

FinTech, Crypto, Trading & Markets

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SEC Issues Interpretive Framework for Crypto Asset Classification

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What You Need To Know:

- The SEC and the CFTC issue a formal interpretation classifying crypto assets into five categories. The Agencies have issued an interpretive release establishing a taxonomy for crypto assets, classifying them as digital commodities, digital collectibles, digital tools, stablecoins, or digital securities and articulating how each category maps to the definition of a “security” under the federal securities laws.
- Specific crypto assets receive regulatory clarity. In a remarkable departure from years of ambiguity, the Agencies expressly identify Bitcoin, Ether, Solana, XRP, Cardano, and several other tokens as “digital commodities” that are not securities.
- The investment contract analysis gets a significant overhaul. The Agencies “add” to the *Howey* test an element requiring an issuer to affirmatively make representations or promises with respect to its essential managerial efforts for there to be an investment contract.
- The Agencies provide clarity on when a non-security crypto asset is part of an investment contract and when it isn’t. The Agencies emphasize that non-security crypto assets can become subject to and subsequently *separate from* investment contracts based on an issuer’s representations and promises. This framework provides a meaningful road map for how tokens transition from securities treatment to non-securities treatment.

Background

On March 17, 2026, the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) (together, the Agencies) released a Joint Interpretation regarding the application of federal securities laws with respect to certain crypto assets and transactions involving crypto assets. The interpretation is a welcome start to regulatory clarity and reaffirmation of the Agencies’ cumulative efforts in providing guidance, especially on the heels of last week’s [Joint Memorandum of Understanding \(MOU\)](#).

The Five-Category Taxonomy

At the core of the interpretation is a classification framework that divides crypto assets into five categories based on their characteristics, uses, and functions: (i) digital commodities, (ii) digital collectibles, (iii) digital tools, (iv) stablecoins, and (v) digital securities. The Agencies acknowledge that some crypto assets may not fit neatly into any category and that others may have hybrid characteristics spanning multiple categories. Digital commodities, digital collectibles, and digital tools are not themselves securities, though they may be offered and sold subject to an investment contract, which is a security.

- **Digital Commodities.** A digital commodity is a crypto asset that is “intrinsically linked to and derives its value from the programmatic operation of a crypto system that is ‘functional,’ as well as supply and demand dynamics, rather than from the expectation of profits from the essential managerial efforts of others.” The programmed purpose of a digital commodity is to facilitate and incentivize transaction

validation, maintain the functioning and security of its associated crypto system, and foster network effects. Of significance, a functional crypto system does not have a central party that oversees participation or distributes rewards to users. The Agencies explicitly identify the following tokens as examples of digital commodities: Aptos (APT), Avalanche (AVAX), Bitcoin (BTC), Bitcoin Cash (BCH), Cardano (ADA), Chainlink (LINK), Dogecoin (DOGE), Ether (ETH), Hedera (HBAR), Litecoin (LTC), Polkadot (DOT), Shiba Inu (SHIB), Solana (SOL), Stellar (XLM), Tezos (XTZ), and XRP. The Agencies also note that a crypto asset does not need to underlie a futures contract to be a digital commodity, and they identify Algorand (ALGO) and LBRY Credits (LBC) as additional examples.

- **Digital Collectibles.** A digital collectible is a crypto asset designed to be collected or used that may represent rights to artwork; music; videos; trading cards; in-game items; or digital representations of memes, characters, or trends. The value of a digital collectible is typically derived from the artistic, entertainment, social, or cultural value, as well as from supply and demand mechanics, but not from the efforts of the creator of a digital collectible, because such creator typically does not make any representations or promises with respect to any managerial efforts from which a purchaser would reasonably expect to derive profits. Notably, the Agencies recognize that certain meme coins may evolve into digital commodities if they become functional within an associated crypto system. The Agencies warn, however, that fractionalized digital collectibles—those enabling individuals to acquire fractional ownership interests—could constitute securities.
- **Digital Tools.** A digital tool is a crypto asset that performs a practical function, such as being a membership, ticket, credential, title instrument, or identity badge. Like digital collectibles, digital tools are not securities, because persons acquire them for functional utility, not with an expectation of profits from the essential managerial efforts of others.
- **Stablecoins.** A stablecoin is a crypto asset designed to maintain a stable value relative to a reference asset like the U.S. dollar. The Agencies address the interplay between its interpretation and the recently enacted GENIUS Act, which excludes “payment stablecoins issued by a permitted payment stablecoin issuer” from the definition of “security.” Given that the GENIUS Act is not yet effective, the Agencies interpret that “Covered Stablecoins” as described in the Division of Corporation Finance’s prior Staff Statement do not involve the offer and sale of securities. Stablecoins that do not fall within these safe harbors may still meet the definition of a security depending on the facts and circumstances.
- **Digital Securities.** A digital security is a financial instrument enumerated in the definition of a security that is formatted as or represented by a crypto asset. The Agencies reiterate what should surprise no one: A security is a security regardless of whether it is issued off-chain or on-chain.

When Non-Security Crypto Assets Become Securities (and When They Don’t)

Perhaps the most consequential aspect of the interpretation is the Agencies’ articulation of how non-security crypto assets become subject to and may subsequently separate from investment contracts.

A non-security crypto asset may be classified as an investment contract when an issuer offers it by (i) inducing an investment of money (ii) in a common enterprise, (iii) with representations or promises to undertake essential managerial efforts and (iv) from which a purchaser would reasonably expect to derive profits. The interpretation narrows the traditional “from the efforts of others” prong of the *Howey* test by replacing it with a more exacting standard: whether the crypto asset was offered or sold “with representations or promises to undertake essential managerial efforts.” This reformulation raises the threshold for classifying a crypto asset as a security, requiring not only that purchasers rely on the efforts of others but also that the issuer or promoter has affirmatively represented or promised that it will perform essential managerial functions.

Significantly, the Agencies clarify that neither post-sale issuer representations nor unaffiliated third-party representations (unless authorized by the issuer) impact the analysis, because they do not “shape” the

purchaser's expectations at the time of purchase.

Additionally, the Agencies maintain 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. This distinction between the underlying non-security crypto asset and the investment contract is critical and resolves one of the most debated questions in the digital asset regulatory space.

Separation From an Investment Contract

The Agencies also reaffirm the position that what once was may not always be. Specifically, a non-security crypto asset does not remain a part of an investment contract in perpetuity, provided that the purchaser no longer reasonably has an expectation of profits derived from the essential managerial efforts of the issuer. The Agencies note that from a timing perspective, a non-security crypto asset that is the subject of an investment contract separates from an issuer's representations or promises of performing essential managerial efforts when (i) an issuer fulfills its representations or promises or (ii) a purchaser reasonably expects that an issuer is unable to fulfill representations or promises or continue to perform essential managerial efforts (e.g., when an issuer "abandons" the development of the related crypto system).

Other Notable Mentions

Consistent with the SEC's prior guidance, the Agencies reaffirmed that certain crypto asset-related activities do not involve the sale or offer of crypto asset securities. Specifically, protocol mining, protocol staking, wrapping of crypto assets, and airdrops do not typically involve the sale or offer of crypto asset securities given the administrative and ministerial nature of these activities. With respect to airdrops, the Agencies note that the first element of the *Howey* test is not met where the recipient of an airdropped non-security crypto asset does not provide money, goods, services, or other consideration in exchange for the airdropped non-security crypto assets.

Practical Takeaways: Why This Matters

Unlike some of the Agencies' prior forays into digital asset guidance—which, candidly, read more like restatements of the obvious—this interpretation represents a genuine attempt to provide the kind of detailed, actionable guidance the industry has demanded for years. However, as with most regulatory interpretations, the Agencies' interpretation is not without ambiguity, and market participants should approach the release with both optimism and caution.

- **The named digital commodities list is both a strength and a limitation.** The Agencies' explicit identification of specific tokens as digital commodities is unprecedented and valuable for projects and market participants dealing in those digital commodities. But the list is not exhaustive, and the criteria for inclusion being "intrinsically linked to and deriv[ing] its value from the programmatic operation of a crypto system that is functional" leaves significant room for interpretation with respect to tokens not named in the interpretation. Projects seeking similar treatment will need to carefully evaluate whether their tokens' characteristics, uses, and functions align with the Agencies' description of a digital commodity.
- **The separation framework creates a path, but the off-ramps are vague.** The idea that a non-security crypto asset can separate from an investment contract is a familiar doctrinal development. However, the Agencies' guidance on *when* separation occurs is largely principles-based—that is, fulfill your promises, publicly disclose completion, or wait long enough that no one reasonably expects you to perform. Projects that initially sold tokens subject to investment contracts should begin evaluating whether they have satisfied or abandoned the representations and promises that gave rise to their investment contracts and should consider making public disclosures to that effect.

- **Staking and decentralized finance (DeFi) participants get meaningful relief.** The Joint Interpretation's treatment of protocol staking, liquid staking, staking receipt tokens, and wrapping is the clearest statement from the Agencies to date that foundational DeFi activities are not inherently securities transactions. However, the Joint Interpretation is careful in scope. Activities that fall outside the described parameters (i.e., such as where a custodian decides whether, when, or how much to stake, or where a liquid staking provider guarantees reward amounts) are expressly excluded. Market participants should closely review whether their specific staking and wrapping arrangements conform to the descriptions in the interpretation.
- **The CFTC's concurrent guidance signals real coordination.** The CFTC's statements that (1) it will administer the Commodity Exchange Act (CEA) consistent with the SEC's interpretation and (2) certain non-security crypto assets could meet the definition of "commodity" under the CEA should reduce, though not eliminate,¹ the risk of conflicting regulatory positions. Nevertheless, the CFTC following the SEC's interpretation is a welcome development that builds on the SEC-CFTC Joint MOU entered into on March 11, 2026, which established mechanisms for interagency coordination.
- **Existing enforcement exposure is not retroactively erased.** The interpretation makes clear that even where a non-security crypto asset separates from an investment contract, the issuer remains potentially liable for material misstatements or omissions made during the existence of the investment contract and for any failure to register the original offering. Projects with historical token sales should continue to evaluate their exposure under the federal securities laws.

For an industry that has spent the better part of a decade pleading for regulatory clarity, this interpretation is a meaningful step forward. It is the first time the Agencies have attempted to provide a comprehensive framework for how they view crypto and other digital assets under the federal securities laws, and it even addresses many of the core questions that have plagued market participants, issuers, and intermediaries alike. The challenge now will be in the application. Market participants should engage counsel to evaluate the Joint Interpretation's impact on their specific activities and consider whether adjustments to their operations, disclosures, or compliance frameworks are warranted.

Lowenstein Sandler has significant experience advising crypto asset issuers, trading platforms, broker-dealers, and other financial institutions on regulatory matters, including the application of the federal securities laws to digital assets. Please contact one of the listed authors of this Client Alert or your regular Lowenstein Sandler contact if you have any questions regarding this interpretation or its implications for your business.

¹ For example, a security is a commodity under the CEA (specifically, an excluded commodity), and, due to the complexity of the jurisdiction over derivatives on securities, a derivative on a security crypto asset may in some cases be CFTC jurisdictional, SEC jurisdictional, or both. The Agencies have disagreed on the appropriate characterization of derivatives on securities in the recent past. See *Commodity Futures Trading Commission v. Archegos Capital Management LP et al.*, No. 1:22-cv-03401 (JPO), 2023 WL 6123102 (S.D.N.Y. Sept. 19, 2023).

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