

THE REVIEW OF
**SECURITIES & COMMODITIES
REGULATION**

AN ANALYSIS OF CURRENT LAWS AND REGULATIONS
AFFECTING THE SECURITIES AND FUTURES INDUSTRIES

Vol. 59 No. 4 February 25, 2026

THE SEC'S REVOLUTIONIZED APPROACH TO CRYPTO

Crypto regulation in the United States has long been the subject of controversy, with the SEC taking the brunt of the criticism. The last SEC administration came under fire for taking what many viewed to be an antagonistic approach to crypto. But it is a new day at the SEC — one that sees the agency embracing crypto like never before with the ultimate goal of integrating crypto assets and technology into our financial system.

By Ladan F. Stewart*

In the past year, the United States has fundamentally overhauled its approach to crypto regulation. President Trump declared early in his presidency his intention to make America “the crypto capital of the world.”¹ Since then, regulators and legislators have been moving at breakneck speed to create an altogether new and comprehensive regulatory framework for crypto. The SEC has been at the forefront of these efforts. Long criticized as hostile to innovation and responsible for driving crypto developers and entrepreneurs offshore through an aggressive “regulation by enforcement” strategy, the SEC has now embraced crypto. The SEC’s crypto task force is spearheading the agency’s efforts to

construct a regulatory structure for crypto assets and technology that balances the need for investor protection with fostering the growth of the domestic crypto industry, attracting lucrative investment to the United States, and expanding the nation’s capital markets. In the words of SEC Chairman Paul Atkins, the SEC’s goal is to “ensure that the United States remains the best place in the world to start a business, develop cutting-edge technologies, and participate in capital markets.”² At its core, this can be described as nothing short of a seismic shift in the agency’s perspective on crypto.

No longer held to the periphery by government regulation, crypto is poised to become an integral part of

¹ The White House, *Fact Sheet: President Donald J. Trump Establishes the Strategic Bitcoin Reserve and U.S. Digital Asset Stockpile* (Mar. 6, 2025), available at <https://www.whitehouse.gov/fact-sheets/2025/03/fact-sheet-president-donald-j-trump-establishes-the-strategic-bitcoin-reserve-and-u-s-digital-asset-stockpile/>.

² Speech, Chairman Paul Atkins, *American Leadership in the Digital Finance Revolution* (July 31, 2025) (“American Leadership Speech”), available at <https://www.sec.gov/newsroom/speeches-statements/atkins-digital-finance-revolution-073125>.

*LADAN F. STEWART is a partner in the white collar and investigations group at White & Case and the Global Head of the Firm’s Fintech and Digital Assets practice. Ladan focuses her practice on SEC and other regulatory enforcement matters and routinely advises clients in the crypto and fintech spaces. Before joining the firm, she served in the SEC’s Division of Enforcement, most recently as assistant director and regional trial counsel leading the SEC’s crypto litigation team. Ladan’s e-mail address is ladan.stewart@whitecase.com. Any views expressed in this publication are strictly those of the author and should not be attributed in any way to White & Case LLP.

our financial system. Indeed, Chairman Atkins has directed the SEC to “consider the potential benefits and risks of moving our markets from an off-chain environment to an on-chain one.”³ Not long ago, the idea of integrating distributed ledger or blockchain technology into our financial markets lacked broad political and institutional support.⁴ Now, however, one can expect that in the not-too-distant future, an average retail investor can exchange a share of stock in Apple for an Apple token, then convert that token into stablecoins, and perhaps transfer those stablecoins to another on-chain user on the other side of the world — all with a couple of clicks on a smartphone.

Making this vision a reality, however, will require a new and highly integrated market framework. While Congress is currently in the throes of negotiating market structure legislation, the SEC is pushing forward through its existing regulatory and rulemaking authority toward the objective of providing updated rules and regulations, exemptive relief, and prescriptive guidance to market participants. Much work remains to be done, but the SEC has already taken several important steps toward this goal.

EARLY LEADERSHIP APPOINTMENTS

Shortly after the November 2024 election, then-president-elect Trump nominated former PayPal chief operating officer David Sacks as the new “AI and crypto czar” and former SEC commissioner Paul Atkins as the new SEC chairman. Both Sacks and Atkins have long been vocal proponents of crypto. Sacks co-founded a venture capital firm that invests in crypto start-ups, and Atkins has been a staunch advocate of crypto for years, including through co-chairing a lobbying group that aims to promote broad marketplace adoption of crypto. Indeed, at his nomination hearing, Chairman Atkins testified that “ambiguous and non-existent regulations

for digital assets” have created “uncertainty in the market and inhibit[ed] innovation,” adding that a “top priority” of his chairmanship will be “to provide a firm regulatory foundation for digital assets through a rational, coherent, and principled approach.”⁵

By contrast, former SEC Chair Gary Gensler had come to be viewed by many in the industry as highly antagonistic to crypto. He was criticized for a so-called “regulation by enforcement” approach that the agency was accused of taking under his leadership. Critics maintained that the SEC had not provided the necessary clarity to the broader industry with respect to the regulatory framework for crypto and was instead regulating the crypto industry through the *ad hoc* initiation of enforcement actions against individual market participants. These actions included a number of high-profile cases that resulted in hard-fought litigations in federal courts across the country.

PRESIDENT’S WORKING GROUP

On January 23, 2025, just days after his inauguration, President Trump issued an executive order entitled “Strengthening American Leadership in Digital Financial Technology,” in which he declared: “The digital asset industry plays a crucial role in innovation and economic development in the United States, as well as our Nation’s international leadership. It is therefore the policy of my Administration to support the responsible growth and use of digital assets, blockchain technology, and related technologies across all sectors of the economy.”⁶

Among other things, the executive order established the “President’s Working Group on Digital Asset Markets,” chaired by Sacks, and including

³ *Id.*

⁴ This article assumes familiarity with basic crypto-specific terminology and generally does not provide definitions for the terms used. In addition, for simplicity, the terms “crypto assets” and “digital assets” are used interchangeably, though industry experts will know that crypto assets are a subset of digital assets.

⁵ Opening Statement of Paul Atkins, Nomination Hearing Before the Senate Banking Committee (Mar. 27, 2025), available at https://www.banking.senate.gov/imo/media/doc/atkins_testimony_3-27-25.pdf.

⁶ The White House, *Strengthening American Leadership in Digital Financial Technology* (Jan. 23, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/01/strengthening-american-leadership-in-digital-financial-technology/>.

representatives from the SEC, CFTC, Treasury, DOJ, and several other federal departments and offices. The working group’s mandate consists of developing recommended regulatory and legislative proposals for digital assets — including a new regulatory framework covering market structure, oversight, consumer protection, and risk management. As discussed below, the working group issued its recommendations in July 2025.

SEC CRYPTO TASK FORCE

The SEC’s new approach began to take shape immediately after Inauguration Day. On January 21, 2025, Acting SEC Chairman Mark Uyeda (who led the agency until Chairman Atkins’ confirmation by the Senate in April 2025) announced the formation of a new crypto task force led by SEC Commissioner Hester Peirce — a fierce defender of crypto, long dubbed “crypto mom” by the industry.⁷ The announcement noted that the SEC’s prior reliance on “enforcement actions to regulate crypto retroactively and reactively” has meant that “clarity regarding who must register, and practical solutions for those seeking to register, have been elusive,” resulting in “an environment hostile to innovation and conducive to fraud.” It added: “The SEC can do better.”

Commissioner Peirce echoed these sentiments, observing that during the prior administration, “the Commission’s handling of crypto ha[d] been marked by legal imprecision and commercial impracticality.” The result was, as Commissioner Peirce denounced, that “the Commission refused to use regulatory tools at its disposal and incessantly slammed on the enforcement breaks as it lurched along a meandering route with a destination not discernible to anyone.”⁸ She described the crypto task force’s ultimate goal to be the creation of an environment “where people have great freedom to experiment and build interesting things, and which will not be a haven for fraudsters.”

The crypto task force immediately began work on a number of priority items to advance the administration’s new crypto agenda.

Repeal of SAB 121

One of the task force’s first orders of business was to ensure that a controversial accounting guidance issued by SEC staff during the prior administration was rescinded.⁹ The guidance, Staff Accounting Bulletin (“SAB”) 121, advised financial institutions to include customers’ crypto assets on their balance sheets.¹⁰ Critics pointed out that this accounting treatment made crypto custody less feasible by increasing capital reserve requirements for financial institutions. SAB 121 triggered strong industry backlash, culminating in Congress’ attempted repeal of the guidance in May 2024 — in the first-ever, crypto-focused legislation to pass both houses of Congress.¹¹ President Biden ultimately vetoed that legislation.¹²

The SEC staff’s move to rescind SAB 121 in the first days of the new administration, thus removing an important barrier to crypto custody, sent a strong early signal that the agency is committed to the wider adoption of crypto.

Enforcement Recalibration

Perhaps the starkest shift in the SEC’s approach to crypto has come in the enforcement area. Under former Chair Gensler, the SEC brought a number of high-profile enforcement cases against crypto industry players. For the most part, these cases alleged violations of the registration provisions of the federal securities laws. More specifically, in several of these cases, the SEC alleged that securities (*e.g.*, crypto tokens) had been issued without proper registration, or that an entity (*e.g.*, a crypto exchange) had operated as a regulated securities

⁷ Press Release, Securities & Exchange Commission, *SEC Crypto 2.0: Acting Chairman Uyeda Announces Formation of New Crypto Task Force* (Jan. 21, 2025), available at <https://www.sec.gov/newsroom/press-releases/2025-30>.

⁸ Statement, Commissioner Hester Peirce, *The Journey Begins* (Feb. 4, 2025) (“Journey Begins Statement”), available at <https://www.sec.gov/newsroom/speeches-statements/peirce-journey-begins-020425>.

⁹ Rel. No. SAB 122, Staff Accounting Bulletin No. 122 (2025), available at <https://www.sec.gov/rules-regulations/staff-guidance/staff-accounting-bulletins/staff-accounting-bulletin-122>.

¹⁰ Rel. No. SAB 121, Staff Accounting Bulletin No. 121 (2022), available at https://www.sec.gov/rules-regulations/staff-guidance/staff-accounting-bulletins/staff-accounting-bulletin-121#_ftnref2.

¹¹ Press Release, House Committee on Financial Services, *House Passes H.J.Res 109 with Bipartisan Support to Overturn SEC’s SAB 121* (May 8, 2024), available at <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=409250>.

¹² The White House, *A Message to the House of Representatives on the President’s Veto of H.J.Res. 109* (May 31, 2024), available at <https://bidenwhitehouse.archives.gov/briefing-room/presidential-actions/2024/05/31/a-message-to-the-house-of-representatives-on-the-presidents-veto-of-h-j-res-109/>.

exchange or broker-dealer without registering with the SEC.

With few exceptions, these cases did not involve allegations of fraud. The underlying premise of these enforcement cases was that certain crypto tokens were offered or traded as investment contracts, and thus securities, under the seminal Supreme Court case, *SEC v. Howey*.¹³

As background, the SEC only has jurisdiction to regulate “securities.” The Securities Act of 1933 defines a “security” to include a wide variety of financial instruments. The statute lists a long series of instruments (such as stocks, bonds, and notes) that are securities, including an “investment contract.”¹⁴ Thus, the definition of “investment contract” is at the heart of the question of whether the SEC can regulate a particular crypto asset. In *Howey*, a 1946 case involving the sale of interests in orange groves, the Supreme Court interpreted “investment contract” as a transaction involving (1) an investment of money (2) in a common enterprise (3) with profits to come from the efforts of others.¹⁵ *Howey* has remained the seminal case for interpreting “investment contract” in a variety of contexts, including with respect to crypto assets.

As part of the SEC’s enforcement cases in the crypto space, numerous federal courts were simultaneously dealing with the fact-intensive question of whether particular crypto transactions constituted securities transactions under *Howey*, sometimes coming to different conclusions.¹⁶ This approach led to strong criticism by the broader crypto industry, academics, and lawmakers — as well as Commissioners Peirce and Uyeda — that the SEC was failing to provide the necessary clarity to market participants about which types of crypto transactions constituted a security and could be regulated by the SEC under existing laws and regulations.

The new administration quickly moved to revamp this enforcement strategy. Starting in February 2025, the

SEC made the unprecedented move to dismiss most of its crypto-related litigations. The dismissed matters were largely limited to registration violations and did not involve allegations of fraud. These high-profile cases included those filed against: crypto exchanges Coinbase, Kraken, and Binance for operating as unregistered securities exchanges; trading firm Cumberland for operating as an unregistered dealer; and Consensys Software for operating as an unregistered broker through its MetaMask platform.¹⁷ The stated rationale provided by the agency was that the dismissals would “facilitate the Commission’s ongoing efforts to reform and renew its regulatory approach to the crypto industry.”¹⁸

At the same time, the agency’s Enforcement Division, under the rebranded Cyber and Emerging Technologies Unit (formerly the Crypto Assets and Cyber Unit), closed many of its ongoing enforcement investigations in the crypto space — largely those that did not include potential fraud. The new enforcement unit, which has been significantly downsized from its prior iteration, will be primarily focused on matters involving allegations of misconduct and fraud targeted at retail investors in the cyber and AI space.¹⁹ Crypto appears to be a relatively

¹³ *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946).

¹⁴ 15 U.S.C. §77b(a)(1).

¹⁵ 328 U.S. 293 at 301.

¹⁶ *SEC v. Ripple Labs, Inc.*, 682 F. Supp. 3d 308 (S.D.N.Y. 2023); *SEC v. Terraform Labs Pte Ltd.*, 684 F. Supp. 3d 170 (S.D.N.Y. 2023); *SEC v. Coinbase, Inc.*, 726 F. Supp. 3d 260 (S.D.N.Y. 2024); *SEC v. Binance Holdings Ltd.*, 738 F. Supp. 3d 20 (D.D.C. 2024); *SEC v. Payward Inc.*, 2024 WL 4511499 (N.D. Cal. Aug. 23, 2024).

¹⁷ Press Release, Securities & Exchange Commission, *SEC Announces Dismissal of Civil Enforcement Action Against Coinbase* (Feb. 27, 2025) available at <https://www.sec.gov/newsroom/press-releases/2025-47>; Lit. Rel. No. 26278, Securities & Exchange Commission, Payward, Inc. and Payward Ventures, Inc. (d/b/a “Kraken”) (Mar. 27, 2025) available at <https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26278>; Lit. Rel. No. 26277, Securities & Exchange Commission, Consensys Software Inc. (Mar 27, 2025) available at <https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26277>; Lit. Rel. No. 26316, Binance Holdings Limited; BAM Trading Services Inc.; BAM Management US Holdings Inc.; Changpeng Zhao (May 29, 2025), available at <https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26316>; Lit. Rel. No. 26276, Cumberland DRW LLC (Mar. 27, 2025), available at <https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26276>; Lit. Rel. No. 26277, Consensus Software Inc. (Mar. 27, 2025), available at <https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26277>.

¹⁸ Press Release, Securities & Exchange Commission, *SEC Announces Dismissal of Civil Enforcement Action Against Coinbase* (Feb. 27, 2025) available at <https://www.sec.gov/newsroom/press-releases/2025-47>.

¹⁹ Press Release, Securities & Exchange Commission, *SEC Announces Cyber and Emerging Technologies Unit to Protect Retail Investors* (Feb. 20, 2025), available at <https://www.sec.gov/newsroom/press-releases/2025-42>.

smaller element of the new unit’s mandate, and any crypto investigations will likely involve potential fraud or market manipulation.²⁰

Industry Engagement

Another significant shift in the new SEC administration has been with respect to engagement with industry participants, which was limited in recent years as a result of the agency’s increasingly adversarial relationship with the industry. Commissioner Peirce set the tone early, declaring in her first statement as leader of the crypto task force: “We invite builders, enthusiasts, and skeptics to engage with us to figure out what the final rules should be and what interim steps might help to foster innovation in the meantime.”²¹ Commissioner Peirce went on to ask for written input on a range of issues, including security status, registration exemptions, trading, custody, lending, exchange-traded products, and tokenized securities.²²

This outreach has resulted in hundreds of written comments from across the crypto industry, traditional finance, and beyond, which the task force has made publicly available.²³ The task force has also held over 150 meetings with industry participants and others on various regulatory questions.²⁴ In addition, the task force has held a series of public roundtables in Washington, where panels of industry experts and academics have discussed the security status of crypto assets, crypto trading, crypto custody, tokenization, and

decentralized finance.²⁵ And the task force has scheduled sessions across the country to hear from those stakeholders who may not be able to travel to Washington.²⁶

Staff Guidance

As an interim measure — while the market awaits possible legislative and rulemaking activity — the SEC’s crypto task force has led the issuance of guidance by staff of the Division of Corporation Finance about whether a number of crypto assets and activities fall within the definition of a security under *Howey*. To date, SEC staff has declared its view that stablecoins,²⁷ meme coins,²⁸ crypto mining activities,²⁹ protocol staking activities,³⁰ and liquid-staking activities³¹ generally do not constitute investment contracts under *Howey*, and therefore are not securities that fall within the SEC’s regulatory purview.

Now, guidance by SEC staff does not constitute action by the Commission and has no legal force or effect. And much of the guidance is nuanced and not subject to generalization. Still, the guidance issued so

²⁰ See, e.g., Press Release, Securities & Exchange Commission, *SEC Charges Three Purported Crypto Asset Trading Platforms and Four Investment Clubs with Scheme that Targeted Retail Investors on Social Media* (Dec. 22, 2025), available at <https://www.sec.gov/newsroom/press-releases/2025-144-sec-charges-three-purported-crypto-asset-trading-platforms-four-investment-clubs-scheme-targeted>.

²¹ Journey Begins Statement, *supra* note 8.

²² Statement, Commissioner Hester Peirce, *There Must Be Some Way Out of Here* (Feb. 21, 2025), available at <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-rfi-022125>.

²³ SEC Crypto Task Force, *Crypto Task Force Written Input*, available at <https://www.sec.gov/about/crypto-task-force/crypto-task-force-written-input>.

²⁴ SEC Crypto Task Force, *Crypto Task Force Meetings*, available at <https://www.sec.gov/about/crypto-task-force/crypto-task-force-meetings>.

²⁵ SEC Crypto Task Force, *Crypto Task Force Roundtables*, available at <https://www.sec.gov/about/crypto-task-force/crypto-task-force-roundtables>.

²⁶ SEC Crypto Task Force, *Crypto Task Force: On the Road*, available at <https://www.sec.gov/about/crypto-task-force/crypto-task-force-road>.

²⁷ Statement, Division of Corporation Finance, *Statement on Stablecoins* (Apr. 4, 2025) available at <https://www.sec.gov/newsroom/speeches-statements/statement-stablecoins-040425>.

²⁸ Statement, Division of Corporation Finance, *Staff Statement on Meme Coins* (Feb. 27, 2025) available at <https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme-coins>.

²⁹ Statement, Division of Corporation Finance, *Statement on Certain Proof-of-Work Mining Activities* (Mar. 20, 2025) available at <https://www.sec.gov/newsroom/speeches-statements/statement-certain-proof-work-mining-activities-032025>.

³⁰ Statement, Division of Corporation Finance, *Statement on Certain Protocol Staking Activities* (May 29, 2025), available at <https://www.sec.gov/newsroom/speeches-statements/statement-certain-protocol-staking-activities-052925>.

³¹ Statement, Division of Corporation Finance, *Statement on Certain Liquid Staking Activities* (Aug. 5, 2025), available at <https://www.sec.gov/newsroom/speeches-statements/corpfincertain-liquid-staking-activities-080525>.

far should enable market participants to understand more fully how the current SEC leadership thinks about *Howey* and provide some level of comfort that activities like standard protocol staking will not be treated as securities transactions.

SEC staff has also issued guidance on the applicability of certain disclosure requirements under the federal securities laws to the issuance and registration of crypto asset securities³² and to the issuance of crypto exchange-traded products (“ETPs”).³³ In addition, SEC staff has released guidance on the applicability of certain broker-dealer and transfer agent rules to crypto assets and distributed ledger technology.³⁴ For example, it has clarified its position that the SEC’s possession and custody rules apply only to securities and not to non-security crypto assets held by broker-dealers on behalf of customers. More recently, SEC staff has issued a statement outlining circumstances under which a broker-dealer can be deemed to have “physical possession” of crypto asset securities for the account of customers under Rule 15c-3-3 of the Securities Exchange Act of 1934.³⁵ And the staff has issued a statement on the taxonomies associated with issuer-sponsored and third-party sponsored tokenized securities, with the aim of assisting market participants as they prepare to submit “any necessary registrations, proposals, or requests for appropriate action to the Commission or its staff.”³⁶

Moreover, SEC staff has issued “no-action letters” relating to crypto matters — which amount to pronouncements that the staff would not recommend enforcement action to the Commission based on certain facts presented in those individual situations. For example, no-action letters were issued relating to the functioning of decentralized physical infrastructure (“DePIN”) networks (illustrating the staff’s position that token distributions intended to incentivize participation in activities like running a node or storage are not securities)³⁷ and to custody issues (illustrating the staff’s position that state-chartered financial institutions can be used by registered advisers and funds to custody crypto assets).³⁸ In December 2025, SEC staff issued a no-action letter to the Depository Trust Company (“DTC”) relating to DTC’s development of a voluntary securities tokenization program.³⁹

PROJECT CRYPTO

In July 2025, the President’s working group (discussed above) released its long-awaited report on digital assets.⁴⁰ The report was comprehensive and offered a series of recommendations across five areas: market structure; banking; stablecoins and payments; countering illicit finance; and taxation. The report provided that, “absent congressional action, the SEC and CFTC should use their existing authorities to provide

³² Statement, Division of Corporation Finance, *Offerings and Registrations of Securities in the Crypto Asset Markets* (Apr. 10, 2025), available at <https://www.sec.gov/newsroom/speeches-statements/cf-crypto-securities-041025-offerings-registrations-securities-crypto-asset-markets>.

³³ Statement, Division of Corporation Finance, *Crypto Asset Exchange-Traded Products* (July 1, 2025), available at <https://www.sec.gov/newsroom/speeches-statements/cf-crypto-asset-exchange-traded-products-070125>.

³⁴ *Division of Trading and Markets: Frequently Asked Questions Relating to Crypto Asset Activities and Distributed Ledger Technology* (May 15, 2025), available at <https://www.sec.gov/rules-regulations/staff-guidance/trading-markets-frequently-asked-questions/frequently-asked-questions-relating-crypto-asset-activities-distributed-ledger-technology>.

³⁵ Statement, Division of Trading and Markets, *Statement on the Custody of Crypto Asset Securities by Broker-Dealers* (Dec. 17, 2025), available at <https://www.sec.gov/newsroom/speeches-statements/trading-markets-121725-statement-custody-crypto-asset-securities-broker-dealers>.

³⁶ Statement, Division of Corporation Finance, Division of Investment Management, Division of Trading and Markets, *Statement on Tokenized Securities* (Jan. 28, 2026), available at

footnote continued from previous column...

<https://www.sec.gov/newsroom/speeches-statements/corp-fin-statement-tokenized-securities-012826-statement-tokenized-securities>.

³⁷ Statement, Commissioner Hester Peirce, *Deep In: Statement on DoubleZero No Action Letter* (Sep. 29, 2025), available at <https://www.sec.gov/newsroom/speeches-statements/peirce-092925-deep-statement-doublezero-no-action-letter>.

³⁸ Statement, Commissioner Hester Peirce, *Out of the Gray Zone: Statement on the Division of Investment Management’s No-Action Letter Relating to the Custody of Crypto Assets with State Trust Companies* (Sep. 30, 2025), available at <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-custody-crypto-assets-093025>.

³⁹ Statement, Commissioner Hester Peirce, *Tokenization Trending: Statement on the Division of Trading and Market’s No-Action Letter Related to DTC’s Development of Securities Tokenization Services* (Dec. 11, 2025), available at <https://www.sec.gov/newsroom/speeches-statements/peirce-121125-tokenization-trending-statement-division-trading-markets-no-action-letter-related-dtcs-development>.

⁴⁰ American Leadership Speech, *supra* note 2.

fulsome regulatory clarity that best keeps blockchain-based innovation within the United States.”

The wide-ranging recommendations directed at the SEC included: crafting a potential “innovation exemption” to allow SEC registrants to engage in novel business models; allowing registrants to offer multiple services within a single user interface; and providing relief from registration obligations for certain “decentralized finance” providers. The report also addressed regulation of market intermediaries, indicating that intermediaries should be able to trade both securities and non-securities and that trading platforms should be able to custody crypto assets.

In response to the working group’s report, Chairman Atkins announced the launch of “Project Crypto,” which he described as a “Commission-wide initiative to modernize the securities rules and regulations to enable America’s financial markets to move on-chain.”⁴¹ To that end, Chairman Atkins directed SEC staff “to draft clear and simple rules of the road for crypto asset distributions, custody, and trading for public notice and comment,” and to consider using interpretive and exemptive authorities “to make sure archaic rules and regulations do not smother innovation and entrepreneurship.”

As part of Project Crypto, Chairman Atkins has prioritized action in the following areas: security status; custody; trading on “super-apps” or side-by-side platforms; decentralized finance; innovation exemptions; and regulatory harmonization. Each is addressed below.

Security Status

Chairman Atkins has directed SEC staff to develop clear guidelines to enable market participants to “slot crypto assets into categories” in order to determine whether the asset can be deemed a security.⁴² As discussed above, this is a central question facing the SEC and one on which market participants have long requested further clarity. While the SEC has not yet provided definitive, bright-line rules in this area, the contours of the forthcoming framework have already taken shape.

In November 2025, Chairman Atkins laid out his “current thinking” on the various categories of crypto assets. Under this framework, the following assets would *not* be securities: “digital commodities” (e.g.,

network or protocol tokens that allow users to interact with a protocol or blockchain network); “digital collectibles” (e.g., tokens that convey rights to things like artwork or music, such as non-fungible tokens or NFTs); and “digital tools” (e.g., tokens that perform a practical function like a membership or ticket). On the other hand, “tokenized securities,” tokens representing ownership of a security maintained on a blockchain, would be considered securities.⁴³

Chairman Atkins went on to say that while most crypto assets are not themselves securities, they can be part of an investment contract (and thus considered to be securities) if they are accompanied by “explicit and unambiguous” representations or promises of essential managerial efforts to be undertaken by the issuer. A non-security crypto asset can “separate” from an investment contract if “the issuer either fulfills the representations or promises, fails to satisfy them, or they otherwise terminate.” Thus, as networks mature, code is shipped, and control disperses, the issuer’s role diminishes and disappears — and, at some point, purchasers are no longer relying on the issuer’s efforts and “most tokens [] trade without any reasonable expectation that a particular team is still at the helm.” In Chairman Atkins’ view, once an investment contract has “run its course,” the tokens are no longer securities transactions “simply by virtue of the token’s origin story.”⁴⁴

Under this framework, most secondary sales of crypto tokens, such as those traded over crypto exchanges, would not constitute securities transactions. In the words of Commissioner Peirce, “even if a broad swath of the crypto assets trading in secondary markets today were initially offered and sold subject to an investment contract, they clearly are no longer bought and sold in securities transactions.”⁴⁵

For those crypto assets that are in fact deemed to be securities, the SEC will be proposing “purpose-fit

⁴¹ *Id.*

⁴² *Id.*

⁴³ Speech, Chairman Paul Atkins, *The SEC’s Approach to Digital Assets: Inside ‘Project Crypto’* (Nov. 12, 2025) (“Inside Project Crypto Speech”), available at <https://www.sec.gov/newsroom/speeches-statements/atkins-111225-secs-approach-digital-assets-inside-project-crypto>.

⁴⁴ *Id.*

⁴⁵ Speech, Commissioner Hester Peirce, *New Paradigm: Remarks at SEC Speaks* (May 19, 2025), available at <https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-sec-speaks-051925-new-paradigm-remarks-sec-speaks>.

disclosures, exemptions, and safe harbors, including for so-called ‘initial coin offerings,’ ‘airdrops,’ and network rewards.”⁴⁶ For example, the crypto task force is considering conditional safe harbors from securities registration that would allow transactions in crypto assets that may be securities so long as certain reporting and disclosure conditions are satisfied.⁴⁷ Likewise, the task force is considering changes to existing paths to registration, including Regulation A and Regulation Crowdfunding.⁴⁸

Custody

Chairman Atkins has stated that “it is incumbent on the SEC to ensure that market participants have maximum choice when deciding where to custody and trade crypto assets.”⁴⁹ To that end, he has prioritized “modernizing” the SEC’s custody requirements, including through rule changes and exemptive relief for intermediaries seeking to custody crypto assets — some of which have been foreshadowed by staff statements relating to custody discussed above. At the same time, Chairman Atkins has been clear that he “believe[s] deeply in the right to use a self-custodial digital wallet to maintain personal crypto assets and participate in on-chain activities like staking.” This suggests the SEC will not be seeking to regulate self-custody wallet platforms like Ledger and MetaMask — software tools that enable individuals to directly control cryptographic “private keys,” thus allowing users to access and transfer digital assets and engage in staking activities.

Trading “Super-Apps”

Another key priority is facilitation of “super-apps” — a framework to allow securities and non-securities to trade side-by-side on SEC-regulated platforms, with the aim of enabling securities intermediaries to offer a broad range of products (*e.g.*, trading, staking, lending, borrowing) and assets (*e.g.*, traditional securities, crypto securities, and non-security crypto assets) under one roof with a single license (as opposed to dozens of state licenses and multiple federal licenses). In Chairman Atkins’ words, “the SEC in concert with other regulators should strive to have the most efficient licensing structure for SEC registrants. They should not be

unnecessarily subject to multiple regulators or regulatory regimes.”⁵⁰

Indeed, Chairman Atkins has asked Commission staff to prepare recommendations that would allow tokens tied to an investment contract (*i.e.*, securities) to trade on non-SEC regulated platforms including platforms registered with the CFTC or state regulators.⁵¹

Decentralized Finance

Project Crypto also looks to unleash the potential of decentralized finance (“DeFi”) in the securities markets. DeFi is a financial system built on blockchain technology that allows users to transact without traditional intermediaries like banks and brokers, instead relying on self-executing computer code called “smart contracts” to automate services like lending, borrowing, and trading. The DeFi sector is an increasingly important aspect of the crypto ecosystem, in part because of its potential to serve as an alternative to the traditional financial system. At the same time, DeFi poses regulatory challenges because it does not rely on intermediaries that, in traditional finance, are regulated.

Chairman Atkins has directed SEC staff to update SEC rules to ensure that DeFi “will be part of our securities markets and not drowned out by duplicative or unnecessary regulation.” As Chairman Atkins has observed, while it is true that federal securities laws have always assumed the involvement of an intermediary, “this does not mean that we should interpose intermediaries for the sake of forcing intermediation where the markets can function without them.”⁵²

Innovation Exemptions

The SEC is contemplating an “innovation exemption” that allows market participants to “quickly go to market with new business models and services that do not neatly fit within [] existing rules and regulations,” so long as they comply with certain principles-based conditions, such as periodic reporting to the SEC.⁵³

One area where the SEC is considering this type of “regulatory sandbox” is with respect to the burgeoning field of “tokenized securities” — where a traditional security like a stock or bond is minted as a digital token

⁴⁶ American Leadership Speech, *supra* note 2.

⁴⁷ Journey Begins Statement, *supra* note 8.

⁴⁸ *Id.*

⁴⁹ American Leadership Speech, *supra* note 2.

⁵⁰ *Id.*

⁵¹ Inside Project Crypto Speech, *supra* note 42.

⁵² *Id.*

⁵³ American Leadership Speech, *supra* note 2.

on a blockchain or other distributed ledger. Recent months have seen significant market interest in tokenization. For example, in September 2025, NASDAQ filed a request with the SEC for rule changes to enable the trading of tokenized securities on its platform.⁵⁴ And, as noted above, SEC staff recently issued a no-action letter to the DTC in connection with its tokenization program

The crypto task force is considering an exemptive order that would allow firms to experiment with tokenization without having to comply with SEC registration requirements. Such an exemption would be conditioned on the issuer's compliance with a number of requirements, including disclosure, monitoring, and examination by SEC staff, and implementation of market integrity processes for the prevention of fraud and manipulation. As Commissioner Peirce has noted, because tokenization is still in its infancy, companies "may be hesitant to issue tokenized securities because only a limited number of venues can trade such securities," or because they "may not be willing to devote resources to identify and address the regulatory barriers to trade and settle them." Exemptive relief would address this "chicken-and-egg problem," and also "afford the SEC time to develop and adopt durable adaptations to its existing rules to accommodate" distributed ledger technology.⁵⁵

Regulatory Harmonization

At the core of the long-running debate on crypto regulation is the question of which market regulator — the SEC or the CFTC — has jurisdiction to regulate crypto. In recent years, the two agencies have not made meaningful attempts to coordinate their approach to crypto, and in fact have sometimes worked at cross-purposes.

In September 2025, the SEC and CFTC announced "a new beginning for coordination,"⁵⁶ starting with a joint

SEC-CFTC roundtable on "regulatory harmonization" that took place in October 2025.⁵⁷ These efforts intensified after the appointment of Michael Selig as CFTC Chairman in December 2025. Chairman Selig most recently served as chief counsel of the SEC's crypto task force and senior adviser to Chairman Atkins.

In late January 2026, the two agencies announced that Project Crypto will proceed as a joint initiative between the SEC and the CFTC aimed at "bringing coordination, coherence, and a unified approach to the federal oversight of crypto asset markets."⁵⁸ According to Chairman Atkins, "we have designed Project Crypto such that when Congress acts, our agencies are ready to implement any new legislation faithfully and thoughtfully. Moving forward, that means deploying every tool at our disposal to reduce friction, to harmonize standards and definitions where appropriate, and to equip markets with confidence as Congress completes its vital work."⁵⁹

Among the efforts of the new combined Project Crypto will be to consider joint codification of the token taxonomy framework laid out by Chairman Atkins (discussed above) and to move toward the "super apps" concept (discussed above) where market participants are able to offer multiple products through a single platform without having to navigate a patchwork of registrations and regulatory regimes.⁶⁰

LEGISLATIVE ACTIVITY

For many years, market participants have clamored for Congress to develop a new regulatory framework for crypto, arguing that old laws and rules do not apply to

⁵⁴ SEC Form 19b-4, File No. SR 2025-072 (Sep. 8, 2025), available at <https://listingcenter.nasdaq.com/assets/rulebook/nasdaq/filings/SR-NASDAQ-2025-072.pdf>.

⁵⁵ Speech, Commissioner Hester Peirce, *A Creative and Cooperative Balancing Act* (May 8, 2025), available at <https://www.sec.gov/newsroom/speeches-statements/peirce-iismgd-050825>.

⁵⁶ Statement, Chairman Paul Atkins & Chairman Caroline Pham, *Joint Statement from the Chairman of the SEC and the Acting Chairman of the CFTC* (Sep. 5, 2025), available at <https://www.sec.gov/newsroom/speeches-statements/joint-statement-atkins-pham-090525>.

⁵⁷ Press Release, Securities & Exchange Commission, *SEC Announces Agenda, Panelists for SEC-CFTC Roundtable on Regulatory Harmonization Efforts* (Sep. 24, 2025), available at <https://www.sec.gov/newsroom/press-releases/2025-124-sec-announces-agenda-panelists-sec-cftc-roundtable-regulatory-harmonization-efforts>.

⁵⁸ Public Statements & Remarks, Chairman Michael S. Selig, *The Next Phase of Project Crypto: Unleashing Innovation for the New Frontier of Finance* (Jan. 29, 2026), available at <https://www.cftc.gov/PressRoom/SpeechesTestimony/opaselig1>.

⁵⁹ Speech, Chairman Paul Atkins, *Opening Remarks at Joint SEC-CFTC Harmonization Event – Project Crypto* (Jan. 29, 2026), available at <https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-joint-sec-cftc-harmonization-event-project-crypto-012926>.

⁶⁰ *Id.*

this novel technology. In recent years, a series of federal legislative proposals have been offered. But until last year, none had gained the necessary support in both houses of Congress.

GENIUS Act

In a major coup for the industry — though one that was years in the making — Congress passed a landmark law, the Guiding and Establishing National Innovation for U.S. Stablecoins (“GENIUS”) Act.⁶¹ The GENIUS Act, which was signed into law in July 2025, was the first significant step to regulate “payment stablecoins” at the federal level. Payment stablecoins are digital assets used for payment or settlement that are pegged to a fixed monetary value, such as the U.S. Dollar or another fiat currency.

At a high level, the GENIUS Act imposes licensing and regulatory requirements for both domestic and foreign stablecoin issuers. The Office of Comptroller of the Currency is designated the primary federal regulator (though other prudential authorities may be appropriate regulators in certain instances and smaller issuers can opt to be regulated at the state level). Among other things, the GENIUS Act requires stablecoin issuers to hold 1:1 reserves in the form of low-risk assets such as Treasury bills, and to provide regular reports on the composition of those reserves. Issuers are also required to comply with the Bank Secrecy Act (including anti-money laundering requirements) and strict disclosure and marketing rules. In addition, stablecoin issuers are prohibited from paying interest or yield to users.

The GENIUS Act makes clear that payment stablecoins are not securities or commodities and that issuers of these assets generally are not subject to the SEC’s or CFTC’s regulatory jurisdiction. That said, the SEC is considering whether additional guidance or rulemaking may be needed to accommodate SEC registrants (like broker-dealers) that seek to use stablecoins for certain transactions, including for settlement and margining.⁶²

Market Structure Legislation

Less progress has been made by Congress in finalizing a so-called market structure bill — legislation that would clarify the jurisdictional reach of the SEC and CFTC with respect to crypto assets.

In July 2025, the House of Representatives passed the Digital Asset Market Clarity (“CLARITY”) Act, which effectively gives the CFTC jurisdiction over most crypto assets.⁶³ Specifically, the CFTC would have exclusive jurisdiction over “digital commodities,” whereas the SEC would have jurisdiction over “investment contract assets.” Importantly, under the CLARITY Act, a crypto asset trading in a secondary transaction is necessarily a digital commodity, even if the primary issuance of the asset was an investment contract. Indeed, the proposed legislation provides that an issuer or DeFi participant can certify that a blockchain system is “mature,” and thus that the crypto assets can no longer be classified as investment contracts. In addition, the Act sets forth various requirements for the regulation of issuers and intermediaries (like commodity exchanges and brokers) in the crypto marketplace.

The fate of the CLARITY Act remains up in the air as the Senate has been engaging in contentious negotiations over market structure issues for months and the bill now appears to be stalled. The main point of contention currently relates to the bill’s treatment of yield-bearing stablecoins, which have been objected to by members of the banking industry.

LOOKING FORWARD

Though significant progress has been made by the SEC on the path toward a comprehensive market structure for crypto, much remains to be done. Staff guidance is useful for near-term decision-making, but it is only an interim measure that cannot provide the requisite finality for the marketplace. Ultimately, the SEC must promulgate new rules and regulations in a number of different areas. But the notice-and-comment rulemaking process is long and often iterative. And the details and scope of any future legislation establishing a baseline market structure — which will be a predicate for much follow-on rulemaking — remains undefined, and the timing and success of its prospects are

⁶¹ 139 STAT. 419, GENIUS Act (Jul. 18, 2025), available at <https://www.congress.gov/bill/119th-congress/senate-bill/1582/text>.

⁶² Statement, Chairman Paul Atkins, *Statement on President Trump Signing the GENIUS Act into Law* (July 18, 2025), available at <https://www.sec.gov/newsroom/speeches-statements/atkins-statement-genius-act-071825>.

⁶³ H.R. 3633, Digital Asset Market Clarity Act of 2025 (Sept. 18, 2025), available at <https://www.congress.gov/bill/119th-congress/house-bill/3633/text>.

impossible to predict. As such, further progress will likely be halting and episodic.

While the unknowns are many, one thing is clear: Crypto is a key component of the Trump administration's "America First" agenda, and the SEC

(and many other federal regulators) will continue to work toward the stated goal of making the United States the crypto capital of the world. In the words of Chairman Atkins: "We will lead. We will build. And, we will ensure that the next chapter of financial innovation is written right here in America."⁶⁴ ■

⁶⁴ American Leadership Speech, *supra* note 2.