

Crypto Unchained: The SEC's Pivotal Interpretive Release

March 19, 2026

On March 17, 2026, the Securities and Exchange Commission (the “SEC”) issued an [interpretive release](#) (the “Release”) regarding the application of the federal securities laws to certain types of crypto assets and transactions involving crypto assets, based primarily on whether they are subject to an “investment contract” under the *Howey* test. The Release articulates the SEC’s view as to how the *Howey* test applies to crypto assets and transactions involving such assets and explicitly states that the SEC “will administer the federal securities laws consistent with the interpretation, including with respect to enforcement actions.”¹ The Release also contains a statement endorsed by the Commodity Futures Trading Commission (the “CFTC”) that asserts that the CFTC and its staff will administer the Commodity Exchange Act consistent with the Release and that certain non-security crypto assets could meet the definition of “commodity” under the Commodity Exchange Act.

Key Elements of the Release

The Release sets out the SEC’s view as to how existing law, including the *Howey* test—the framework established by the Supreme Court in *SEC v. W.J. Howey Co.* (1946) for determining whether a transaction involves an “investment contract” and therefore a security — applies to crypto assets and transactions. The Release addresses three principal areas:

- **Token Taxonomy.** The Release classifies crypto assets into five categories: digital commodities, digital collectibles, digital tools, stablecoins and digital securities. The Release notes that some crypto assets may fall outside those categories or have hybrid characteristics.

¹ The Release separately notes that it supersedes: (i) the SEC staff’s “Framework for ‘Investment Contract’ Analysis of Digital Assets” (Apr. 3, 2019), available at: <https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets> and (ii) any prior statements by the SEC or its staff on certain topics, including digital collectibles, protocol mining and protocol staking.

- **Investment Contract Formation and Separation.** The Release provides detailed guidance as to how the SEC will consider the circumstances under which a non-security crypto asset may be deemed to be subject to an investment contract—through an investment of money in a common enterprise based on issuer representations or promises to undertake essential managerial efforts—and when it may cease to be subject to one if those representations or promises are fulfilled or no longer reasonably remain associated with the crypto asset.
- **Common Crypto Activities.** The Release concludes that protocol mining, protocol staking, wrapping and certain airdrops, each as described in the Release, do not involve the offer and sale of a security, subject to express conditions and limitations.

The Release is intended to serve as a foundational step to execute on the commitment of the current SEC Chair to apply existing authority to create space for innovation using distributed ledger technology—in this case by clarifying when activity involving a crypto asset will be deemed subject to the federal securities laws. While the Release’s discussion of the separation of a crypto asset from its related investment contract may be partially superseded by a new statutory framework under the draft CLARITY Act currently being debated in the Senate, it is nevertheless an important milestone in the effort to adapt the securities laws to the new technological landscape. The SEC has solicited public comment on the Release and may refine, revise or expand upon it based on the feedback received.

A Comprehensive Token Taxonomy

The Release centers on a five-category framework for classifying crypto assets (any digital representation of value, e.g., a non-fungible token (“NFT”), recorded on a blockchain) according to their characteristics, uses and functions:

- **Digital Commodities—Not Securities.** These are crypto assets whose value is derived intrinsically from the operation of a functional crypto system (*i.e.*, a blockchain network that is operational and serving its intended purpose), as well as supply and demand, rather than from an expectation that the managerial efforts of others will generate profits. The Release specifically identifies Bitcoin (BTC), Ether (ETH), Solana (SOL), XRP (XRP), Cardano (ADA), Litecoin (LTC), Dogecoin (DOGE) and several other crypto assets as examples of digital commodities.² Importantly, the Release concludes that a digital commodity is not one of the

² The Release makes clear that the term “commodity” is being used for its commercial meaning in this context and is not intended to signal a regulatory conclusion that a digital commodity is necessarily a “commodity” as defined under the Commodity Exchange Act.

financial instruments listed in the definition of a security because a purchaser would not reasonably expect profits to result from the essential managerial efforts of others given the crypto asset's connection to a functional crypto system.

- **Digital Collectibles—Not Securities.** These are crypto assets designed to be collected and/or used that may represent or convey rights to artwork, music, videos, trading cards, in-game items or digital representations or references to internet memes, characters, current events or trends, among other things, including most NFTs and “meme coins.” The Release notes that, like physical collectibles, their value depends on supply and demand, which may in turn depend on the subject matter, popularity or scarcity rather than the essential managerial efforts of others. However, the Release cautions that the offer and sale of fractionalized digital collectibles (*i.e.*, collectibles divided into smaller ownership shares) could constitute the offer or sale of a security, as interests in the fractional pool may constitute investment contracts (discussed below).
- **Digital Tools—Not Securities.** These are crypto assets that perform a practical function, such as a membership, ticket, credential, title instrument or identity badge. Their value is derived from their practical functionality, and the Release notes that persons acquire them for functional utility and do not have rights in or with respect to a business enterprise or other entity, underscoring the Release's broader point that crypto assets acquired and valued for use, rather than for profit based on others' managerial efforts, generally are not “securities” and thus fall outside the securities laws.
- **Stablecoins—Treatment Depends on Facts and Circumstances.** The Release addresses stablecoins in two ways. First, it notes that, once effective, the GENIUS Act will exclude from the definition of “security” any payment stablecoin issued by a permitted payment stablecoin issuer. Second, as a matter of the SEC's current interpretive position, the offer and sale of “covered stablecoins,” as described in the [SEC's Division of Corporation Finance April 2025 guidance](#), does not involve the offer and sale of securities.³ Stablecoins other than covered stablecoins and payment stablecoins could still meet the definition of “security,” depending on the facts and circumstances.
- **Digital Securities—Securities.** Commonly known as “tokenized” securities, these are securities represented by crypto assets, where ownership is recorded in whole or in part on one or more blockchain networks. In the context of digital securities, the

³ This includes payment stablecoins issued by a “foreign permitted stablecoin issuer” permitted to issue into the United States under Section 18 of the GENIUS Act, although not technically included in the statutory exclusion from the definition of “security” in Section 17 of the GENIUS Act.

Release emphasizes that tokenization does not change the regulatory characterization of an asset: a security remains a security whether ownership is recorded on-chain (on a blockchain) or off-chain (through traditional, non-blockchain recordkeeping).

Investment Contract Analysis

The Release provides significant new guidance on how a non-security crypto asset may become subject to, and later cease to be subject to, an investment contract under the *Howey* test, which the Release states requires: (i) an investment of money, (ii) in a common enterprise, (iii) with a reasonable expectation of profits derived from the efforts of others.

Formation

A non-security crypto asset becomes subject to an investment contract when an issuer offers it by inducing an investment of money in a common enterprise through representations or promises to undertake essential managerial efforts from which a purchaser would reasonably expect to derive profits. In assessing whether such an expectation exists, the Release emphasizes that it generally must be based on representations or promises made by or on behalf of the issuer, including affiliates and agents of the issuer or a promoter, rather than unaffiliated third parties or holders of the relevant crypto asset, and that those representations or promises must be conveyed to the purchaser prior to or contemporaneously with the offer or sale. The Release asserts that these representations are more likely to create an expectation of profit when they are clear and specific, e.g., when they describe milestones, timing, personnel, funding and how holders are expected to profit.

Critically, the Release states that the fact that a non-security crypto asset is subject to an investment contract does not transform the non-security crypto asset itself into a security.

Separation and Termination

The Release also clarifies that a non-security crypto asset initially offered and sold as part of an investment contract will not necessarily be deemed to be subject to the federal securities laws indefinitely. If purchasers continue to reasonably expect to derive profits from the issuer's promised essential managerial efforts, the associated investment contract continues to transfer with the asset in secondary market transactions. However, once purchasers no longer reasonably expect the issuer's representations or promises to remain connected to the crypto asset, subsequent transactions in the asset

may fall outside the securities laws. In light of this, the Release identifies two principal, non-exclusive indicia of separation:

- **Fulfillment of Representations or Promises.** A non-security crypto asset is no longer subject to the initial investment contract once the issuer has fulfilled the essential managerial efforts it represented or promised it would undertake, because purchasers would no longer reasonably expect to derive profits from those efforts. The Release notes that such efforts may include, for example, developing promised functionality, achieving roadmap milestones, or open-sourcing related code, and that fulfillment depends on how the issuer itself described those efforts. The issuer may continue to provide non-essential efforts without causing the crypto asset to remain subject to the investment contract.
- **Failure to Satisfy Representations or Promises.** A non-security crypto asset is no longer subject to an initial investment contract if purchasers would no longer reasonably expect the issuer to be able to fulfill or continue the essential managerial efforts it represented or promised it would undertake—for example, because the issuer has effectively abandoned development of the associated crypto system or a sufficiently long period of time has passed without performance that those promised efforts can no longer reasonably be expected.

Protocol Mining and Protocol Staking—Not Securities Transactions

The Release provides that certain mining and staking activities on public, permissionless blockchain networks do not involve the offer and sale of a security. Specifically, it addresses protocol mining activities on proof-of-work networks (such as Bitcoin), including specified types of self-mining and mining pool activities. On those networks, participants, or miners, contribute computing power to perform the protocol's validation process, which confirms transactions and enables new blocks to be added to the blockchain. When they successfully participate in that process, they receive protocol-based rewards, such as newly issued digital assets and, in some cases, transaction fees. The Release also addresses protocol staking activities on proof-of-stake networks (such as Ethereum), where participants commit digital commodities to the network to help validate transactions and secure the blockchain in exchange for protocol-based rewards. In each case, the Release concludes that, when conducted in the manner and under the circumstances described in the Release, the related activities of facilitators are merely "administrative or ministerial in nature" and that any expected financial return is derived from the participant's own activity under the network's software protocol—not from the essential managerial efforts of others.

This treatment extends to mining pools, delegation arrangements, custodial staking arrangements and liquid staking arrangements (in which a holder deposits digital commodities and receives a tradeable receipt token representing the deposited position and accrued rewards). These conclusions are expressly limited: custodial or liquid staking arrangements fall outside the Release if the service provider decides whether, when, or how much to stake, or guarantees or otherwise fixes rewards. The Release further concludes that the offer and sale of a staking receipt token representing a non-security crypto asset not subject to an investment contract does not itself involve the offer and sale of a security. The Release also states that certain ancillary staking-related services, such as slashing coverage, early unbonding, alternate reward payment schedules and amounts (subject to limits), and aggregation to meet protocol minimums, are likewise administrative or ministerial in nature.

Wrapping of Non-Security Crypto Assets—Not a Securities Transaction

The Release also addresses the “wrapping” of crypto assets, which is the process by which a person deposits a crypto asset with a custodian or cross-chain bridge (a service that transfers assets between different blockchains) and receives an equivalent redeemable wrapped token (a crypto asset issued on another crypto network or under another token standard that is backed and redeemable at a fixed one-for-one basis) without the wrapped token provider directly or indirectly offering any return, yield, profit opportunity or additional good or service. The Release concludes that such wrapping, when it involves a non-security crypto asset not subject to an investment contract, does not involve the offer and sale of a security, reasoning that the wrapping process is administrative or ministerial in nature, that holders are not making an investment in an enterprise and that any value of the wrapped token is derived from the deposited crypto asset rather than from the efforts of others. By contrast, a wrapped token that is a receipt for a digital security or for a non-security crypto asset that remains subject to an investment contract is itself a security.

Airdrops of Non-Security Crypto Assets—No Investment of Money

The Release addresses crypto asset disseminations known as “airdrops” (free distributions of crypto assets to holders’ digital wallets), concluding that where an issuer conducts an airdrop of non-security crypto assets to recipients who do not provide money, goods, services or other consideration in exchange, the first element of the *Howey* test—an investment of money—is not met. Accordingly, the Release concludes that such airdrops do not involve the offer and sale of securities. This interpretation applies where any prior consideration was provided before the announcement of the

airdrop and recipients are not required to provide further consideration after such announcement. It does not apply where recipients perform services or provide consideration in exchange for the airdropped assets. The Release also notes, however, that the airdropped asset may still become subject to an investment contract in a subsequent transaction if an associated investment contract is created in connection with other transactions involving the crypto asset. The Release also notes that in this respect, it does not apply to or otherwise affect existing SEC or staff positions regarding employee compensation and benefit arrangements involving the issuance or award of securities.

Practical Implications for Market Participants

While the Release provides extensive guidance on factors the SEC will consider in determining when an investor may reasonably rely on the managerial efforts of others based on issuer statements and actions, it is important to recognize that the framework includes numerous pressure points that are likely to be tested. For example, issuer use of hedging language in potentially promissory statements or highlighting of incentive structures that indirectly suggest managerial efforts without explicitly promising them are likely to raise difficult questions. Similarly, the concept that a representation or promise needs to be “conveyed” to the purchaser leaves much room for judgment calls as to what constitutes adequate conveyance to purchasers in the secondary market. More broadly, the Release adopts an expressly transaction-specific and temporal approach that may prove directionally helpful, but in practice it may leave difficult line-drawing questions, particularly where issuer communications evolve. Further, although the Release addresses certain airdrops where recipients do not provide consideration in exchange, questions may still arise where prior conduct or value was furnished in anticipation of a later airdrop, where eligibility criteria are structured to induce conduct before formal announcement, or where the surrounding facts suggest an indirect exchange of value.

Finally, it is important to recognize that as an interpretive statement, the Release is not binding on courts interpreting the definition of “security” under the federal securities laws in the context of civil litigation. In that respect, the Release may substantively affect regulatory enforcement posture without fully resolving litigation exposure.

Nevertheless, the Release represents an important step in the SEC’s approach to crypto assets and has several important practical implications for market participants.

Enhanced Regulatory Clarity. By providing detailed guidance on the *Howey* test’s application to common crypto activities, the Release is intended to give market

participants a more usable framework for analyzing how the federal securities laws apply to crypto assets and common crypto transactions.

Named Digital Commodities. The Release's express identification of specific crypto assets as digital commodities provides a measure of certainty for trading platforms, custodians and intermediaries dealing in those assets. However, because the Release is based on the SEC's current understanding of the relevant assets' characteristics, uses and functions, market participants should be aware that future developments could alter the classification of any given asset.

Implications for Token Issuers. For issuers of non-security crypto assets, the Release's guidance on the formation and separation of investment contracts provides a meaningful roadmap. Issuer disclosure will matter; issuers that make explicit representations about essential managerial efforts should clearly outline those efforts, provide timelines and milestones, explain the resources needed to complete those efforts and publicly disclose their completion. The Release's recognition that an investment contract can terminate upon the issuer's fulfillment—or acknowledged abandonment—of its representations offers a path for a non-security crypto asset to separate from the associated investment contract. An issuer's public statement that it will no longer undertake previously represented or promised essential managerial efforts may likewise bear on whether those prior representations or promises remain connected to the asset.

DeFi and Infrastructure Protocols. The SEC's treatment of mining, staking, liquid staking, wrapping and certain airdrops will likely be significant for participants in decentralized finance and crypto infrastructure. The SEC's interpretive determinations reduce regulatory friction for common activities that form an important part of many crypto systems. Participants should, however, note the Release's express carveouts for arrangements that deviate from the described structures—for example, staking arrangements in which a service provider exercises discretion over staking parameters or guarantees returns. This analysis assumes miners receive rewards from the pool on a pro rata basis according to their contributed computational power, and not through arrangements in which non-miners purchase pool interests or miners pay to receive more than their pro rata share.

Continued Anti-Fraud Liability. Market participants should note that the Release does not diminish the application of the federal securities laws' anti-fraud provisions. Even where a non-security crypto asset separates from an investment contract, the issuer remains potentially liable for material misstatements or omissions made in connection with the investment contract during its existence.

Further Regulatory Developments. The SEC characterized the Release as its first step toward a clearer regulatory framework and may update guidance based on the feedback received. Recent public remarks by SEC Chair Atkins also suggest that the Release may soon be followed by a formal proposal addressing capital-raising pathways, exemptions, safe harbors and disclosure obligations for crypto asset issuances in the United States. Market participants should monitor further developments, including potential rulemaking, additional joint SEC-CFTC guidance and final regulations implementing the GENIUS Act.

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Please do not hesitate to contact us with any questions.



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