

# SEC Confirms Application of Federal Securities Laws to Tokenized Securities

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On January 28, 2026, the SEC's Division of Corporation Finance, Division of Investment Management, and Division of Trading and Markets jointly issued a Statement on the taxonomies associated with various products marketed as "tokenized securities." The Statement confirmed what has been previously expressed in [public statements](#): tokenization does not alter the legal status of a security or lessen regulatory obligations. While ardent followers of recent regulatory developments will not be surprised by the core substance of the Statement, it reflects the SEC's deepened engagement with the industry and highlights certain areas of consideration for market participants, particularly with respect to third-party "synthetic" models.

The Statement outlines a simplified taxonomy to assist industry participants in understanding applicable obligations under the federal securities laws. Each structure carries distinct regulatory implications, particularly regarding investor rights and required disclosures.

- **Issuer-Sponsored Tokenized Securities:** Issuers or their agents tokenize securities by directly issuing them in the format of a crypto asset while maintaining records of ownership on-chain. Alternatively, an issuer may issue the security off-chain and provide a separate crypto asset that does not convey rights in the security. In this indirect model, transfers of the crypto asset merely notify the issuer to update the off-chain master securityholder file, which remains the authoritative record of ownership of the security. Regardless of the specific structure, issuer-sponsored tokenized securities carry the fundamental securities law obligations as traditional securities issued off chain.
- **Third-Party-Sponsored Tokenized Securities:** These include:
  - **Custodial models**, where a third party (*i.e.*, a person unaffiliated with an issuer of a security) holds an unaffiliated issuer's security and issues a crypto asset representing the underlying security, such as a securities entitlement formatted as a crypto asset; or the sale of a security entitlement and a crypto asset together, with the crypto asset being used to transfer the security, and records of transfer of the crypto asset being used to update the records of ownership of the security entitlement which are maintained off chain;
  - **Synthetic models**, where a third party issues instruments providing economic exposure to an underlying security without conveying ownership rights.
    - Synthetic models encompass "linked securities" and "security-based swaps."

- A “**linked security**” is issued by a third party itself providing synthetic exposure to a referenced security, but it is not an obligation of the issuer of the referenced security and confers no rights or benefits from the issuer of the referenced security.
- A “**security-based swap**” may take the form of a crypto asset. In certain circumstances (i.e., absent an exemption), security-based swaps formatted as crypto assets cannot be offered or sold to non-eligible contract participants unless registered.

## HEIGHTENED SCRUTINY FOR SYNTHETIC STRUCTURES

The SEC’s Statement draws particular attention to the distinction between “linked securities” and security-based swaps, a distinction that carries significant consequences. A security-based swap generally provides synthetic exposure to, among other things, either a referenced security or certain referenced events relating to an issuer of a security, and generally does not provide the holder any equity, voting, information, or other rights with respect to the referenced security. Security-based swaps formatted as crypto assets generally cannot be offered or sold to non-eligible contract participants unless registered or otherwise exempt. Certain types of assets, including any note, bond, or evidence of indebtedness that is a security and put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to the Securities Act and the Exchange Act, are excluded from the definition of a securities based swap.

This guidance aligns with prior remarks from SEC Commissioner Hester Peirce, who has emphasized that tokenized products providing economic exposure without beneficial ownership of the underlying security may be treated as security-based swaps, triggering constraints on off-exchange retail trading.

## OFTEN OVERLOOKED UCC COMPLIANCE OBLIGATIONS

The Statement also notes in a footnote that tokenized securities must comply with requirements of Article 8 of the Uniform Commercial Code and may require further consideration of whether the various tokenization strategies discussed are compliant and practicable under existing state law.

## KEY TAKEAWAYS FOR MARKET PARTICIPANTS

Key takeaways include:

- **Tokenization is now squarely within the regulatory mainstream.** The SEC’s detailed taxonomy signals that tokenized securities are no longer viewed as experimental or marginal. The Commission expects issuers to bring products to market using compliant business models that map coherently to existing law.
- **Precision in disclosure is paramount.** Issuers should ensure that offering documents, regulatory filings, and investor communications precisely describe the specific tokenization model employed and the attendant rights, obligations, and risks.
- **Synthetic structures require careful navigation.** Structures that rely on synthetic exposure or security-based swaps require careful design, as they may trigger swap regulation and related constraints.
- **Clear articulation of investor rights.** Market participants should clearly define whether the token represents direct ownership, an entitlement, or synthetic economic exposure, along with the varying investor rights and issuer obligations that follow.

Altogether, the SEC’s Statement underscores a simple principle: if an instrument is a security under U.S. law, it is regulated as a security irrespective of blockchain technology. While the guidance does not offer new exemptions or safe harbors, it provides a framework that may be utilized by market participants as they design products and engage with the SEC staff.

## FOR MORE INFORMATION

If you have any questions regarding this subject or related subjects, or if you need assistance, please contact Daniel Stabile, Drew Hinkes, Thania Charmani or your Winston & Strawn relationship attorney. You can also visit our

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