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Another big win for Arizona chip sector

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When Crypto Meets Wall Street: How Federal Securities Laws Shape Today's Digital Investments

The Legal PULSE



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BACKGROUND

On March 17, 2026, the Securities and Exchange Commission (the "SEC") issued an interpretation clarifying when and how federal securities laws govern crypto assets and related transactions. The SEC classified crypto assets based on their characteristics, uses, and functions to determine if they are considered securities. (Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, SEC Release Nos. 33-11412; 34-105020 (the "Release")).

Until the Release, the SEC had never offered official, holistic guidance tailored to the unique features of crypto markets. Instead, the SEC relied primarily on the investment-contract framework articulated by the U.S. Supreme Court in SEC v. W.J. Howey Co. (the "Howey test") as its principal tool for assessing whether digital tokens and associated transactions triggered securities-law obligations.

Responding to continued criticisms on its lack of guidance and drawing on public feedback gathered by the SEC's Crypto Task Force, the SEC released interpretive guidance to bring some stability to the crypto markets.

HIGHLIGHTS OF THE INTERPRETATION

Token Classification

The most consequential aspect of the release is the SEC's new classification of digital tokens. The five categories (and their status as securities) are: Digital Commodities (not securities), Digital Collectibles (not securities), Digital Tools (not securities), Stablecoins (likely not securities but can be), and Digital Securities (considered "Tokenized securities").

Digital Commodities are crypto assets whose value stems principally from the automated mechanics of a "functional" blockchain network and from ordinary market supply-and-demand forces, rather than from expected profits and reliance on management's

entrepreneurial efforts. The SEC noted that for a crypto asset to be a digital commodity, its programmed purpose must be to be used as part of the blockchain's consensus mechanism or it must convey governance rights over technical or governance matters to the crypto assets holders.

Digital Collectibles are crypto assets intended primarily for collection or personal enjoyment, such as digital artwork, music, video clips, trading cards, in-game items, or tokenized representations of memes, characters, and cultural moments. The SEC clarified that the offer or sale of a digital collectible that is fractionalized or otherwise enables purchasers to acquire a fractional interest may constitute the offer or sale of a security if it involves essential managerial efforts from which a purchaser would reasonably expect to derive profits.

Digital Tools are crypto assets that perform a practical function, such as a membership, ticket, credential, title instrument, or identity badge. These are generally not securities and include Ethereum Name Service domain names, attestations, and event tickets.

Stablecoins are crypto assets designed to maintain a stable value relative to a reference asset like the U.S. dollar. "Payment stablecoins," as defined by the GENIUS Act, are not themselves securities, but they may be offered subject to an investment contract and thus fall under federal securities laws. Beyond payment stablecoins, other stablecoins may be securities depending on their characteristics, such as the manner in which such stablecoins are offered.

Tokenized securities are generally either tokenized by or on behalf of the issuer of such securities or tokenized by third parties unaffiliated with the issuer. The SEC affirmed its previously issued statement regarding tokenized securities, noting that tokenization is a change in format, not substance. It explained that all devices and instruments that have the economic

characteristics of a security are securities regardless of format or label. Financial instruments that are defined as a "security" and are represented as crypto assets are tokenized securities. Solely providing non-financial benefits, such as governance rights or network security benefits, does not remove the security status of a tokenized security if it otherwise has the economic characteristics of a security.

WHEN A NON-SECURITY CRYPTO ASSET BECOMES A SECURITY

Even if a crypto asset is not initially classified as a security, it can become one if it's sold in a way that encourages people to invest money in a shared venture, with the expectation of profits based on the issuer's representations or promises to engage in managerial efforts under the Howey test. The facts and circumstances of each case will dictate whether it's reasonable for a purchaser to expect profits based on the representations or promises made by the issuer. Without the issuer's representations or promises, a purchaser could not reasonably expect profits from the transaction. Once the underlying arrangement concludes (either because the issuer delivered on its commitment or because it has failed to do so), the token loses its investment-contract status.

Although the Release is final and constitutes an interpretive rule exempt from the Administrative Procedure Act's notice-and-comment requirements, the SEC is still "soliciting public comment on the views set forth in the interpretation" and may "refine, revise, or expand" it in response to such comments. Accordingly, market participants should monitor developments closely, as the SEC may revise its interpretive position or use the Release as a basis for future rulemaking.

We encourage those who have specific questions about cryptocurrency, securities, or other corporate legal matters to contact the author, Guillaume Aimé.