

Tokenized Securities: Compliance Is Not Optional

Key Takeaways

- On January 28, 2026, the SEC's Division of Corporation Finance, Division of Investment Management, and Division of Trading and Markets issued a joint Statement on tokenized securities taxonomies.
- The Statement confirms a fundamental principle: tokenization does not alter the legal status of a security.
- If an instrument meets the statutory definition of a security under federal law, it remains subject to full securities regulation regardless of its technological format.
- Blockchain is a medium for recordkeeping and transfer—not a mechanism for regulatory avoidance.

What Is a Tokenized Security?

DEFINITION

- A tokenized security is a financial instrument that (1) meets the legal definition of a "security" under federal law; (2) is formatted as or represented by a crypto asset; and (3) has ownership records maintained wholly or partially on one or more distributed ledger networks.

CORE PRINCIPLE

- Migrating recordkeeping from a traditional database to a blockchain does not diminish or alter an issuer's legal obligations under the federal securities laws.

Issuer-Sponsored Tokenized Securities

The SEC's Statement breaks tokenized securities into two categories based on who issues the token. The first category is issuer-sponsored tokenized securities.

- **Structure:** In this model, the issuer or its agent directly issues the tokenized security. On-chain ledger transfers are mapped to the issuer's official master securityholder file. Alternatively, an issuer may tokenize existing off-chain securities, using on-chain tokens to effect transfers while maintaining traditional master records off-chain.
- **Regulatory Implication:** Rights, obligations, and regulatory status under these structures mirror those of traditional securities. The issuer retains direct responsibility for compliance with registration, disclosure, and recordkeeping requirements.

Third-Party Models

The second category involves third parties—someone other than the original issuer creates the token. This category breaks down further into two models:

- **Custodial Tokenized Securities:** A third party holds the underlying security or security entitlement and issues a token representing the holder's beneficial interest. The nature of ownership rights depends on the custody arrangement and the reconciliation of on-chain and off-chain records.
- **Synthetic Tokenized Securities:** A third party issues a separate security that provides economic exposure to a referenced security without conveying actual ownership. These structures include linked securities, which derive their performance from an underlying asset or event, and security-based swaps, which may trigger swap regulation and restrict sales to eligible contract participants unless properly registered.

Key Regulatory Takeaways

- **Tokenization Does Not Reduce Regulatory Obligations:** Tokenized securities remain fully subject to registration, disclosure, custody, and investor protection requirements under federal law.
- **Structural Choices Have Regulatory Consequences:** Issuer-sponsored models generally align with established regulatory frameworks, while third-party synthetic models often implicate more complex regimes, including swap dealer registration and conduct requirements.
- **Precision in Rights Disclosure Is Essential:** Issuers must clearly articulate whether investors receive direct ownership, a defined entitlement, or mere economic exposure. Ambiguity invites enforcement risk.
- **Broader Legal Frameworks Apply:** Commercial law considerations, including the Uniform Commercial Code's treatment of investment property and control, as well as federal and state custody obligations, must be evaluated in product design.

Market Implications

- The SEC's taxonomy signals that tokenization is now firmly within the regulatory mainstream.
- Market participants can no longer credibly claim that blockchain-based instruments occupy a regulatory gray area.
- As the market matures, clarity on the distinction between securities and security-based swaps will prove critical to permissible product design and distribution strategy.
- For issuers and platforms developing tokenized offerings, regulatory compliance must be treated as foundational infrastructure—not a post-launch consideration.

Conclusion

1

Blockchain tokenization represents a technological evolution in how securities are issued, recorded, and transferred. It does not constitute a regulatory exemption.

2

The SEC's Statement provides a working taxonomy to guide compliant market participation.

3

Firms should review existing and proposed product structures against the SEC's taxonomy to confirm regulatory classification.

4

Early engagement with securities counsel and, where appropriate, SEC staff, remains advisable for novel structures.