



SEC Chairman Atkins Signals Major Shift: Potential Token Taxonomy and Evolving Application of Howey Test to Crypto Assets

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In an address delivered on November 12, 2025 at the Federal Reserve Bank of Philadelphia, Securities and Exchange Commission (SEC or Commission) Chairman Paul S. Atkins outlined the next phase of the SEC’s “Project Crypto,” advocating for clarity and fairness in the regulation of digital assets. The speech implicitly critiqued the SEC’s approach to crypto regulation during the Gensler era, suggesting that it created unnecessary obstacles to U.S. innovation in the sector. Chairman Atkins, building on SEC Commissioner Hester Peirce’s foundational work, previewed a potential token taxonomy grounded in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946), that could categorize many crypto assets as non-securities, potentially bringing the regulatory clarity long sought by the industry.

The SEC’s new approach aligns with congressional efforts toward comprehensive crypto legislation and signals that numerous digital assets, including those previously targeted in SEC enforcement actions, may fall outside the agency’s jurisdiction in the view of the current Commission. Below, we explore the key elements of Chairman Atkins’ remarks and their implications for the digital asset landscape.

A PROPOSED TOKEN TAXONOMY: CATEGORIES AND CHALLENGES

Chairman Atkins emphasized the need for a “coherent, transparent treatment of crypto assets under the federal securities laws” and signaled a shift away from past presumptions that treated most tokens as securities. He outlined a non-exhaustive taxonomy with four categories that are largely consistent with how industry actors view various crypto instruments:

- **Digital Commodities or Network Tokens:** Not securities; these derive value from functional, decentralized systems rather than expectations of profit from the managerial efforts of others.
- **Digital Collectibles:** Not securities; these encompass NFTs or tokens representing artwork, music, videos, or in-game items, where purchasers lack expectations of profit tied to issuers’ efforts. This constitutes a key acknowledgment by the SEC, as the SEC had previously pursued enforcement actions against certain art-related NFTs.
- **Digital Tools:** Not securities; these serve practical purposes like memberships, tickets, credentials, or identity badges, and there is no expectation of profit.

- **Tokenized Securities:** Remain securities; these represent traditional financial instruments (e.g., stocks or bonds) on blockchain networks.

This new framework purports to prioritize economic substance over form and represents a step forward for the digital assets industry. However, developing a comprehensive taxonomy for crypto assets still will present challenges. The digital asset space features near-infinite variety and rapid innovation, with inevitable gray areas. As the Commission advances this project, balancing flexibility with clarity will be essential to accommodate evolving technologies without stifling growth.

REINTERPRETING *HOWEY*: WHEN INVESTMENT CONTRACTS END

Central to Chairman Atkins' speech is the application to digital assets of the *Howey* test: whether there is an investment in a common enterprise with profits expected from the efforts of others. Chairman Atkins asserted that non-security tokens can initially be sold as part of investment contracts (which constitute securities) during fundraising, but these contracts can expire as networks mature, code is deployed, and issuers' roles fade, rendering the tokens themselves no longer securities under the *Howey* test.

He highlighted the role of "explicit and unambiguous" representations or promises of managerial efforts. Once fulfilled, failed, or terminated, the investment contract ends, allowing the token to trade without being securities subject to regulation as such. Drawing an analogy to citrus groves (the original subject of *Howey*) evolving into non-security uses like golf courses, a view echoed by Commissioner Peirce and some courts, Chairman Atkins provides a clearer outline for when a token can shed its status as a security.

Notably, Chairman Atkins has directed the SEC staff to prepare recommendations on how to facilitate trading of tokens on non-SEC-regulated platforms, including those under Commodity Futures Trading Commission or state oversight, with a view toward promoting innovation in the crypto industry without rigid jurisdictional boundaries.

FUTURE DIRECTIONS

If implemented, this approach could alleviate regulatory uncertainty, enabling U.S.-based innovation and reducing migration of new technologies and instruments offshore. Stakeholders should assess their assets in light of this new framework and monitor for formal SEC rulemaking in the near future.

Winston's Capital Markets and Securities Law Watch will continue to monitor developments and will provide our readers with additional updates as they become available. For more information, or if you have any questions, please contact the authors of this blog post or your regular Winston contacts.

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