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A “NEW ERA OF COLLABORATION” OVER DIGITAL ASSETS BETWEEN THE SEC AND CFTC

This article examines the evolving relationship between the SEC and CFTC regarding oversight of digital assets in the U.S., characterized by a shift from conflicting enforcement approaches and regulatory ambiguity to increased collaboration and clarity. Previously, both agencies vied for jurisdiction over digital assets, with differing regulatory approaches, leading to industry confusion. Under the second Trump Administration, however, increased agency cooperation has fostered a more innovation-friendly regulatory environment. The SEC has disclaimed authority over several categories of digital asset transactions, signaling a departure from earlier hardline policies and paving the way for the CFTC to assume a greater regulatory role. Overall, although many questions remain, these changes establish the beginning of a harmonized, more transparent regulatory framework intended to support the growth of the digital asset industry.

By Jacqueline Yecies and Jack C. Murphy *

Over the past decade, U.S. financial regulators confronted the challenge of applying laws and regulations created for traditional financial products and businesses associated with them to the digital asset industry. The Securities and Exchange Commission (“SEC”) and the Commodity Futures Trading Commission (“CFTC”) found themselves at the forefront of this effort. Up until 2025, both agencies pursued hardline enforcement tactics that shaped the legal and commercial landscape for digital asset markets in the U.S. These efforts began under the first Trump Administration and accelerated with full force under the Biden Administration.

From the industry’s perspective, a regulatory gap existed, given no federal agency had express Congressional authority to oversee these markets. This

drew in part from ambiguity, as digital assets range widely in terms of function and purpose and can exhibit characteristics of both securities and non-security commodities. It also drew from assertive positions taken by the SEC under former Chairman Gary Gensler, who stated publicly that he believed almost every digital asset except bitcoin was a security within the SEC’s jurisdiction.¹

To make matters even more complicated, certain high profile enforcement cases saw both the SEC and CFTC claim jurisdiction over the same or similar products.

¹ David Hollerith, *SEC Chair Gensler says ‘vast majority’ of cryptocurrencies are securities*, Yahoo Finance (Sept. 8, 2022), <https://finance.yahoo.com/news/sec-chair-gensler-majority-cryptocurrencies-securities-124610154.html>.

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Both agencies, for example, brought enforcement actions against Binance, in which each agency claimed jurisdiction in relation to BUSD, a stablecoin. The CFTC alleged that BUSD was a commodity within its jurisdiction,² while the SEC alleged it was a security (and by implication, outside the CFTC’s jurisdiction).³

Under the second Trump Administration, the pendulum has swung to the opposite end, with the U.S. now heralding itself as a country in which the digital asset industry can flourish. Congress is pursuing bipartisan legislation that would establish a comprehensive market structure for digital assets in the U.S. Relatedly, a new spirit of cooperation now prevails at the SEC and CFTC as it pertains to digital assets, with the heads of each agency promoting regulatory clarity for the industry. On September 29, 2025, in remarks given at an SEC-CFTC Joint Roundtable on Regulatory Harmonization efforts, Paul Atkins, the Chairman of the SEC, announced “a new era of collaboration” between the agencies.⁴ The SEC and CFTC, he said, were “too often in conflict with one another, leaving the American public to bear the costs of duplication, delay, and uncertainty.” “[I]t is indeed a new day at the SEC and the CFTC,” he continued. “The era of regulatory fragmentation is ending. The age of harmonized, innovation-friendly oversight is here.” At the same event, Caroline Pham, then Acting Chairman of the

CFTC, echoed this sentiment, declaring that “the turf war is over.”⁵

A review of recent SEC and CFTC actions — in the form of public statements, guidance, projects, and requests for comment — confirms that the agencies have followed through on their promise to collaborate. Since the early days of the new administration, the agencies have rowed in unison. Both agencies have issued guidance designed to encourage innovation in the digital asset industry and to shift the balance of regulatory responsibility from the SEC to the CFTC. At a high level, the SEC has issued a series of statements disclaiming authority over several categories of crypto-related transactions, while the CFTC has removed heightened requirements applicable to digital assets and has launched initiatives to expand the role of digital assets on CFTC-regulated platforms.

Michael Selig was confirmed as CFTC Chairman in December 2025, and the spirit of cooperation has continued. The CFTC officially joined the SEC’s “Project Crypto,” and the agencies issued a new Memorandum of Understanding (“MOU”) designed to harmonize policies and practices, including in relation to digital assets.

Most significantly, on March 17, 2026, the SEC issued an interpretation (“Interpretation”) to clarify the application of federal securities laws to crypto assets, and the CFTC confirmed it would administer the CEA consistent with the SEC’s Interpretation. For the first time, crypto market participants have a clear framework under which to assess the regulatory implications of their business. The Interpretation marks the culmination of a year of consistent cooperation between the agencies and signals further collaboration in the years ahead.

² Press Release, CFTC, *CFTC Charges Binance and Its Founder, Changpeng Zhao, with Willful Evasion of Federal Law and Operating an Illegal Digital Asset Derivatives Exchange* (Mar. 27, 2023), <https://www.cftc.gov/PressRoom/PressReleases/8680-23>.

³ Press Release, SEC, *SEC Files 13 Charges Against Binance Entities and Founder Changpeng Zhao* (June 5, 2023), <https://www.sec.gov/newsroom/press-releases/2023-101-sec-files-13-charges-against-binance-entities-founder-changpeng-zhao>.

⁴ Statement of Paul S. Atkins, Chairman, SEC, *Harmonization: A New Era of Collaboration between the SEC and CFTC* (Sept. 29, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-092925-harmonization-new-era-collaboration-between-sec-cftc>.

⁵ Statement of Caroline D. Pham, Acting Chairman, CFTC, *Working Together is Working Better, Remarks of Acting Chairman Caroline D. Pham, SEC-CFTC Joint Roundtable on Regulatory Harmonization Efforts* (Sept. 29, 2025), <https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement092925>.

THE SEC'S CEDING OF AUTHORITY

Between February and August 2025, the SEC issued a series of statements disclaiming authority over broad categories of digital asset-related transactions, including meme coins, proof of work mining, stablecoins, protocol staking, and liquid staking. These statements represented a departure from the SEC's policies under the prior administration, in which the SEC commenced enforcement actions and investigations relating to transactions involving many of these same transactions and assets.

On February 27, 2025, the SEC's Division of Corporation Finance ("DCF") clarified that most "meme coins" — i.e., crypto assets inspired by internet trends and bought mainly for entertainment or social reasons — are not securities.⁶ The SEC had not previously brought an enforcement case alleging that a meme coin was a security. However, former Chairman Gensler had espoused a broad view of the SEC's jurisdiction over digital assets, publicly stating that the vast majority of digital assets were securities and leaving it unclear whether meme coins fell within this category. DCF determined that because meme coins generally lack utility, generate no income, and do not involve pooled investments or managerial efforts, they typically do not meet the *Howey* test⁷ for an investment contract.

On March 20, 2025, DCF clarified the application of federal securities laws to crypto asset mining activities on proof-of-work networks.⁸ The statement focused on "protocol mining," in which persons (called "miners") validate blockchain network transactions. Miners, whether operating individually or in groups, use computational resources to solve complex cryptographic puzzles and earn rewards for their validation services. Mining pools allow participants to combine resources,

with rewards distributed proportionally. DCF concluded that protocol mining activities do not constitute the offer or sale of securities under the securities laws. Applying the *Howey* test, the analysis determined that miners earn rewards through their own administrative or ministerial efforts, and not from the entrepreneurial or managerial efforts of others. This distinction holds true both for solo miners and those contributing to mining pools, as a pool operator's role is primarily administrative.

On April 4, 2025, DCF clarified its views on certain stablecoins ("Covered Stablecoins"), defined as crypto assets pegged to the U.S. dollar and backed by low-risk and liquid reserves. Covered Stablecoins are designed for use in payments, money transmission, or value storage, and are minted and redeemed on a one-for-one basis with the U.S. dollar. DCF determined that the offer, sale, minting, or redeeming of Covered Stablecoins do not require registration under federal securities laws because Covered Stablecoins are not securities or investment contracts, but instead are consumer-oriented payment instruments. Such assets are not "notes" under the *Reves* test⁹ because, among other reasons, they are marketed as digital dollars for commerce, not as investments; holders do not receive interest; and the assets' price stability minimizes secondary market trading for speculation. In addition, Covered Stablecoins are not investment contracts under the *Howey* test because buyers are motivated to use them as "digital dollars," and they are not marketed for investment or profit potential. Under the prior administration, the SEC brought several cases alleging that stablecoins were offered and sold as investment contracts when paired with opportunities to earn interest or other passive income.¹⁰ The SEC's April 4, 2025

⁶ *Staff Statement on Meme Coins*, SEC Div. of Corp. Fin. (Feb. 27, 2025), <https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme-coins>.

⁷ Under the *Howey* test, an investment contract is defined as an investment of money in a common enterprise premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others. *Securities & Exchange Commission v. Howey*, 328 U.S. 293, 301 (1946); see also *Securities & Exchange Commission v. Edwards*, 540 U.S. 389, 393 (2004).

⁸ *Statement on Certain Proof-of-Work Mining Activities*, SEC Div. of Corp. Fin. (Mar. 20, 2025), <https://www.sec.gov/newsroom/speeches-statements/statement-certain-proof-work-mining-activities-032025>.

⁹ Under *Reves*, courts apply a "family resemblance" test to determine whether a note is a security. The test begins with a presumption that every note is a security. It then directs courts to examine four factors, each of which helps to uncover whether the note was issued in an investment context (and is thus a security) or in a consumer or commercial context (and is thus not a security). The four factors are: (1) the motivations that would prompt a reasonable seller and buyer to enter into the transaction; (2) "the plan of distribution of the instrument; (3) "the reasonable expectations of the investing public; and (4) "whether some factor such as the existence of another regulatory scheme significantly reduces the risk of the instrument, thereby rendering application of the federal securities laws unnecessary. *Reves v. Ernst & Young*, 494 U.S. 56 (1990); see also *Kirschner v. JP Morgan Chase Bank N.A.*, 79 F.4th 290, 303-04 (2d Cir. 2023).

¹⁰ Compl., *Securities & Exchange Commission v. Binance Holdings Limited*, No. 23-cv-1599 (June 5, 2023) (alleging that

statement did not express a view on the application of the securities laws to these specific transactions, however.

On May 29, 2025, DCF issued a statement clarifying the application of federal securities laws to “protocol staking” activities on proof-of-stake networks. “Staking” refers to the process of locking up crypto assets on a blockchain network for the purpose of supporting or maintaining the network (often by validating transactions); stakers earn rewards for their commitment, typically in the form of more of the staked crypto assets. In its statement, the SEC clarified that such protocol staking activity does not constitute an offer or sale of securities. According to the SEC, when a person stakes their own crypto assets using their own resources, rewards are properly viewed as payments in exchange for services provided to the network, and not profits derived from the entrepreneurial or managerial efforts of others. Also, according to the SEC, when a person stakes their crypto assets through a third party, the third party’s efforts are merely administrative or ministerial, not entrepreneurial or managerial. This represents a significant departure from the SEC’s earlier stance, in which it brought enforcement actions against prominent crypto asset exchanges for offering “staking-as-a-service” programs.¹¹

On August 5, 2025, DCF provided further clarity on crypto asset staking. This time, DCF addressed “liquid staking” activities in which persons who stake their crypto assets receive newly minted “staking receipt tokens” in return, allowing holders to maintain liquidity without withdrawing the crypto assets that have been

locked up for staking. Like its prior statement on staking, the SEC clarified here that liquid staking activities do not constitute an offer or sale of securities because, among other reasons, any efforts by a liquid staking provider are administrative or ministerial in nature, not entrepreneurial or managerial. Again, this represents a significant departure from the SEC’s stance in the prior administration, in which it brought enforcement actions alleging that liquid staking programs were investment contracts.¹²

A NEW MOU AND TOKEN TAXONOMY

On November 12, 2025, Chairman Atkins gave a speech demonstrating just how much has changed at the SEC in a year. While Chairman Gensler believed almost every digital asset was a security, Chairman Atkins expressed his belief that “most crypto tokens trading today are not themselves securities.”¹³ In his first public remarks as CFTC Chairman on January 29, 2026, Selig agreed with Chairman Atkins that most crypto assets are not securities and directed CFTC staff to work with the SEC to consider joint codification of Atkins’s taxonomy while Congress finalizes market structure legislation.¹⁴ He also announced that the CFTC would join the SEC’s “Project Crypto” in order to “clarify jurisdictional lines, remove duplicative compliance requirements, and reduce regulatory fragmentation.” In a joint op-ed the same day, Atkins and Selig announced a “harmonization agenda” focused on “aligned definitions, coordinated oversight, and seamless, secure data sharing between agencies.”¹⁵ On March 11, 2026, the SEC and CFTC formalized their cooperation by announcing a new MOU on the “harmonization in areas of common regulatory interest,” including crypto assets.¹⁶ The MOU confirms

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BUSD, a stablecoin issued by Binance, was offered and sold as an investment contract); *Securities & Exchange Commission v. Terraform Labs Pte. Ltd.*, 684 F. Supp. 3d 170 (S.D.N.Y. July 31, 2023) (holding that the SEC adequately alleged that UST, a stablecoin issued by Terraform Labs, was offered and sold as an investment contract).

¹¹ See, e.g., Compl., *Securities & Exchange Commission v. Payward Ventures, Inc. (d/b/a Kraken)*, No. 23-cv-00588 (N.D. Cal. Feb. 9, 2023) (alleging that Kraken offered and sold investment contracts through its staking program); Compl., *Securities & Exchange Commission v. Coinbase, Inc.*, No. 23-cv-4783 (S.D.N.Y. June 6, 2023) (alleging that Coinbase offered and sold investment contracts through its staking program); see also *Securities & Exchange Commission v. Coinbase, Inc.*, 725 F. Supp. 3d 260, 302-04 (S.D.N.Y. 2024) (holding that SEC adequately alleged that Coinbase offered and sold its staking program as an investment contract).

¹² Compl., *Securities & Exchange Commission v. Consensus Software Inc.*, No. 24-cv-4578 (E.D.N.Y. June 28, 2024).

¹³ Paul S. Atkins, Chairman, SEC, *The SEC’s Approach to Digital Assets: Inside “Project Crypto”* (Nov. 12, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-111225-secs-approach-digital-assets-inside-project-crypto>.

¹⁴ Michael S. Selig, Chairman, CFTC, *The Next Phase of Project Crypto: Unleashing Innovation for the New Frontier of Finance* (Jan. 29, 2026), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opaselig1>.

¹⁵ Michael S. Selig, Paul S. Atkins, *Team Trump readies crypto plan so Americans can count on their future* (Jan. 29, 2026), <https://www.cftc.gov/PressRoom/SpeechesTestimony/seligstatement012926a>.

¹⁶ Memorandum of Understanding Between the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission Regarding Harmonization in Areas of

the agencies' shift toward joint, technology-neutral oversight of crypto asset products, including coordinated interpretations, rulemakings, examinations, and enforcement.

Most recently, on March 17, 2026, the SEC issued an Interpretation¹⁷ creating a token taxonomy that draws clear lines between the SEC's and CFTC's jurisdiction over crypto assets. The CFTC joined the Interpretation and affirmed¹⁸ it will administer the Commodity Exchange Act ("CEA") consistent with the SEC's Interpretation. The taxonomy establishes five categories of digital assets:

- **Digital Commodities.** A digital commodity is a crypto asset that is "intrinsically linked to and derives its value from the programmatic operation of a crypto system that is functional, as well as supply and demand dynamics." Digital commodities encompass most assets commonly considered as "crypto," including Bitcoin, Ether, Solana, Dogecoin, and XRP.
- **Digital Collectibles.** A digital collectible is a crypto asset that is "designed to be collected and/or used and may represent or convey rights to artwork, music, videos, trading cards, in-game items, or digital representations or references to internet memes, characters, current events, or trends, among other things." Digital collectibles include meme coins and many NFTs.
- **Digital Tools.** A digital tool is a crypto asset that performs a practical function, such as a membership, ticket, credential, or identification.
- **Payment Stablecoins.** Payment stablecoins are crypto assets that are designed to maintain a stable value relative to a reference asset, most often the U.S. dollar.

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Common Regulatory Interest (Mar. 11, 2026), <https://www.sec.gov/files/mou-sec-cftc-2026.pdf>.

¹⁷ *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 (Mar. 17, 2026).

¹⁸ Press Release, CFTC, *CFTC Joins SEC to Clarify the Application of Federal Securities Laws to Crypto Assets* (Mar. 17, 2026), <https://www.cftc.gov/PressRoom/PressReleases/9198-26>.

- **Digital Securities.** A digital security (often referred to as a "tokenized" security) is a financial instrument enumerated in the definition "security" that is formatted as or represented by a crypto asset.

According to the SEC, digital securities are the only category of crypto assets that meet the statutory definition of a security. The SEC further explained that digital commodities, as their name implies, "could" meet the statutory definition of a commodity. The Interpretation also reaffirmed DCF's prior statements that protocol mining, protocol staking, and liquid staking do not involve the offer or sale of securities.

The Interpretation is the most detailed statement yet by the SEC regarding the classification of crypto assets under the securities laws. The CFTC's agreement to administer the CEA consistent with the Interpretation is also significant, as the agencies have sometimes struggled to agree on the dividing line between their respective jurisdictions. In many respects, the Interpretation is a clear retreat from the aggressive positions taken by the SEC under Gensler, and many categories of crypto asset transactions now fall comfortably outside the SEC's jurisdiction. Still, the SEC retains a significant role in the regulation of crypto assets because non-security crypto assets, like many other non-security assets, may be offered and sold in connection with an investment contract. The Interpretation offered additional guidance on how a crypto asset becomes subject to an investment contract, as well as how the asset may later separate from the investment contract.

THE CFTC STEPS INTO THE GAPS

With the SEC retreating on multiple fronts, the path has cleared for the CFTC to take a more active role in the regulation of digital asset markets. To date, the CFTC has taken a notably different approach than the SEC. While the SEC has offered multiple statements interpreting the scope of its jurisdiction, the CFTC has not offered corresponding guidance. It has not, for example, addressed whether meme coins are "commodities" under the Commodity Exchange Act ("CEA"), or whether it views mining and staking activities to be within its purview. Instead, the CFTC has focused on practical steps to facilitate the trading of digital assets in CFTC-regulated markets and to integrate digital assets into the "traditional" financial system. The CFTC has accomplished this goal in two primary ways: (1) withdrawing earlier guidance relating to digital assets and (2) promoting pilot programs and similar initiatives.

Among the CFTC’s first acts under the new administration was to withdraw guidance relating to virtual currency derivative product listings¹⁹ and review of risks relating to clearing digital assets, both withdrawn on March 28, 2025.²⁰ CFTC Staff Advisory No. 18-14, issued in 2018 by the Division of Market Oversight (“DMO”) and Division of Clearing and Risk (“DCR”), noted particular risks associated with virtual currencies and highlighted “key areas that require particular attention in the context of listing a new virtual currency derivatives contract”: enhanced market surveillance; coordination with CFTC staff; large trader reporting; outreach to stakeholders; and derivative clearing organization risk management. In withdrawing this guidance, DMO and DCR “determined that the advisory is no longer needed given additional staff experience with virtual currency derivative product listings and increasing market growth and maturity.”

CFTC Letter No. 23-07, issued in 2023, noted “heightened risks” associated with digital asset-related clearing activities and explained that, in light of such risks, “DCR will be placing emphasis on the potential risks and DCO core principles related to system safeguards, physical settlement procedures, and conflicts of interest.” DCR explained it was withdrawing this letter “to ensure that it does not suggest that its regulatory treatment of digital asset derivatives will vary from its treatment of other products.” By withdrawing both letters, the CFTC staff, in essence, confirmed it will not view digital asset-related transactions differently from other transactions under the CFTC’s authority. This will help level the playing field for digital asset-related transactions, making it easier for digital asset derivatives to trade in CFTC-regulated markets.

On December 11, 2025, the CFTC withdrew detailed interpretative guidance on the actual delivery of cryptocurrency. This guidance was originally issued “to inform the public of the Commission’s views when determining whether actual delivery has occurred in the context of retail commodity transactions in certain types of digital assets that serve as a medium of exchange.”²¹

The CEA provides that transactions entered into with or offered to certain persons on a leveraged, margined, or financed basis, are treated “as if” they were futures transactions.²² This is subject to exceptions, including where the transaction “results in actual delivery within 28 days.”²³ The CFTC originally issued this guidance in 2020²⁴ to provide detail on circumstances in which actual delivery will be deemed to have occurred.²⁵ Announcing the withdrawal, Chairman Pham placed the action within the broader context of the CFTC’s implementation of recommendations in the President’s Working Group on Digital Asset Markets report (“Working Group Report”) and explained that “[e]liminating outdated and overly complex guidance that penalizes the crypto industry and stifles innovation is exactly what the Administration has set out to do this year.”²⁶

In addition to withdrawing guidance perceived as outdated, the CFTC has actively sought to expand digital asset trading in CFTC-regulated markets and to implement market structure changes to bring “traditional” markets into line with digital asset market conventions. For example, on April 21, 2025, DMO, DCR, and the Market Participants Division (“MPD”) issued a request for comment on the potential uses, benefits, and risks of trading on a 24/7 basis in the

²² 7 U.S.C. § 2(c)(2)(D).

²³ 7 U.S.C. § 2(c)(2)(D)(ii)(III)(aa).

²⁴ 85 Fed. Reg. 37734 (June 24, 2020).

²⁵ Under the 2020 guidance, “actual delivery” was deemed to have occurred within the context of virtual currency when: (1) A customer secures: (i) Possession and control of the entire quantity of the commodity, whether it was purchased on margin, or using leverage, or any other financing arrangement and (ii) the ability to use the entire quantity of the commodity freely in commerce (away from any particular execution venue) no later than 28 days from the date of the transaction and at all times thereafter; and (2) The offeror and counterparty seller including any of their respective affiliates or other persons acting in concert with the offeror or counterparty seller on a similar basis) do not retain any interest in, legal right, or control over any of the commodity purchased on margin, leverage, or other financing arrangement at the expiration of 28 days from the date of the transaction. 85 Fed. Reg. at 37742-43.

²⁶ Press Release, CFTC, *Acting Chairman Pham Announces Withdrawal of Outdated Digital Assets Guidance* (Dec. 11, 2025), <https://www.cftc.gov/PressRoom/PressReleases/9152-25>.

¹⁹ Press Release, CFTC, *CFTC Staff Withdraws Advisory on Virtual Currency Derivative Product Listings* (Mar. 28, 2025), <https://www.cftc.gov/PressRoom/PressReleases/9059-25>.

²⁰ Press Release, CFTC, *CFTC Staff Withdraws Advisory on Review of Risks Related to Clearing Digital Assets* (Mar. 28, 2025), <https://www.cftc.gov/PressRoom/PressReleases/9060-25>.

²¹ Withdrawal of Interpretive Guidance: Retail Commodity Transactions Involving Certain Digital Assets (Dec. 10, 2025).

derivatives markets²⁷ — a move likely prompted by the 24/7 nature of the crypto markets. On the same day, DMO, DCR, and MPD issued a request for comment regarding the trading of “perpetual derivatives,”²⁸ a product frequently traded in the crypto markets that is similar to a futures contract with no expiration date.

The CFTC has also launched new initiatives that bring digital assets closer to mainstream adoption in traditional financial markets. First, on August 4, 2025, then Acting Chairman Pham announced a “listed spot crypto trading initiative;”²⁹ and on December 4, 2025, the first listed spot cryptocurrency products began trading for the first time in U.S. federally regulated markets.³⁰ Second, on September 23, 2025, then Acting Chairman Pham announced the launch of a “tokenized collateral and stablecoins initiative.”³¹ On December 8, 2025, she announced a pilot program for certain digital assets, including BTC, ETH, and USDC, to be used as collateral in CFTC-regulated derivatives markets.³² At the same time, MPD, DMO, and DCR issued new guidance on the use of collateral in the trading of futures and swaps.

These and other recent initiatives are part of the CFTC’s “Crypto Sprint” to implement the recommendations in the Working Group Report, as part of President Trump’s stated goal of making the U.S. the

“crypto capital of the world” and adopting a pro-innovation approach to digital assets and blockchain technologies.³³ While the CFTC has made substantial progress towards implementing these recommendations, there is more work to be done. For example, the Working Group Report recommends that the CFTC “[p]rovide guidance as to how digital assets may be considered commodities under Section 1a(9) of the CEA”; “[p]rovide clarity on the applicability of various CFTC registration requirements to DeFi activities, smart contract protocols, or decentralized autonomous organizations (“DAOs”) consistent with technology-neutral principles”; and “[c]onsider allowing the use of blockchain technology to satisfy recordkeeping obligations under CFTC Regulation 1.31.”³⁴ The CFTC likely will continue to move quickly to implement these and other recommendations.

THE ROAD AHEAD

Developments at the SEC and CFTC have produced tangible benefits for the digital asset industry. The SEC’s retreat from its “enforcement-first” approach and its surrender of authority over a wide range of digital asset-related transactions has created an environment in which digital asset companies can innovate in the U.S. without fear of reprisal. At the same time, the CFTC has stepped forward with a series of proposals to ease restrictions on digital asset market participants and expand access to trading. Industry participants are seeing the benefits from clearer guideposts, new opportunities, and a regulatory environment that encourages innovation. Although it is impossible to quantify the impact of the SEC’s and CFTC’s recent actions, individually or in aggregate, anecdotal evidence suggests that the new administration’s more welcoming approach to digital assets has contributed to industry momentum. Spot crypto exchange-traded products have experienced substantial net inflows,³⁵ stablecoin market capitalization has increased by 50% since the beginning of 2025,³⁶ and blockchain-based companies like

²⁷ Press Release, CFTC, *CFTC Staff Seek Public Comment on 24/7 Trading* (Apr. 21, 2025), <https://www.cftc.gov/PressRoom/PressReleases/9068-25>.

²⁸ Press Release, CFTC, *CFTC Staff Seek Public Comment Regarding Perpetual Contracts in Derivatives Markets* (Apr. 21, 2025), <https://www.cftc.gov/PressRoom/PressReleases/9069-25>.

²⁹ Press Release, CFTC, *Acting Chairman Pham Launches Listed Spot Crypto Trading Initiative* (Aug. 4, 2025), <https://www.cftc.gov/PressRoom/PressReleases/9105-25>.

³⁰ Press Release, CFTC, *Acting Chairman Pham Announces First-Ever Listed Spot Crypto Trading on U.S. Regulated Exchanges* (Dec. 4, 2025), <https://www.cftc.gov/PressRoom/PressReleases/9145-25>.

³¹ Press Release, CFTC, *Acting Chairman Pham Launches Tokenized Collateral and Stablecoins Initiative* (Sept. 23, 2025), <https://www.cftc.gov/PressRoom/PressReleases/9130-25>.

³² Press Release, CFTC, *Acting Chairman Pham Announces Launch of Digital Assets Pilot Program for Tokenized Collateral in Derivatives Markets* (Dec. 8, 2025), <https://www.cftc.gov/PressRoom/PressReleases/9146-25>.

³³ *Crypto*, The White House, <https://www.whitehouse.gov/crypto/> (last visited Dec. 18, 2025).

³⁴ Working Group Report at 52-53.

³⁵ *2026 Digital Asset Outlook: Dawn of the Institutional Era*, Grayscale (Dec. 16, 2025), <https://research.grayscale.com/reports/2026-digital-asset-outlook-dawn-of-the-institutional-era>.

³⁶ *Stablecoins*, DefiLlama, <https://defillama.com/stablecoins> (last visited Dec. 18, 2025).

Polymarket and Binance have raised significant funding.³⁷

Despite significant progress towards regulatory harmonization, however, challenges remain. While the SEC’s recent statements have clarified the scope of its authority over digital assets in many respects, these assets continue to present challenging jurisdictional questions. The *Howey* test is highly fact-intensive, and while the Interpretation offers guidance on how crypto assets may become subject to — and separate from — an investment contract, these questions cannot be resolved in the abstract. They require detailed inquiries into the nature of the promises made by the issuer and the reasonableness of relying on those promises. It remains to be seen how the SEC and CFTC will resolve questions of jurisdiction in cases where reasonable minds might disagree over whether (and when) an investment contract was formed or terminated.

While the SEC has now issued a comprehensive framework for its assessment of crypto assets, the CFTC has yet to do the same. The Interpretation notes that digital commodities “could” meet the definition of a commodity under the CEA, but it offers no further guidance on the topic. A parallel interpretation by the CFTC explaining which types of assets and transactions fall within its jurisdiction would provide substantial additional clarity to market participants.

In addition, many crypto assets do not lend themselves to easy classification. According to the

Interpretation, “[g]iven the variations in crypto assets and the constantly evolving nature of the crypto asset markets, including the underlying technology, there may be crypto assets that do not fall within any of these five categories, as well as crypto assets with hybrid characteristics that may fall within more than one category.” The diversity of crypto assets will complicate the agencies’ efforts to draw clear jurisdictional lines.

New legislation may also impact the agencies’ relationship. The CLARITY Act³⁸ passed by the House of Representatives on July 17, 2025, for example, proposes a category of digital assets called “investment contract assets,” which are digital commodities that are sold or transferred pursuant to an investment contract. Investment contract assets would be treated as securities by default and subject to the SEC’s jurisdiction until they are determined to be part of a “mature blockchain system” (i.e., a blockchain system not controlled by any person or group of persons), at which point they become “digital commodities” subject to CFTC jurisdiction. If the Senate adopts this framework, determining the precise point of “maturity” will be a fact-intensive inquiry and may prove difficult in practice for specific assets, with important jurisdictional implications hanging in the balance. The current spirit of collaboration between the SEC and CFTC, however, suggests that the agencies will approach these issues in a more cooperative fashion and attempt to offer clear guidance to industry participants for the foreseeable future. ■

³⁷ *2026 Digital Asset Outlook: Dawn of the Institutional Era*, Grayscale (Dec. 16, 2025), <https://research.grayscale.com/reports/2026-digital-asset-outlook-dawn-of-the-institutional-era>.

³⁸ See Digital Asset Market Clarity Act of 2025, H.R. Rep. No. 119-168 (June 23, 2025). The CLARITY Act aims to create a regulatory framework for digital assets, including by dividing authority between the SEC and CFTC.