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DLx News Alert: SEC Clarifies the Application of Federal Securities Laws to Certain Crypto Assets

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On March 17, 2026, the Securities and Exchange Commission (SEC), together with the Commodity Futures Trading Commission (CFTC), issued a joint interpretive release (the "**Release**")[1] addressing the application of the federal securities laws to crypto assets and certain transactions involving crypto assets. The Release establishes a coordinated federal framework for determining when a digital asset constitutes a security under U.S. law, addressing a central and unresolved issue in the regulation of crypto asset markets.

The Release does not have the force of law and does not modify or overrule the test for determining whether an instrument constitutes a security under *SEC v. W. J. Howey Co.*.[2] It does, however, represent the SEC's current enforcement posture and serves as the agency's "first step toward developing a clearer regulatory framework for the treatment of crypto assets under the Federal securities laws."[3]

The Release divides "crypto assets"[4] generally into 5 different categories:

1. **Digital Commodity**, defined as a crypto asset that is "intrinsically linked to and derives its value from the programmatic operation of a crypto system that is functional [...] rather than from the expectation of profits from the essential managerial efforts of others":[5] The Release lists Bitcoin, Ether, XPR, and Solana as examples of digital commodities[6] and

[1] SEC-CFTC Joint Release on Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, Securities Act Release No. 33-11412, Exchange Act Release No. 34-105020, SECURITIES & EXCH. COMM'N & COMMODITY FUTURES TRADING COMM'N (Mar. 17, 2026), https://www.sec.gov/files/rules/interp/2026/33-11412.pdf [hereinafter SEC Interpretive Release].
[2] See SEC Interpretive Release at 8 ("The interpretation in this release does not supersede or replace the Howey test, which is binding legal precedent. Rather the interpretation conveys the Commission's views (...) regarding how certain aspects of the Howey test apply to crypto assets"). *Howey* established the standard for determining whether a transaction constitutes an "investment contract" under the federal securities laws, including the Securities Act of 1933 and the Securities Exchange Act of 1934, and is satisfied where there is (i) an investment of money, (ii) in a common enterprise, and (iii) a reasonable expectation of profits derived from the efforts of others. SEC v. W. J. Howey Co., 328 U.S. 293, 298–99 (1946).
[3] SEC Interpretive Release at 9.
[4] Id. at 13.
[5] Id. at 14.
[6] Id.

explains that such assets are not securities because their value is "derived from the value of the goods and services that may be produced or accessed using that commodity[.]"[7]

2. **Digital Collectable**, defined as a crypto asset that is "collected [or] used,"[8] including, among other things, digital assets which "convey rights to artwork, music, videos, trading cards, in-game items, or digital representations or references to internet memes":[9] The Release considers "meme coin[s]"[10] as an example of digital collectables, and explains that because these assets are generally purchased for artistic, entertainment, or social purposes rather than for profit, and the value of these digital collectables depends on supply and demand rather than any "essential managerial efforts"[11] of the creators, they do not constitute securities under the *Howey* test.

3. **Digital Tool,** defined as a crypto asset that performs a practical function, including "a membership, ticket, credential, title instrument, or identity badge":[12] Because users acquire digital tools for their utility and do not obtain any rights or interests in a business enterprise, the Release concludes that digital tools fall outside the scope of the *Howey* test. The Release analogizes purchasing a digital tool to acquiring a museum membership, where the purchaser does "not expect to realize a profit from the essential managerial efforts of the museum's operators."[13]

4. **Stablecoin,** defined as a crypto asset designed to maintain a stable value relative to a reference asset:[14] Congress passed the GENIUS Act,[15] which excludes from the definition of "security" any payment stablecoin issued by a permitted payment stablecoin issuer.[16] The Release adopts a consistent approach, concluding that such stablecoins fall outside the scope of the federal securities laws.[17] The Release does not address tokens that fall outside the GENIUS Act's definition of a payment stablecoin, including algorithmic and decentralized stablecoins such as GHO and DAI, which remain subject to case-by-case analysis under the federal securities laws.

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[7] SEC Interpretive Release at 16.
[8] Id.
[9] Id.
[10] Id. at 18.
[11] Id. at 19.
[12] SEC Interpretive Release at 20.
[13] Id. at 21.
[14] See Id.
[15] Guiding and Establishing National Innovation for U.S. Stablecoins (GENIUS) Act, Pub. L. No. 119-27, 139 Stat. 419 (2025) (codified at 12 U.S.C. §§ 5901–5916).
[16] Id. at § 17.
[17] See SEC Interpretive Release at 21-23.

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6. **Digital Security,** defined as a tokenized security or, more specifically, a "financial instrument enumerated in the definition 'security' that is 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":[18] The Release explains that, while tokenized securities may be issued or represented onchain rather than through traditional certificated or book-entry systems, that difference in form does not alter their status as securities or the application of the federal securities laws.[19]

The Release makes clear that most categories of crypto assets do not constitute securities in themselves, although transactions involving such assets can nonetheless be subject to the federal securities laws where they form part of an investment contract. In a joint editorial, SEC Chairman Paul Atkins, SEC Commissioner Hester Peirce, and Commissioner Mark Uyeda emphasized that "[o]nly one class remains within the federal securities laws: digital securities, the tokenized versions of conventional securities like stocks and bonds."[20]

Decentralized Operations and Staking

For builders and participants in decentralized networks, the Release in part provides specific guidance on core protocol operations, including mining, staking arrangements, and token wrapping, delineating how the SEC will evaluate these activities under federal securities laws.

The Release addresses the regulatory treatment of mining activities in proof-of-work consensus models and explains that, because miners, whether acting individually or participating in a mining pool, contribute computational resources to secure the network, any rewards they receive do not derive from the "efforts of others" under *Howey* and therefore do not constitute an investment contract under the federal securities laws.[21] The Release also explains that although mining pool operators do perform "activities [that] may benefit the group of miners," those functions are "administrative or ministerial in nature" and are insufficient to bring mining pools within the scope of the securities laws.[22]

The Release addresses protocol staking, under which participants validate transactions and secure proof-of-stake networks, and explains that, where participants contribute their own digital assets

[18] Id. at 23.
[19] Id. at 24 ("A security is a security regardless of whether it is issued, or otherwise represented, offchain or onchain").
[20] Paul Atkins, Hester Peirce, & Mark Uyeda, Crypto Markets and the American People Deserve Clarity, CoinDesk (Mar. 19, 2026), https://www.coindesk.com/opinion/2026/03/19/crypto-markets-and-the-american-people-deserve-clarity.
[21] SEC Interpretive Release at 39-40.
[22] Id. at 40.

and perform validation functions, any rewards received are derived from the operation of the network's underlying protocol rather than from the essential managerial efforts of others and therefore do not constitute investment contracts.[23] The Release explains that direct self-staking, self-staking through a third-party custodian, custodial staking, and liquid staking arrangements, as described in the Release, fall outside the scope of the *Howey* test.[24] The Release also addresses staking receipt tokens, concluding that, where the underlying digital asset is a non-security crypto asset, transactions involving the offer and sale of such tokens do not constitute investment contracts under the federal securities laws.[25]

The Release covers the wrapping of non-security crypto assets, a common practice in decentralized finance ("**DeFi**") for cross-chain compatibility.[26] Consistent with its broader framework, the SEC centers its analysis on the underlying digital asset and explains that, where the underlying asset is not a security, the associated "Redeemable Wrapped Token" does not give rise to an investment contract under the federal securities laws. Conversely, where the underlying asset constitutes a security, wrapping that asset does not alter its status, and transactions involving the wrapped asset remain subject to the federal securities laws. [27]

Airdrops and Crypto Asset Lifecycles

The Release also addresses the practice of "airdropping" non-security digital assets.[28] The Release focuses its analysis on the circumstances of the distribution: where recipients are not required to provide consideration in exchange for the airdropped tokens, those airdrop distributions do not give rise to an investment contract under the federal securities laws because there was no "investment of money".[29] The Release explicitly leaves situations where a promoter airdrops digital securities outside the scope of the Release.[30]

Importantly, it also outlines the pathways through which an asset may cease to be subject to an investment contract, reflecting the reality that such arrangements are not permanent.[31] Notably, the Release introduces a critical framework for the lifecycle of digital assets, explicitly recognizing that a non-security crypto asset does not necessarily remain subject to an investment contract in perpetuity. This "separation" principle hinges on whether purchasers continue to have a reasonable

[23] See id. at 48-50.
[24] See id. The Release explains that arrangements in which custodians or liquid staking providers exercise discretion over staking decisions or guarantee a level of rewards fall outside the scope of the guidance.
[25] See SEC Interpretive Release at 52-54.
[26] SEC Interpretive Release at 54-58.
[27] Id. at 55.
[28] See id. at 58-63.
[29] Id. at 60.
[30] Id. at 63.
[31] Id. at 28-31.

expectation of profits derived from the issuer's essential managerial efforts. The Release lists two primary pathways through which a crypto asset separates from its investment contract: fulfillment of promises, in which an issuer fulfills its representations to engage in essential managerial efforts,[32] and failure or abandonment, in which a purchaser would no longer reasonably expect the issuer to fulfill its promised efforts.[33]

The bottom line is that secondary market transactions shed their securities status once the non-security crypto asset separates from the issuer's initial promises, according to the Release.

Interagency Harmonization

The CFTC formally joined the SEC's Release, committing to administer the Commodity Exchange Act in a manner consistent with this new framework. Under the leadership of SEC Chairman Paul Atkins and CFTC Chairman Michael Selig, this coordinated approach aims to foster a regulatory environment with clear, rational, and harmonized rules for the U.S. crypto industry.[34]

This approach closely aligns with the framework proposed in the CLARITY Act of 2025. The CLARITY Act, which passed the House with bipartisan support in July 2025, seeks to formally divide regulatory responsibilities by granting the CFTC exclusive jurisdiction over digital commodity spot markets[35] while maintaining SEC oversight over investment contract assets.[36]

By proactively adopting a token taxonomy that mirrors these core jurisdictional boundaries and explicitly classifying assets intrinsically linked to functional blockchain systems as digital commodities rather than securities, the SEC and CFTC are resolving longstanding regulatory ambiguity. This effectively lays the administrative groundwork to seamlessly implement the CLARITY Act's framework as legislation continues to be negotiated in the Senate.

Feel free to contact the DLx Law team with any questions you might have.

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[32] Id. at 29.
[33] Id. at 31.
[34] See Press Release: SEC Clarifies the Application of Federal Securities Laws to Crypto Assets, SECURITIES & EXCH. COMM'N (Mar. 17, 2026), https://www.sec.gov/newsroom/press-releases/2026-30-sec-clarifies-application-federal-securities-laws-crypto-assets.
[35] Digital Asset Market Clarity Act of 2025, H.R. 3633, 119th Cong. § 401 (2025).
[36] Id. at § 201.

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