

# SEC Issues Interpretation on Application of Securities Laws to Crypto Assets

On March 17, 2026, the U.S. Securities and Exchange Commission (“SEC”) issued an interpretation clarifying its views on the application of federal securities laws to certain crypto assets and transactions involving crypto assets (the “Interpretation”).<sup>1</sup> The Interpretation (1) provides an SEC taxonomy of crypto assets, (2) explains when a non-security crypto asset can become—and cease to be—subject to an “investment contract” and (3) addresses the regulatory treatment of “protocol mining,” “staking,” “wrapping” and “airdrops.” The Commodity Futures Trading Commission (“CFTC”) joined the Interpretation, stating that it will administer the Commodity Exchange Act consistent with the Interpretation.

The Interpretation does not alter existing law, including the “*Howey* test,” which remains binding precedent. Rather, it reflects the SEC’s current views on how the federal securities laws apply to crypto assets. The SEC has indicated it will administer the securities laws consistent with the Interpretation, including in enforcement actions. As an interpretive rule, the Interpretation is effective immediately. The SEC has requested public comment and stated that it may revise the Interpretation over time.

This is a major milestone for the SEC and CFTC and bears promise of future coordination in the digital asset space. In a contemporaneous speech, SEC Chairman Paul Atkins stated that he expects the SEC to consider, in the coming weeks, releasing a proposed rule for public comment that may include a “startup exemption,” a “fundraising exemption” and an “investment contract safe harbor.”<sup>2</sup>

## BACKGROUND

The federal securities laws and SEC rules only apply in the context of securities. If an asset is a security, its offer and sale are subject to the federal securities laws and comprehensive SEC rules and regulations as well as oversight. If an asset is not a security, then the federal securities laws do not apply and the SEC lacks jurisdiction. Federal securities laws define “security” broadly to include a wide range of instruments, including “investment contracts.”

Courts and the SEC have largely relied on the “*Howey* test” to determine whether a particular crypto asset is an “investment contract” and, therefore, a security subject to the SEC’s jurisdiction and rules.<sup>3</sup> However, this analysis has proven complex and difficult to apply consistently.

## CLASSIFICATION OF CRYPTO ASSETS

The SEC’s Interpretation classifies crypto assets into five categories based on their characteristics, uses and functions:

- **Digital commodities** are crypto assets that are intrinsically linked to and derive their value from the programmatic operation of a crypto system that is “functional,” as well as supply and demand dynamics, rather than from an expectation of profits from the essential managerial efforts of others.
- **Digital collectibles** are crypto assets designed to be collected and/or used. They 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.
- **Digital tools** are crypto assets that perform practical functions such as a membership, ticket, credential, title instrument or identity badge and are acquired for their functional utility rather than for investment, with any resale value tied to that utility rather than an expectation of profits from managerial efforts.
- **Stablecoins** are crypto assets designed to maintain a stable value relative to a reference asset (e.g., the U.S. dollar). The GENIUS Act, enacted on July 18, 2025, creates a regulatory framework for “payment stablecoins,” and excludes from the definition of “security” any “payment stablecoin issued by a permitted payment stablecoin issuer.”<sup>4</sup>
- **Digital securities (or “tokenized securities”)** are financial instruments enumerated in the definition of “security” that are formatted as or represented by a crypto asset, where the record of ownership is maintained in whole or in part on or through one or more crypto networks.

The SEC analyzed each category under the definitions of a “security” under the federal securities laws and articulated its view that digital commodities, digital collectibles, digital tools and stablecoins are not securities, while digital securities are securities.

## NON-SECURITY CRYPTO ASSETS SUBJECT TO AN INVESTMENT CONTRACT

Notwithstanding the above, the Interpretation also clarified that a crypto asset that is not itself a security may nevertheless become

subject to the federal securities laws if offered and sold as part of an “investment contract”—*i.e.*, an investment of money in a common enterprise with a reasonable expectation of profits to be derived from the efforts of others.

The Interpretation provides guidance on the nature of the representations or promises that may cut in favor of the existence of an investment contract. Relevant factors include:

- **Source of representations or promises.** It would be reasonable for a purchaser to expect profits based on explicit representations or promises to engage in essential managerial efforts made *by or on behalf of the issuer*, but not by *unaffiliated third parties*.
- **Level of detail in representations or promises.** Representations or promises are more likely to create reasonable expectations of profit when they are explicit and unambiguous, contain sufficient details demonstrating the issuer’s ability to implement the proposed project and explain how the issuer’s efforts will produce the profits.
- **Timing of representations or promises.** Representations or promises are relevant to a purchaser’s reasonable expectations of profits only if conveyed prior to or contemporaneously with the issuer’s offer or sale; post-sale statements do not retroactively create an investment contract.
- **Manner in which representations or promises are made.** It would be reasonable for a purchaser to expect profits based on representations or promises conveyed in written or oral agreements, public communications through which the issuer has established a regular pattern of communicating, direct private communications, publicly available regulatory filings or other documents clearly attributable to the issuer (*e.g.*, a whitepaper).

## SEPARATION OF NON-SECURITY CRYPTO ASSETS FROM AN INVESTMENT CONTRACT

The SEC explained that a non-security crypto asset offered and sold subject to an “investment contract” does not necessarily remain subject to that investment contract in perpetuity. The asset can separate from the “investment contract”—and thus no longer be subject to the federal securities laws—at any time after

the investment contract is offered if continued reliance on the initial representations or promises becomes unreasonable. Separation does not affect potential liability for prior securities law violations or preclude the creation of a new investment contract based on subsequent representations or promises.

The Interpretation provides the following non-exhaustive examples of separation indicia:

- **Fulfillment of representations or promises.** When the issuer has fulfilled its representations or promises to engage in essential managerial efforts, such as upon delivery, even if it continues to provide efforts that are not essential managerial efforts.
- **Failure to satisfy representations or promises.** When a purchaser would not reasonably expect the issuer to be able to fulfill or to continue to engage in essential managerial efforts, such as where the issuer has publicly announced abandonment.

Market participants should bear in mind that even under the SEC taxonomy described in the Interpretation, the status of a given crypto asset depends on the facts and circumstances and must be analyzed appropriately in light of the asset’s characteristics, uses and functions.

## OTHER ACTIVITIES

The Interpretation affirms the SEC’s view that “protocol mining,” “protocol staking” and the “wrapping” of a non-security crypto asset, under the circumstances set forth in the Interpretation (which generally involve no reliance on essential managerial efforts of others), do not involve the offer and sale of a security. The Interpretation also articulates the SEC’s view that certain “airdrops” do not involve an “investment of money” under the *Howey* test.

## CONCLUSION

The Interpretation is a major milestone for the SEC and CFTC in their efforts to establish regulatory clarity and complements ongoing legislative efforts to codify a comprehensive crypto asset market structure framework into statute. Market participants should continue to monitor ongoing developments.

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1 SEC, CFTC, *Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets*, Mar. 17, 2026, available at <https://www.sec.gov/files/rules/interp/2026/33-11412.pdf>.

2 See Paul S. Atkins, SEC Chairman, *Regulation Crypto Assets: A Token Safe Harbor*, Mar. 17, 2026, available at <https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-regulation-crypto-assets-031726>.

3 *SEC v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946). Under the *Howey* test, an investment contract exists where there is an investment of money in a common enterprise with a reasonable expectation of profits to be derived from the efforts of others.

4 See generally the Guiding and Establishing National Innovation for U.S. Stablecoins Act, Pub. L. No. 119-27, 139 Stat. 419 (2025) (“GENIUS Act”). Given that the GENIUS Act is not yet effective, the scope of this category is limited to “Covered Stablecoins,” as such term is defined in prior SEC staff guidance, which the Interpretation affirmed. Covered Stablecoins are crypto assets designed and marketed for use as a means of making payments, transmitting money or storing value and which possess the characteristics outlined in the Division of Corporation Finance’s April 4, 2025 Statement on Stablecoins. See SEC, Division of Corporation Finance, *Staff Statement on Stablecoins*, Apr. 4, 2025, available at <https://www.sec.gov/newsroom/speeches-statements/statement-stablecoins-040425>.

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