
November 21, 2025

SEC Chairman Atkins Addresses SEC's Next Steps in Regulation of Digital Assets

On November 12, 2025, SEC Chairman Paul S. Atkins delivered a speech¹ at the Federal Reserve Bank of Philadelphia, outlining next steps in the SEC's "Project Crypto" initiative to create a comprehensive regulatory framework for digital assets. His remarks emphasized the SEC's goal of reducing regulatory uncertainty for developers, exchanges, custodians, and investors. And, while he acknowledged that the *Howey* test for assessing whether a transaction is a security applies to digital asset transactions, he also recognized that the application of the test to those transactions involves consideration of facts and circumstances that may change over time.

Project Crypto's Underlying Core Principles

Chairman Atkins first described two core principles guiding his view on how the federal securities laws apply to digital assets and transactions: (1) securities remain securities regardless of how they are represented (for example, whether represented by paper certificates or digital tokens) and (2) "economic reality trumps labels," such that "calling something a 'token' or an 'NFT' does not exempt it from the current securities laws if it in substance represents a claim on the profits of an enterprise and is offered with the sorts of promises based on the essential efforts of others." Chairman Atkins described these guiding principles as "hardly novel" because they are "embedded in the Supreme Court's repeated insistence" on substance rather than form in determining whether the federal securities laws apply to a particular transaction. He noted that "what is new" is the "scale and speed at which asset types evolve" in new markets, which requires regulators to be "nimble" in response to requests for guidance.

A Potential Crypto Token Taxonomy

Chairman Atkins also identified four categories of digital assets, previewing a "token taxonomy" that the SEC will consider establishing in the coming months to further clarify regulation of digital assets and transactions under the securities laws:

- "Digital commodities" or "network tokens," whose value is derived from a functional and decentralized crypto system, are not securities;
- "Digital collectibles," which are designed to be collected and/or used, are not securities;
- "Digital tools," which provide a practical function, are not securities;
- "Tokenized securities," which represent ownership of a financial instrument that is maintained on a crypto network, are and will continue to be securities.

¹ Paul S. Atkins, Chairman, *The Securities and Exchange Commission's Approach to Digital Assets: Inside "Project Crypto"* (Nov. 12, 2025), available at <https://www.sec.gov/newsroom/speeches-statements/atkins-111225-securities-exchange-commissions-approach-digital-assets-inside-project-crypto>.

A Crypto Asset's Security Status May Change

Chairman Atkins further explained that “while most crypto assets are not themselves securities, crypto assets can be part of or subject to an investment contract” where “these crypto assets are accompanied by certain representations or promises to undertake essential managerial efforts that satisfy the *Howey* test.” Such crypto assets are subject to the securities laws, provided that the representations or promises are “explicit and unambiguous as to the essential managerial efforts to be undertaken by the issuer.” However, a token that was initially offered as part of an investment contract might not remain a security permanently—the investment contract can expire, and “the token may continue to trade, but those trades are no longer ‘securities transactions’ simply by virtue of the token’s origin story.” In Chairman Atkins’s view, “a non-security crypto asset” can “separate from an investment contract” when “the issuer either fulfills the representations or promises, fails to satisfy them, or they otherwise terminate.” These representations or promises might terminate when, for example, “the issuer’s role diminishes or disappears.” At that point, Chairman Atkins explained, “purchasers are no longer relying on the issuer’s essential managerial efforts, and most tokens now trade without any reasonable expectation that a particular team is still at the helm,” so subsequent transactions in that asset would not be subject to the federal securities laws.

Looking Ahead

Chairman Atkins has asked SEC staff “to prepare recommendations for the Commission to consider that would allow tokens tied to an investment contract to trade on non-SEC regulated platforms, including those registered at the CFTC or through a state regulatory regime.” He also requested that the SEC “consider a package of exemptions to create a tailored offering regime for crypto assets that are part of or subject to an investment contract.” We will continue to monitor these developments.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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