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SEC Releases Commission Interpretation on Application of Securities Laws to Digital Assets

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On March 17, 2026, the Securities and Exchange Commission (the "SEC") issued interpretive guidance addressing how existing federal securities laws apply to certain types of crypto assets and certain transactions involving crypto assets (the "Interpretation"). The Commodity Futures Trading Commission (the "CFTC") joined the guidance and confirmed its staff would administer the Commodity Exchange Act consistently with the Interpretation. Subsequent statements by SEC leadership and staff, including at the annual "SEC Speaks" event March 19-20, indicate they expect the Interpretation to be the beginning, not the end, in the agency's transformation of its approach to the industry and that further action is yet to come, but it nonetheless provides welcome clarity on how the SEC interprets the securities laws as they apply to digital assets.

At a high level, the Interpretation addresses the following matters:

- Creation of a Taxonomy of Crypto Assets. The Interpretation establishes a five-part taxonomy for crypto assets: digital commodities, digital collectibles, digital tools, stablecoins, and digital securities. Under the agencies' view, digital commodities, digital collectibles, and digital tools are not themselves securities, whereas digital securities (or "tokenized securities") are. The release also takes the position that GENIUS Act payment stablecoins are not securities, while other stablecoins continue to require a facts-and-circumstances analysis. Rather than leaving the taxonomy at a theoretical level, the Interpretation grounds the classifications in actual, widely used crypto assets. The Interpretation expressly identifies a number of widely traded assets, including Bitcoin, Ether, Solana and XRP, as examples of "digital commodities." The accompanying CFTC reinforces that certain non-security crypto assets may be commodities under the Commodity Exchange Act.
- Investment Contract Guidance. The Interpretation clarifies that a non-security crypto asset may be offered and sold *subject to* an investment contract when the purchasers provide value in reliance on the issuer's promises to undertake essential managerial efforts. In the SEC's view, however, the existence of an investment

contract does not transform the underlying digital asset into a security; the asset may also later "separate" from the investment contract, for example, where the issuer has fulfilled or publicly abandoned those promises. The Interpretation makes clear that this framework does not provide any exemption from the requirement to register an offering of securities (e.g., investment contracts for digital assets) or operate pursuant to a valid exemption from registration.

- On-Chain Activities. The Interpretation outlines several categories of "on chain" activities, such as protocol mining, protocol staking, wrapping non-security crypto assets, and airdrops. It concludes that protocol mining, protocol staking, and the wrapping of non-security crypto assets (in each case, as further defined in the Interpretation) are not offers or sales of securities, noting that these activities do not present the types of purchaser reliance on the essential managerial efforts of others that characterize investment contracts under *Howey*. The Interpretation further finds that airdrops do not involve an investment of money, placing them outside the scope of the *Howey* test.

The Interpretation is a significant development, but it does not resolve all outstanding crypto-policy questions. Although the guidance clarifies how the SEC and CFTC interpret existing law, it is not binding on courts, which SEC staff acknowledged are required to apply their own independent judgment on questions of statutory interpretation. Further, issuance of interpretive guidance is not the same as creating new exemptions, safe harbors, or a bespoke regulatory framework for crypto assets. The SEC says the Interpretation is intended as the first step toward a more coherent regulatory regime, and it is soliciting public comment on the views expressed in the Interpretation. The SEC's public agenda separately notes that the agency is evaluating possible rulemaking initiatives related to crypto assets, which could include exemptions or safe harbors. During his keynote during SEC Speaks on March 19, Chairman Atkins noted that while the Interpretation provides long-needed clarity, it amounts to a beginning and not to an end. Likewise, SEC staff from the Division of Corporation Finance remarked that there is "a lot more to come" with respect to clarity on crypto assets, with Director Jim Moloney noting that the Interpretation sets forth the initial groundwork.

While SEC action on crypto assets has been expected since the 2024 election, the manner in which it is occurring is noteworthy. The document comes from the SEC itself rather than the staff, and the SEC states that it and its staff will administer the federal securities laws consistent with the interpretation, including in enforcement matters. The Commission reiterates that the *Howey* test continues to govern the analysis of investment contracts, and the release serves primarily to articulate how the current SEC leadership intends to apply settled principles to crypto assets. Indeed, several members of the staff of the Division of Corporation Finance indicated the necessity of Congressional action to settle difficult questions. And even as the Interpretation appears to dramatically ease the *Howey* analysis for offerors of digital assets, numerous staffers mentioned that the fact that the SEC has acknowledged that certain digital assets themselves may not be securities, they may nonetheless be offered as part of an investment contract, which is a security, and that until the managerial efforts associated with such digital assets are either completed or publicly abandoned, the issuer may be engaged in a securities offering.

Further, the Interpretation is different from rulemaking and may in fact be separate from the rulemaking the SEC signaled it would undertake on its public regulatory agenda. Interpretive releases do not require notice-and-comment, which means the SEC was able to move more quickly in explaining how it believes existing securities-law principles apply in the crypto context. The SEC’s decision to proceed via an interpretive release underscores its interest in expediting clarity on how existing securities laws apply to crypto.

This development also comes shortly after the SEC and CFTC announced a March 11, 2026 Memorandum of Understanding ("MOU") establishing a formal harmonization framework between the agencies. The MOU was designed to reduce duplicative regulation, eliminate the longstanding "turf war mentality" between the regulators, and enhance coordinated oversight by aligning interpretations, processes, and data sharing. The MOU announcement specifically acknowledged that one objective was a joint effort to provide "a fit-for-purpose regulatory framework for crypto assets and other emerging technologies." In conjunction with the MOU, the SEC and CFTC created a Joint Harmonization Initiative led by designated officials from both agencies to coordinate policy, examinations, and enforcement activities, signaling an early move toward unified regulatory treatment of crypto assets. The fact that the Interpretation was issued jointly with the CFTC so soon after the MOU reinforces this coordinated approach.

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