwab & Co., Inc., SEC Staff No-Action Letter, 1996 WL 762999 (Nov. 27, 1996).

[29] Center for Environmental Policy, Economics and Science, SEC Staff No-Action Letter, 1996 WL 29083 (Jan. 26, 1996.

[30] Venture Match of New Jersey, SEC Staff No-Action Letter, 1987 WL 108917 (Jun. 11, 1988).

[31] Real Goods Trading Corp., *supra* note 21.

[32] PerfectData Corp., *supra* note 21.

[33] Flamemaster Corp., *supra* note 21.

[34] Portland Brewing Co., *supra* note 21.

[35] EJV Partners, L.P., *supra* note 23.

[36] Farmland Industries, Inc., SEC Staff No-Action Letter, 1991 WL 214324 (Aug. 26, 1991).

[37] Reuters Information Services, Inc., SEC Staff No-Action Letter, 1991 WL 176539 (Jan. 17, 1991). *See also* SEC Investment Adviser Outline, supra note 12 (A Publisher who issues or promulgates analyses or reports concerning securities for compensation and as a part of a regular business is also excluded from the definition if it "(i) provides only impersonal advice (*i.e.*, advice not tailored to the individual needs of a specific client); (ii) is "bona fide," (containing disinterested commentary and analysis rather than promotional material disseminated by someone touting particular securities); and (iii) is of general and regular circulation (rather than issued from time to time in response to episodic market activity)").

[38] Technology Capital Network, Inc., SEC Staff No-Action Letter, 1992 WL 175694 (June 5, 1992).

[39] Capital Resource Network, SEC Staff No-Action Letter, 1993 WL 164600 (Apr. 23, 1993).

[40] Venture Capital Network, Inc., SEC Staff No-Action Letter, 1984 WL 45334 (May 7, 1984).

[41] Center for Environmental Policy, Economics and Science, *supra* note 29.