

# SEC Clarifies the Application of Federal Securities Laws to Crypto Assets

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On March 17, 2026, the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) issued a joint interpretation clarifying in large part how the federal securities laws apply to certain crypto assets and related market participants. Rather than creating a new regulatory framework, the regulators clarified prior guidance and emphasized that longstanding principles under the Securities Act of 1933 and the Securities Exchange Act of 1934 apply equally to crypto-asset activities. Notably, the CFTC provided guidance stating that the CFTC and its staff will administer the Commodity Exchange Act consistent with the SEC's interpretation.

SEC Chairman Paul S. Atkins commented that "after more than a decade of uncertainty, this interpretation will provide market participants with a clear understanding of how the SEC treats crypto assets under federal securities laws." Chairman Atkins further stated that the interpretation "acknowledges ... that most crypto assets are not themselves securities," and that, while crypto assets can become subject to SEC regulation in the context of investment contracts, the new interpretation "reflects the reality that investment contracts can come to an end." CFTC Chairman Michael S. Selig emphasized that, with the interpretation, "the wait is over," and that both he and Chairman Atkins "are committed to fostering a regulatory environment that allows the crypto industry to flourish in the United States with clear and rational rules of the road." Chairman Selig characterized the joint agency action as reflecting "a shared commitment to developing workable, harmonized regulations for the new frontier of finance."

## KEY ELEMENTS OF THE INTERPRETATION

The SEC's interpretation addresses several significant areas relevant to market participants. The interpretation establishes four categories of digital assets that are not securities: digital commodities, digital collectibles, which was defined to include certain NFTs and memecoins, digital tools, and stablecoins which include payment stablecoins as defined under the GENIUS Act and covered stablecoins that were the subject of prior SEC Staff guidance.<sup>[1]</sup> With these categories in place, the interpretation then clarifies that only one crypto asset class remains subject to the securities laws: digital securities, namely traditional securities that are tokenized.

Through the guidance, the SEC reiterates its view that a non-security crypto asset may be sold as part of an "investment contract," making it subject to the securities laws, depending on the representations or promises made to purchasers to undertake future managerial efforts. However, the interpretation further addresses digital assets issued as part of investment contracts, explaining that while those digital assets themselves may not be securities, they may be required to be issued and sold on secondary markets as if they are securities if the investment contract with which

they were issued has not yet been completed or terminated. This creates a so called “traveling investment contract” that subjects secondary market transactions of these tokens to the federal securities laws. The guidance further clarifies that the representations or promises that evidence reliance on the efforts of others under *Howey*<sup>[2]</sup> must be explicit and unambiguous as to the essential managerial efforts that the project team intends to undertake, and may be completed or terminated based on their terms.

The interpretation provides a coherent token taxonomy for digital commodities, digital collectibles, digital tools, stablecoins, and digital securities. Furthermore, it addresses how a “non-security crypto asset” may become subject to, and how it may cease to be subject to, an investment contract. The SEC also clarifies the application of federal securities laws to airdrops, protocol mining, protocol staking, and the wrapping of a non-security crypto asset. However, open questions regarding the “traveling investment contract,” restaking, decentralization and other topics remain.

The following table summarizes the SEC’s guidance on the regulatory treatment of various types of digital assets, categorizing them as securities, non-securities or commodities based on their functional characteristics, investment structure, and applicable federal securities laws.

<p>No New Legal Framework</p>	<p>The SEC does not create a separate regulatory regime for crypto assets. Instead, it reiterates that the Securities Act of 1933 and the Securities Exchange Act of 1934 apply to crypto assets when they meet the definition of a security, and clarifies positions taken in prior settlements, guidance, and litigation.</p>
<p>Determining Whether a Crypto Asset Is a Security</p>	<p>The SEC reaffirms that the determination depends on the facts and circumstances of each offering and transaction. The analysis centers on whether the digital asset is an enumerated security type, or if the digital asset is sold under circumstances, that make it an “investment contract,” focusing on:</p> <ul style="list-style-type: none"> <li>• Investment of money</li> <li>• In a common enterprise</li> <li>• With a reasonable expectation of profits</li> <li>• Based on the efforts of others</li> </ul>
<p>Digital Commodities (Non-security)</p>	<p>Native “network” tokens that are inherently tied to a functional crypto system—where their value derives from the system’s programmed operation rather than the managerial or entrepreneurial efforts of others—are not considered securities. The interpretation cites BTC, ETH, SOL, ADA, and XRP, among others, as examples.</p>
<p>Digital Collectibles (Non-security)</p>	<p>Collectibles such as NFTs, as well as “memecoins” that offer little or no functional utility, are generally not securities. However, structures such as</p>

	fractionalization or arrangements that depend on managerial efforts may still give rise to a security.
Digital Tools (Non-security)	Assets that serve a utilitarian purpose, such as memberships, credentials, tickets, title instruments, or identity badges, and are intended to be used or consumed rather than held for investment are not securities.
Stablecoins (Mixed/fact-specific)	<p>“Payment stablecoins,” as defined under the GENIUS Act, are statutorily excluded from the definition of a security.</p> <p>Offerings of “Covered Stablecoins,” as described in prior issued SEC Staff Statement on Stablecoins, are not considered securities offerings or sales of securities under federal securities laws.</p> <p>The interpretation does not address the regulatory treatment of other types of stablecoins.</p>
Digital/Tokenized Securities (Securities)	All transactions involving digital assets that are securities remain subject to federal anti-fraud provisions. The SEC stresses that misleading statements, omissions of material facts, or deceptive practices will trigger liability.
Economic Reality and Ongoing Obligations	A digital security—meaning a financial instrument listed within the definition of a “security” but issued or represented as a digital asset, with ownership recorded in whole or in part on a blockchain or similar network—qualifies as a security. This remains true regardless of whether it exists onchain or offchain, as instruments with the economic characteristics of securities are treated as such, irrespective of their form or labeling.

## IMPLICATIONS FOR MARKET PARTICIPANTS

Market participants should review this interpretation to better understand the new categories of digital assets and the regulatory interplay between the SEC and CFTC.

The guidance represents a significant shift in the regulatory landscape for digital assets and helps provide clarity that the industry has long sought. In particular, the establishment of a clear token taxonomy and the acknowledgment that most crypto assets are not themselves securities could open new avenues for crypto innovation and investment in the United States. As Congress continues to advance bipartisan market structure legislation, the interpretation is intended to serve as an interim regulatory framework until a comprehensive statutory regime is enacted.

Winston’s Capital Markets and Securities Law Watch and Digital Assets teams will continue to provide updates on the application of the federal securities laws to crypto assets and post additional updates as they become available.

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[1] The Guiding and Establishing National Innovation for U.S. Stablecoins Act of 2025 (the “GENIUS Act”) is a federal law that establishes a regulatory framework for payment stablecoins, including requirements for reserves, disclosures, and issuer qualifications, while expressly excluding qualifying payment stablecoins from the definition of a “security” under federal securities laws.

[2] *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946).

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