CLIENT ALERTS & INSIGHTS

SEC and CFTC Increase Harmonization

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Featured Practices: Litigation, White Collar, Government Investigations & Regulatory Compliance, Intellectual Property, Data Privacy & Cybersecurity

Key Takeaways

- The SEC and CFTC are accelerating efforts to harmonize crypto regulation, with new leadership, joint initiatives and a shared taxonomy that classifies crypto assets into five categories. This collaboration includes regular data sharing, cross-training and coordinated guidance for the industry.
- This unified approach reduces regulatory uncertainty for crypto businesses but also signals increased scrutiny and evolving compliance expectations. Companies must stay alert to new exemptions, definitions and enforcement priorities, as both agencies clarify how different crypto assets are regulated.
- Crypto market participants should review their asset classifications, update compliance programs and monitor ongoing regulatory developments. Engaging with regulators and adapting to new rules-especially around stablecoins, digital securities and reporting requirements-will be essential to manage risk and seize new opportunities.

Since our last article, Michael Selig has been officially appointed Chairman of the CFTC, stepping down from his prior role as chief counsel of the SEC's Crypto Task Force. As a result of his appointment, the SEC and CFTC's crypto harmonization plans should face little delay, given that Chairman Selig is already well acquainted with the initiative. During his first public remarks at January's SEC-CFTC Joint Harmonization Event, Chairman Selig announced that the SEC's Project Crypto will now be a joint initiative.[1] He also highlighted the importance of a crypto asset taxonomy, the tokenization of collateral, the introduction of perpetual derivatives, and new and revised exemptions.

Further demonstrating cross-agency collaboration, in March, the SEC and CFTC announced a new Memorandum of Understanding (MOU). Under the MOU, the agencies will hold regular meetings, share data, notify each other of issues of mutual concern, and cross-train staff.

A View Toward Regulation

Beyond joint initiatives, the SEC has shown public support for the crypto community, with SEC Chairman Paul Atkins and SEC Commissioner Hester Peirce both speaking at ETHDenver. They addressed the much-anticipated "innovation exemption," noting that it will likely be more modest

than many hope (or fear) and would be temporary in nature. The primary goal, it appears, is to allow the SEC to assess what new rules may be necessary and which existing rules need revision-a notably different approach than Chairman Atkins initially laid out last July.

However, on March 17, 2026, Chairman Atkins discussed a few different exemptions he views as critical to strengthening U.S. crypto markets. These included a "start-up exemption," which would provide a time-limited exemption from registration for certain investment contracts for crypto assets; a "Fundraising Exemption" aimed at new offerings of investment contracts involving crypto assets; and an "Investment Contract Safe Harbor," which would apply after managerial efforts have ceased and the new crypto asset has become more decentralized.

Additionally, the SEC and CFTC released an official taxonomy, in which they discussed the definition of "security" under the Federal securities laws and classified crypto assets into five categories based on their characteristics, uses and functions.[2] First, the agencies reaffirmed that Congress intended the definition of "security" to be broad and flexible, with courts focusing on the economic realities of a transaction rather than the label attached to an instrument[3]. At the same time, they emphasized that the securities laws are not unlimited in scope[4] and generally do not apply to assets purchased for use or consumption,[5] leading the regulators and federal courts to analyze novel instruments (including many crypto assets) under the "investment contract" framework set forth in *Howey*.[6]

Second, the SEC and CFTC grouped crypto assets into five categories based on their characteristics, uses and functions: (i) digital commodities; (ii) digital collectibles; (iii) digital tools; (iv) stablecoins; and (v) digital securities.

1. **Digital Commodities** are crypto assets that are intrinsically linked to, and derive their value from, (a) the "programmatic operation of a crypto system that is functional" and (b) supply and demand dynamics-rather than from the expectation of profits from the managerial efforts of others. They do not have intrinsic economic properties or rights (such as generating a passive yield or conveying rights to future income). Digital commodities are not inherently securities; however, depending on how they are marketed, offered or sold, transactions involving digital commodities may constitute investment contracts-and therefore securities-under the Federal securities laws. Examples of digital commodities include Bitcoin, Dogecoin and Ether.
2. **Digital Collectibles** are crypto assets that are designed to be collected and/or used and may represent or convey rights to, e.g., artwork, trading cards, videos, or digital representations or references to memes or current events among other things. Like digital commodities, digital collectibles do not have intrinsic economic properties or rights and are not inherently securities. Examples of digital collectibles include CryptoPunks, Chromie Squiggles, Fan Tokens, WIF and VCOIN.
3. **Digital Tools** are crypto assets that perform a practical function, such as providing access, membership, credentials, tickets, title instruments or identity verification. They are typically issued for use within crypto systems and derive their value from their practical utility rather than from an expectation of profit. Like digital commodities and digital collectibles, digital tools do not have intrinsic economic properties or rights and are not inherently securities. Examples of digital tools include Ethereum Name Service domain names and CoinDesk's 'Microcosms' NFT Consensus Ticket.

4. **Stablecoins** are crypto assets designed to maintain a stable value relative to a reference asset, such as the U.S. dollar. Certain stablecoins-specifically "payment stablecoins" issued by a permitted stablecoin issuer under the GENIUS Act[7]-are expressly excluded from the definition of a "security" under the Federal securities laws. Other stablecoins, however, are not categorically excluded and may be securities depending on their characteristics, structure and the manner in which they are marketed, offered or sold.
5. **Digital Securities** (commonly known as "tokenized securities") are financial instruments that fall within the statutory definition of a "security" and are issued or represented in crypto-asset form, with ownership recorded in whole or in part on one or more crypto networks. Digital securities are securities under the Federal securities laws.

The CFTC Ramps Up

On the day the taxonomy was released, the CFTC issued a No-Action Position regarding a digital wallet software developer-a move consistent with Chairman Selig's stated plans to provide additional guidance for non-custodial software systems. A week later, the CFTC launched a new "Innovation Task Force" focused on developing a clear framework for crypto asset and blockchain technology. Since most substantive actions beyond broader agreement on plan have previously come from the SEC,[8] it is an encouraging sign for crypto investors that the CFTC is beginning to provide firmer guidance of its own.

Banking on Stablecoins and Taxing Digital Assets

The FDIC and the Office of the Comptroller of the Currency also issued proposed regulations under the GENIUS ACT designed primarily to help banks understand how to treat stablecoins. The Federal Reserve likewise issued new FAQs addressing the impact of the GENIUS Act on the capital rule, which requires institutions to hold a minimum amount of capital. Separately, on March 5, 2026, the IRS issued proposed regulations intended to facilitate brokers' issuance of digital Form 1099-DA to customers.

Relatedly, U.S. Representatives Max Miller and Steven Horsford released a draft bill aimed at modernizing the tax treatment of digital assets and stablecoins. The bill would exclude *de minimis* gains and losses from the sale of stablecoins when used in small transactions, exclude trading of digital assets from U.S. sourcing rules, allow a mark-to-market election for dealers in digital assets, and add references to digital assets in other existing parts of the Internal Revenue Code. The bill also includes explanatory notes indicating plans to address additional areas including constructive sales, a staking and mining deferral election, charitable giving, and what constitutes a trade of business for passive investment purposes.

Enforcement Updates

In early April, President Trump fired Attorney General Pam Bondi and named Deputy Attorney General Todd Blanche as Acting Attorney General. Blanche has been a central figure in the Administration's rollback of crypto enforcement efforts, most notably through his April 7, 2025 memorandum (the "Blanche Memo").[9]

The Blanche Memo outlined the Administration's plan to "end the regulatory weaponization against digital assets." Blanche emphasized that the Department of Justice "is not a digital assets regulator" and directed prosecutors to cease enforcement actions that effectively impose regulatory frameworks on digital assets through criminal prosecution. The Blanche Memo also set forth charging considerations for digital assets, directing prosecutors to "prioritize cases that hold accountable individuals who (a) cause financial harm to digital asset investors and consumers; and/or (b) use digital assets in furtherance of other criminal conduct, such as fentanyl trafficking, terrorism, cartels, organized crime, and human trafficking and smuggling." In addition, the Blanche Memo disbanded the DOJ's National Cryptocurrency Enforcement Team, a Biden-Era unit established "to tackle complex investigations and prosecutions of criminal misuses of cryptocurrency, particularly crimes committed by virtual currency exchanges, mixing and tumbling services, and money laundering infrastructure actors."[10]

Blanche's elevation to Acting Attorney General signals continuity in this enforcement posture and suggests further restraint in DOJ-led crypto enforcement.

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[1] The CFTC previously was running a parallel initiative referred to as its "Crypto Sprint." *See* our Summer 2025 Roundup.

[2] *Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets*, (Mar. 23, 2026) https://www.sec.gov/files/rules/interp/2026/33-11412.pdf.

[3] *Id.* at 10 (citing *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837, 849 (1975)).

[4] *Id.* at 10-11 (citing *Marine Bank v. Weaver*, 455 U.S. 551, 556, 559 (1982)).

[5] *Id.* at 11 (citing *Forman,* 421 U.S. at 852-53).

[6] *See SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946). For more on the *Howey* test, see What The Future May Hold For Crypto Asset Litigation And Regulation | Benesch, Friedlander, Coplan & Aronoff LLP.

[7] For more, *see* our Summer 2025 Roundup.

[8] *See* our December 2025 Update.

[9] *Memorandum from Todd Blanche, Deputy Att'y Gen., to All Dep't Employees* (Apr. 7, 2025), https://www.justice.gov/dag/media/1395781/dl.

[10] *Deputy Attorney General Lisa O. Monaco Announces National Cryptocurrency Enforcement Team* (Oct. 6, 2021) https://www.justice.gov/archives/opa/pr/deputy-attorney-general-lisa-o-monaco-announces-national-crypto
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