SEC Commissioner Warns Crypto Industry That Yield-Generating Activities May Trigger Securities Laws

July 29, 2026

On July 22, 2026, SEC Commissioner Hester M. Peirce issued a statement warning that crypto vaults and onchain lending products may trigger obligations under the federal securities laws.[1] The statement comes against the backdrop of the SEC indicating, over the past year, that much digital asset activity does not implicate those laws—and thus serves as an important reminder that crypto projects remain subject to investigation and enforcement under the federal securities laws, depending on the particular facts and circumstances.

Commissioner Peirce's statement does not specify that any particular type of vault, token or lending product is necessarily a security, but nonetheless delivers a broad warning to the digital asset industry and its legal advisors: the fact that a yield strategy is onchain—or uses crypto assets that are not themselves securities—does not, by itself, insulate a product or its managers from the federal securities laws.

CRYPTO VAULTS AND ONCHAIN LENDING PRODUCTS

In her remarks, Commissioner Peirce started with a proposition that has become a recurring theme of the SEC's recent crypto work: the fact that an asset or activity is onchain does not, by itself, determine whether it is governed by the federal securities laws.[2]

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1 Commissioner Hester M. Peirce, *Headstands and Summervaults: A Statement on Crypto Vaults and Lending Strategies* (July 22, 2026), https://www.sec.gov/newsroom/speeches-statements/peirce-statement-crypto-vaults-lending-strategies-072226 ("Peirce Statement").

2 *See, e.g.*, Commissioner Hester M. Peirce, *Enchanting, but Not Magical: A Statement on the Tokenization of Securities* (July 9, 2025), https://www.sec.gov/newsroom/speeches-statements/peirce-statement-tokenized-securities-070925 (noting the underlying technology does not change the legal character of a security); SEC Divisions of Corporation Finance, Investment Management, and Trading and Markets, *Statement on Tokenized Securities* (Jan. 28, 2026), https://www.sec.gov/newsroom/speeches-statements/corp-fin-statement-tokenized-securities-012826-statement-tokenized-securities (explaining that "the format in which a security is issued or the methods by which holders are recorded (e.g., onchain vs. offchain) does not affect application of the federal securities laws"); SEC Division of Corporation Finance, *Statement on Certain Protocol Staking Activities* (May 29,

Commissioner Peirce described crypto vaults as smart-contract-based arrangements that allocate deposited assets among yield-generating activities, including staking and lending. Those arrangements can range from immutable, programmatic allocation to allocation controlled by another person or group. Similarly, she noted that "crypto lending strategies" may "allow participants to deposit their assets into onchain systems that lend them for a fee to borrowers who can put those assets to use."[3]

Commissioner Peirce described several types of activities that may warrant securities law analysis: choosing yield-generating activities; reallocating assets among strategies; selecting the persons who will make those decisions; setting interest rates; deciding which assets a lending system will accept; establishing loan-to-value limits; and setting liquidation thresholds. Her repeated focus on decision-making suggests she believes that architecture and governance—not labels such as "vault," "protocol," "curator" or "smart contract"—will drive the SEC's analysis.

FEDERAL SECURITIES LAW APPLICATION

Commissioner Peirce identified four key ways in which crypto vaults and onchain lending products might trigger scrutiny under the federal securities laws.

Investment Contract

Under *Howey*, a vault could be treated as an investment contract, *i.e.*, a common enterprise where customers invest money with a reasonable expectation of profits derived from the entrepreneurial or managerial efforts of a deployer, curator or other actor.[4] That analysis would focus on the structure of the arrangement and the parties' expected efforts, even where the deposited asset is not itself a security. The degree of managerial effort a curator or deployer exercises can drive the analysis. Active, discretionary curation—for instance, selecting yield strategies, reallocating assets or tuning risk parameters—would likely weigh toward investment contract status, whereas passive, ministerial or fully automated operation would likely weigh against it.[5]

2025), https://www.sec.gov/newsroom/speeches-statements/statement-certain-protocol-staking-activities-052925 (concluding that whether an onchain activity falls within the securities laws turns on the economic substance of the arrangement rather than the fact that it occurs on a blockchain).

3 Peirce Statement.

4 Peirce Statement (laying out the elements of the *Howey* test).

5 The SEC Division of Corporation Finance's statement on protocol staking activity illustrates the point: the Division found the "efforts of others" prong unsatisfied where service providers performed only administrative or ministerial functions and did not decide whether, when or how much of a customer's assets to stake. *See* SEC Division of Corporation Finance, *Statement on Certain Protocol Staking Activities*, https://www.sec.gov/newsroom/speeches-statements/statement-certain-protocol-staking-activities-052925.

Investment Company

A vault that holds securities or allocates assets to investments in securities may raise Investment Company Act issues. Commissioner Peirce observed that certain designs could resemble a unit investment trust with a largely fixed portfolio, a management investment company with active management or a separately managed account offering individualized treatment. Critically, even if the crypto assets originally deposited in a vault are not themselves securities, a vault that invests in assets that are securities—and whose interests in the vault are themselves securities—may be subject to registration or an exemption requirement under the Investment Company Act.

Notes

Onchain loans could themselves be securities, as Commissioner Peirce observed. Under *Reves v. Ernst & Young*, 494 U.S. 56 (1990), notes are presumed to be securities unless they fall within one of a judicially recognized category of non-security instruments (such as consumer loans or notes secured by home mortgages) or closely resemble such an instrument under a four-factor "family resemblance" analysis weighing (1) the parties' investment-versus-commercial motivations, (2) whether the note is widely distributed for trading or speculation, (3) whether the investing public reasonably expects the instrument to be a security and (4) whether collateral or another regulatory scheme reduces risk enough to make securities regulation unnecessary. No single factor controls; courts weigh all four together to decide whether the instrument was, in substance, bought and sold as an investment.[6] Unlike *Howey*, the test does not directly consider the "managerial efforts" of the offeror. A lending arrangement can therefore satisfy—or fail—the *Reves* test largely independent of how much discretion the offeror exercises.

Investment Adviser

Finally, Commissioner Peirce warned that "[i]nvolvement in managing vaults and lending strategies also may implicate investment adviser issues."[7] A person who, for compensation, exercises discretion or provides advice concerning a vault or onchain lending product may need to evaluate potential registration, exemption, fiduciary, custody and conflicts requirements under the Investment Advisers Act.

In sum, Commissioner Peirce's remarks serve as an important reminder that certain digital asset business activity—including offering crypto vaults or onchain lending products—may expose companies and their managers to significant risks under the federal securities laws.

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6 *See, e.g.*, Kirschner v. JPMorgan Chase Bank, N.A., 79 F.4th 290, 304–305 (2d Cir. 2023).

7 Peirce Statement.

CLARITY ACT IMPLICATIONS

On the same day that Commissioner Peirce published her statement, Senator Cynthia Lummis released updated text for the Digital Asset Market Clarity Act of 2025 (H.R. 3633) (the "CLARITY Act"), combining the work products of the Senate Banking and Agriculture Committees. The bill passed the House in July 2025 by a vote of 294–134 and was reported out of the Senate Banking Committee in June 2026, but as of today, it has not been scheduled for a Senate floor vote, with passage before the August recess appearing unlikely due to unresolved disputes over ethics provisions and stablecoin regulation.

If enacted, the CLARITY Act could impact—but is unlikely to entirely displace—the analysis set forth in Commissioner Peirce's statement. The bill would generally assign CFTC jurisdiction over "digital commodities" (broadly, digital assets whose value is intrinsically linked to the use of a mature, sufficiently decentralized blockchain) and preserve SEC jurisdiction over assets that are securities, including investment contracts. Critically for vault and lending operators, the bill would clarify that an "investment contract asset" (a digital commodity sold pursuant to an investment contract) is not itself an investment contract, which could limit SEC jurisdiction over certain secondary market activities involving those assets. However, the bill does not displace the four-factor *Reves* analysis for onchain notes, nor would it categorically exempt vault managers from the investment adviser or investment company frameworks.

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Please do not hesitate to contact us with any questions.

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