PUBLICATION

A Potential Turning Point in Crypto Regulation: SEC–CFTC Joint Interpretation Caps a Decade of Shifting SEC Policy

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Key Takeaways

- **On March 17, 2026, the SEC and CFTC issued a joint interpretive release establishing a five-category token taxonomy that generally determines which digital assets are – and are not – securities.**
- **In many ways, the interpretive release represents a shift in the SEC's regulatory position and reflects the Trump Administration's pro-crypto stance.**
- **Many commonly transacted crypto assets, including digital commodities, collectibles, utility tokens, and GENIUS Act-compliant stablecoins, are expressly excluded from securities classification.**
- **Protocol mining, staking (including liquid staking), wrapping, and airdrops are generally not considered investment contracts under the interpretive release.**
- **SEC Chair Atkins signaled forthcoming proposed rulemaking and launched "Project Crypto," which is tasked with modernizing "rules and regulations under the Federal securities laws in accordance with the President's Working Group's recommendations to enable America's financial markets to move onchain".**
- **The interpretation is effective upon Federal Register publication but remains subject to potential judicial challenge.**
- **The interpretive release may affect fund managers, issuers, exchanges, DeFi operators, custodians, and wallet providers, who should promptly assess their token portfolios and operational activities under this new framework.**

The U.S. Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) jointly published an interpretive release (the Interpretation) on March 17, 2026, clarifying how federal securities laws apply to crypto assets and related transactions.[1] The Interpretation takes effect upon publication in the Federal Register. The CFTC joined the Interpretation to confirm it will administer the Commodity Exchange Act (CEA) consistent with the SEC's securities law conclusions, and separately noted that certain non-security crypto assets may qualify as "commodities" under the CEA.

The Interpretation represents the most significant regulatory guidance to date from the SEC on the treatment of digital assets under existing federal securities law. It builds on feedback gathered by the SEC's Crypto Task Force and is expressly intended as a "bridge" measure pending enactment of comprehensive market structure legislation. H.R. 3633, the Digital Asset Market Clarity Act of 2025, passed the House on July 17, 2025, and currently awaits action in the Senate Committee on Banking, Housing, and Urban Affairs.

The March 17, 2026, Interpretation did not emerge in a regulatory vacuum. It represents the culmination of nearly a decade of evolving SEC guidance, enforcement actions, and interpretive statements on the classification of digital assets.

As noted in the Interpretation, one of the SEC's initial forays into the crypto space occurred in 2017, when it issued the "DAO Report", which found that certain crypto assets issued by an unincorporated organization were offered and sold as "securities" under the federal securities laws.

Later, in a June 14, 2018, speech, SEC Director of Corporation Finance William Hinman announced that the SEC would not treat offers and sales of Ether or Bitcoin as securities transactions. Hinman's analysis focused on the decentralized nature of both networks, reasoning that where no central party is making managerial efforts on which purchasers rely for profit, the *Howey* test[2] is not satisfied. Hinman also stated an important principle, which has been incorporated into the Interpretation, that status of an instrument as a security "is not static," meaning a digital asset originally sold as a security could later be sold in a manner that does not constitute a security transaction once a crypto network achieves sufficient decentralization.

The Hinman Speech was not formal SEC guidance and did not bind the agency, but it did establish an analytical framework that has shaped subsequent SEC and certain judicial treatment of digital assets.

Under the Biden Administration, the SEC adopted a more aggressive enforcement posture, asserting that most digital assets – with Bitcoin as the primary exception – qualified as securities under the *Howey* test. The SEC brought high-profile enforcement actions against Ripple (XRP), Coinbase, Binance, and numerous token issuers, relying on the theory that each token represented an investment contract under the *Howey* test.

Bitcoin's status as a non-security commodity was effectively accepted by the SEC throughout this period, based on its proof-of-work mining architecture and the absence of an identifiable issuer or promoter on whose managerial efforts purchasers relied.

In January 2024, the SEC approved spot Bitcoin exchange-traded products, describing Bitcoin in the approval as a "non-security commodity." This marked the first formal, product-specific agency action expressly asserting Bitcoin's status outside the securities framework, with the CFTC assuming primary oversight over Bitcoin-based derivatives and related products.

In July 2024, the SEC approved spot Ethereum exchange-traded funds. While the SEC did not issue a stand-alone declaration that Ether is not a security, approval of a registered investment product referencing Ether as an underlying asset was broadly understood as inconsistent with treating Ether as an unregistered security. The approval operated as a practical, if not formal, confirmation of Ether's non-security commodity status.

Following a change in SEC leadership after the 2024 presidential election, the SEC significantly shifted its posture in 2025. Under Chair Atkins, the SEC:

- Dismissed enforcement actions against Coinbase and Binance;
- Settled with Ripple for a significantly reduced amount relative to the original enforcement demand;
- Established a Crypto Task Force to develop clearer prospective rules; and

- Issued Division of Corporation Finance staff statements clarifying that meme coins, proof-of-work mining, and certain stablecoins are not securities under existing law.

These actions set the stage for the joint SEC/CFTC Interpretation issued on March 17.

Crypto Taxonomy

As of the March 17, 2026, Interpretation, both Bitcoin and Ether are expressly classified as non-security digital commodities under a new five-category crypto taxonomy. This classification reflects the Hinman principle of dynamic analysis – i.e., each network has achieved sufficient decentralization such that purchaser returns are no longer dependent on the essential managerial efforts of any identifiable party. The Interpretation confirms that CFTC jurisdiction applies to spot transactions in both assets. The Interpretation's new five-category taxonomy (summarized below) classifies crypto assets into a new taxonomy based on an asset's characteristics, uses, and functions as applied to the investment contract analysis under *Howey*.

Token Category	Description	Securities Law Status
Digital Commodities	Assets intrinsically linked to the programmatic operation of a crypto system (including governance tokens); value derived from supply/demand, not managerial efforts of others	**NOT a Security**
Digital Collectibles	Assets designed to be collected; may represent rights to artwork, music, trading cards, memecoins, or in-game items	**NOT a Security**
Digital Tools	Assets that perform a practical function such as memberships, tickets, credentials, title instruments, or identity badges	**NOT a Security**
Stablecoins	Payment stablecoins issued by a permitted payment stablecoin issuer as defined by the GENIUS Act	NOT a Security
Digital Securities	Financial instruments enumerated in the statutory definition of "security" that are formatted as or represented by a crypto asset	**IS a Security**

The Interpretation emphasizes that a security remains a security regardless of whether it is issued or represented on-chain or off-chain. Instruments with the economic characteristics of a security will be treated as such regardless of the format or label assigned to the token.

Investment Contract Analysis: Becoming, and Ceasing to Be, a Security

A significant feature of the Interpretation is its recognition that securities status can be both transitory and fact-specific.

For instance, a non-security crypto asset can become subject to an investment contract – and therefore be treated as a security – when an issuer offers it by inducing an investment of money in a common enterprise through representations or promises that purchasers would reasonably expect to produce profits from the issuer's essential managerial efforts. The Interpretation emphasizes that the manner, timing, and specificity of such representations are relevant to the analysis.

Importantly, the Interpretation also confirms that non-security assets offered pursuant to an investment contract do not necessarily remain securities in perpetuity. For instance, an investment contract ends – and the underlying asset may revert to non-security status – when:

- The issuer fulfills its representations or promises (e.g., the network reaches functional maturity and decentralizes); or
- The issuer fails to satisfy its representations or promises.

This principle may provide meaningful relief to projects whose networks have achieved sufficient decentralization.

The Interpretation also provides express guidance on four categories of market activity that had previously generated significant uncertainty.

First, the SEC concludes that proof-of-work mining does not constitute an investment contract. Miners contribute their own computational resources to secure a network, validate transactions, and add new blocks – activities the SEC characterizes as administrative or ministerial rather than the "essential managerial efforts" of another party under *Howey*. This guidance may signal a departure from certain prior judicial interpretations that had focused on the mere presence of economic rewards.

Staking of digital commodities on proof-of-stake networks is similarly characterized as an administrative or ministerial activity. The SEC finds that staking rewards are compensation for services rendered to the network (validating transactions) rather than profits derived from the essential managerial efforts of others. The same conclusion applies to liquid staking arrangements and staking receipt tokens.

Similarly, the wrapping of a non-security crypto asset – where a person "deposits a crypto asset with a Custodian or cross-chain bridge (the Wrapped Token Provider) and in return the Wrapped Token Provider generates an equivalent amount of "Redeemable Wrapped Tokens" – does not create a security. The SEC finds that a wrapped token's value is derived from the deposited crypto asset – not from third-party efforts – because the wrapping process is itself administrative or ministerial in nature. Furthermore, because wrapped tokens are redeemable on a fixed one-for-one basis for the deposited asset with no additional financial benefit, there is no financial incentive derived from the wrapping process.

Airdrops – where issuers disseminate crypto assets in exchange for no or nominal consideration – do not involve an "investment of money" under *Howey*, and therefore do not give rise to securities law obligations under this guidance.

"Regulation Crypto Assets": A Potential Forthcoming Rulemaking Framework

At The Digital Chamber's 2026 Blockchain Summit on March 17, 2026, SEC Chair Atkins outlined a potential rulemaking framework – referred to as "Regulation Crypto Assets" – that would build on the Interpretation and draw from SEC Commissioner Hester Peirce's prior "Token Safe Harbor" proposal. The framework contemplates several pathways:

- Startup Exemption: A time-limited exemption (potentially up to four years) for early-stage crypto projects to raise a capped amount of capital (approximately $5 million) while working toward network maturity, accompanied by principles-based disclosure requirements and notice filings.
- Registered Pathway: An adapted form of registration for digital securities, with disclosure requirements tailored to the characteristics of crypto assets.
- Safe Harbor: Protections for qualifying projects that satisfy specified conditions related to network development and decentralization milestones.

Chair Atkins stated that formal proposed rules are expected within weeks. Market participants should monitor the SEC's rulemaking docket closely.

Limitations and Open Questions

While the Interpretation should be broadly welcomed by the digital asset industry, several significant uncertainties remain:

- The precise boundary between a "digital security" and a "digital commodity" for partially decentralized protocols has not been definitively addressed.
- Secondary market trading obligations for digital securities generally are not covered by the Interpretation.
- The Interpretation, as a final agency statement of position rather than a formal rule, may be subject to judicial challenge, particularly given courts' traditional application of the *Howey* test.
- Comprehensive legislative clarity – which both Chair Atkins and CFTC Chair Michael S. Selig identified as essential to "future-proofing" the regulatory framework – remains pending in Congress.

Implications and Recommended Action Steps

The Interpretation has immediate implications across the digital asset ecosystem. Industry participants should take a number of steps to determine the extent to which the Interpretation may affect their businesses.

For instance, crypto fund managers should consider a taxonomy analysis of their portfolios to determine the extent to which their investment activities would be considered investment advisory activities under the U.S. securities laws.

Token issuers, likewise, should consider a taxonomy analysis to determine whether registration or an exemption applies. Token issuers also should review all marketing materials, white papers, and offering communications for representations or promises that could give rise to investment contract status. For projects approaching or having achieved network maturity and decentralization, token issuers also should evaluate whether the conditions for investment contract termination have been satisfied. Finally, token issuers should monitor SEC rulemaking and prepare to evaluate any startup exemption or safe harbor for which their project may qualify.

The March 17, 2026, joint SEC/CFTC Interpretation represents a landmark shift in the regulatory treatment of digital assets in the United States – moving from an enforcement-first posture toward a principles-based framework grounded in existing securities law doctrine. This shift reflects a multiyear evolution in agency thinking, and while it provides substantial clarity on many longstanding questions, open issues remain and judicial challenges are possible.

We will continue to monitor developments, including the forthcoming proposed "Regulation Crypto Assets" rulemaking and the progress of the Digital Asset Market Clarity Act. For any questions regarding the SEC's and CFTC's joint interpretive release, please contact Cole Beaubouef, Paul J. Foley, Kiki Scarff, John M. Faust, or Michael T. Fulks.

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[1] The Interpretation was released shortly after the SEC and CFTC entered into a new Memorandum of Understanding on March 11, 2026, which established a formal framework for coordinated oversight, joint interpretations, and aligned enforcement across areas of overlapping jurisdiction, with a particular focus on digital assets.

[2] The *Howey* test is an often-used analysis from Supreme Court precedent used to "determine whether a contract, transaction, or scheme is an investment contract and therefore a security".