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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

April 24, 2026

The Honorable Paul Atkins
Chairman
Securities and Exchange Commission
100 F St NE
Washington, D.C. 20549

Dear Chairman Atkins,

We are writing to express our concern about the Securities and Exchange Commission’s interpretive release, “Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets.”¹ The Release—which appears to take the view that broad swaths of the crypto market are exempt from our securities laws—is yet another example of the SEC doing the bidding of the crypto industry while abdicating its responsibilities to investors and the public. You have also promised that further exemptions are on their way, raising alarm in the financial industry. Indeed, just last week, the crypto industry reiterated its request² for a broad carveout and downplayed serious concerns raised by one of the world’s largest financial firms that the proposed approach to tokenization could override “key investor protections”³ and increase the risk of “flash crashes and other bouts of severe volatility.”⁴

As Congress continues to consider crypto market structure legislation, it must close the loopholes that would allow market participants to easily escape the securities laws using crypto. Otherwise, this lax regulatory system—the sole focus of which is to accelerate adoption of crypto—will erode the SEC’s own authority and ability to protect investors and our markets.

Specifically, the SEC’s recent Release divides crypto assets into five categories “based on their characteristics, uses, and functions”: digital commodities, digital collectibles, digital tools, stablecoins, and digital securities.⁵ The Release then analyzes each category to determine whether they meet “the definition of ‘security.’”⁶ The Commission ultimately concludes that three of its five categories—digital commodities, digital collectibles, and digital tools – are “not themselves securities.”⁷ A fourth category, stablecoins, “may or may not be securities depending

¹ SEC, “Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets,” press release, March 17, 2026. <https://www.sec.gov/rules-regulations/2026/03/s7-2026-09>, issued with the Commodity Futures Trading Commission (the “Release”).

² Blockchain Association Letter to the SEC, “Re: Citadel Securities Letter re: Tokenized U.S. Equity Securities & DeFi Trading Protocols,” April 6, 2026, <https://www.sec.gov/files/ctf-written-ba-submission-04-06-2026.pdf>.

³ Citadel Securities Letter to the SEC, “Re: Tokenized U.S. Equity Securities & DeFi Trading Protocols,” December 2, 2025, <https://www.sec.gov/files/citadel-securities-120225.pdf>.

⁴ *Id.*

⁵ Release at 13.

⁶ Release at 8.

⁷ Release at 13.

on their characteristics.”⁸ The Commission also declares that mining, staking, wrapping, and airdrop activities are largely outside of the ambit of the securities laws.⁹ While defining these categories, the Commission makes sweeping proclamations about entire categories of crypto assets and activities—despite the Supreme Court’s *Howey* test requiring individualized analysis of “the ‘economic realities’ of an offer or sale” to determine if a product constitutes a security.¹⁰ The reasoning also contradicts the Commission’s own positions in past actions¹¹ and conclusions reached by courts in analogous cases.¹²

Further, though the Commission acknowledges that “a nonsecurity crypto asset can be offered and sold subject to an investment contract, which is a security,” it espouses the view that an underlying asset can be separated from an investment contract.¹³ This approach allows crypto assets to dynamically enter and exit the securities regulatory regime, and, crucially, causes predominately retail investors to lose securities law protections for secondary transactions even in assets that once were deemed securities.¹⁴ Whether in an interpretive release or codified in market structure legislation as contemplated by Congress, this leaves investors unprotected and without certainty as to whether their investments are covered by the securities laws, and contradicts conclusions reached by many courts.¹⁵

The Commission also outlines the conditions that may cause the asset to cease to be a security.¹⁶ Central to the *Howey* analysis is whether an investor has the reasonable expectation of profits from the efforts of others.¹⁷ Troublingly, the Commission provides that issuers may cease to have obligations under securities laws simply by failing to fulfill their promises to investors or announcing they will no longer perform promised managerial efforts, so that investors no longer have a “reasonable expectation of profit.”¹⁸ In addition to stretching the *Howey* test beyond recognition, this analysis creates a roadmap to escape securities regulation and perverse

⁸ *Id.*

⁹ Release at 38, 52, 54, 60.

¹⁰ Statement by SEC Commissioner Caroline Crenshaw, “Response to Staff Statement on Meme Coins: What Does it Meme?” February 27, 2025, <https://www.sec.gov/newsroom/speeches-statements/crenshaw-response-staff-statement-meme-coins-022725>.

¹¹ *See, e.g.*, The SEC charged Kraken with failure to register the offer or sale of their crypto asset staking-as-a-service program. To settle the charges, two Kraken entities agreed to immediately cease offering or selling securities through the staking program and pay \$30 million. <https://www.sec.gov/newsroom/press-releases/2023-25>.

¹² *See, e.g.*, Treatment of “free stock” cases during the dot-com boom, in which the SEC took the position that, although investors did not pay money in exchange for shares, issuers received value from signing up for issuers’ websites and disclosure of personal information, and the distributions therefore constituted sales of securities for purposes of the securities laws.

¹³ Release at 13, 24.

¹⁴ Release at 27.

¹⁵ *See, e.g.*, Sec. & Exch. Comm’n v. Terraform Labs Pte. Ltd., No. 23-CV-1346 (JSR), 2023 WL 4858299 (S.D.N.Y. July 31, 2023) at 41 (“*Howey* makes no such distinction between purchasers. And it makes good sense that it did not. That a purchaser bought the coins directly from the defendants or, instead, in a secondary resale transaction has no impact on whether a reasonable individual would objectively view the defendants’ actions and statements as evincing a promise of profits based on their efforts...Simply put, secondary-market purchasers had every bit as good a reason to believe that the defendants would take their capital contributions and use it to generate profits on their behalf.”)

¹⁶ Release at 24.

¹⁷ SEC v. W.J. Howey Co. et al., 328 U.S. 293.

¹⁸ Release at 28.

incentives for issuers to renege on their promises to investors, allowing them to escape securities regulation simply by offering a disclaimer.

In practice, this means that, so long as the crypto industry disguises securities in one of the many products that the Commission has just categorically exempted, investors would lose protections of the securities laws. In these situations, the Commission—and injured investors—would no longer be able to enforce rules that have been built up over nearly a century to allow investors to make informed decisions with their money by requiring accurate and timely disclosures, protect against scams, prevent conflicts of interest, and guard market integrity. The Release limits accountability not just for issuers of securities, but also for other market participants, such as investment advisers and insiders. The SEC should not abdicate its responsibility to hold bad actors to account for misconduct involving securities simply because investment products are wrapped in crypto technology.

The SEC’s Release—which was issued without going through a public notice-and-comment rulemaking process, despite your proclamation that the SEC was “returning rulemaking to regular order”¹⁹—would also leave much of the Trump family’s cryptocurrency empire outside regulatory oversight, allowing the President to continue to profit off of his crypto schemes at the expense of the public. The Trump family’s wealth is increasingly tied to crypto, with crypto holdings adding some \$1.4 billion to their net worth over the last year.²⁰ As has been publicly reported, the “Trump family’s crypto initiatives span several categories that, under Atkins’s ‘token taxonomy’, would be exempt from SEC oversight,” and loosening the regulatory and disclosure requirements for crypto “may spur additional institutional financial interest in crypto-based activities—market shifts that may be a boon to the Trump family’s various crypto projects.”²¹ Under the system designed by the Commission in the Release, the Trump family may, for instance, bypass a facts-and-circumstances analysis of whether the securities laws apply simply by labeling a product like \$TRUMP a “memecoin.” Just as certainly as investors will be harmed as the Commission works to provide special treatment for crypto, the Trump family’s holdings will be boosted by these favorable regulatory developments.

Nor does this appear to be the last step you are planning to take to deliver for the crypto industry, at the expense of the broader public. Indeed, in remarks to the DC Blockchain Summit earlier this month, you have promised the interpretive release “amounts to a beginning, not an end.”²² You outlined a “startup exemption” and a “fundraising exemption” that would allow some crypto companies to raise tens of millions of dollars from investors over several years without having to register with the SEC.²³ And you said you would like the SEC to consider an “investment

¹⁹ Testimony by SEC Chairman Paul Atkins before the United States House Appropriations Subcommittee on Financial Services and General Government, May 20, 2025, <https://www.sec.gov/newsroom/speeches-statements/atkins-testimony-fsgg-052025>.

²⁰ Bloomberg, “Trump Family’s \$6.8 billion Fortune Is Increasingly Tied to Crypto,” Annie Massa and Tom Maloney, January 20, 2026, <https://www.bloomberg.com/news/features/2026-01-20/donald-trump-family-net-worth-increasingly-comes-from-crypto>.

²¹ The Guardian, “New Crypto Regulations Likely To Be Big Favor to the Trump Family, Industry Insiders Say,” Adam Willems, March 22, 2026, <https://www.theguardian.com/technology/2026/mar/22/sec-crypto-regulations-trump-family>.

²² Speech by SEC Chairman Paul S. Atkins, “Regulation Crypto Assets: A Token Safe Harbor,” March 17, 2026, <https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-regulation-crypto-assets-031726>.

²³ *Id.*

contract safe harbor” from the definition of “security” for some crypto assets.²⁴ And the SEC has now submitted a draft proposal to the White House for review and approval.²⁵

As SEC Chairman, you have made clear that you intend to provide “crypto innovators [with] bespoke pathways to raise capital in the U.S.”²⁶ and make America the “crypto capital of the world.”²⁷ It appears that you plan to work towards this goal by exempting most cryptocurrencies from the securities laws—with significant potential harm to implications for investors and our financial markets. Citadel Securities, a leading traditional securities firm, submitted a letter detailing its concerns with this approach, highlighting the logical inconsistencies of treating intermediaries in tokenized securities differently from traditional intermediaries, and warning of risks to investors of granting broad exemptive relief from compliance obligations applicable to crypto market participants serving in these functions. It warned that the broad exemptive relief sought by the crypto industry could introduce “a host of potential cybersecurity risks,” “illicit protocols” that “harm investors,” “flash crashes and other bouts of severe volatility,” and other “fundamental” issues that include “far too many investor protection concerns.”²⁸ But the Blockchain Association, representing the crypto industry, responded by downplaying these concerns,²⁹ raising fresh questions about whether the SEC plans to take seriously the risks posed by tokenization.³⁰

In light of these developments, reflected in both the Release and also the ongoing tokenization debate between the crypto industry and traditional market players—which centers on whether crypto securities will be broadly exempted from the SEC’s rules—and to ensure that American investors receive the full protections of securities laws for their investments in securities, no matter the technological wrapper, we request responses to the following questions by May 8, 2026:

1. Please preserve and provide copies of all records and communications between any employee of the SEC and any employee of the White House regarding the contents of “Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets,” including any discussions of crypto asset taxonomy.
2. Please preserve and provide copies of all records and communications between any employee of the SEC and President Donald Trump regarding the contents of “Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets,” including any discussions of crypto asset taxonomy.

²⁴ *Id.*

²⁵ Yahoo Finance, “SEC Crypto Safe Harbor Proposal Moves to White House,” Alex Ioannou, April 7, 2026, <https://finance.yahoo.com/markets/crypto/articles/sec-crypto-safe-harbor-proposal-150340648.html>.

²⁶ *Supra* note 22.

²⁷ Speech by SEC Chairman Paul S. Atkins, “American Leadership in the Digital Finance Revolution,” July 31, 2025, <https://www.sec.gov/newsroom/speeches-statements/atkins-digital-finance-revolution-073125>.

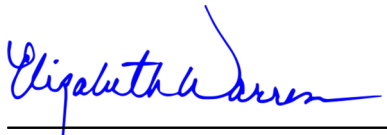
²⁸ *Supra* note 3.

²⁹ *Supra* note 2.

³⁰ *Id.*

3. Please preserve and provide copies of all records and communications between any employee of the SEC and any employee, or any individual operating on behalf of, President Trump's immediate family members regarding the contents of "Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets," including any discussions of crypto asset taxonomy.
4. Please preserve and provide copies of all records and communications between any employee of the SEC and any employee, or any individual operating on behalf of, World Liberty Financial regarding the contents of "Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets," including any discussions of crypto asset taxonomy.
5. What discussions, if any, occurred among SEC employees regarding whether the conclusions reached in "Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets" should have been set forth in an Administrative Procedure Act-compliant rulemaking? Provide copies of any analyses conducted by the Commission, Commissioners, or staff regarding the applicability of the Administrative Procedure Act to the Release. If no such analyses exist, please explain why not.
6. What specific policies, procedures, or other rules has the SEC put in place to prevent President Trump's unprecedented financial ties to the crypto industry from influencing or guiding the SEC's decisions surrounding crypto policies, rules, and guidance? Please provide copies of any written procedures or policies. If no such policies exist, why not?
7. Does the SEC intend to report this Release to Congress as a rule under the Congressional Review Act?

Sincerely,



Elizabeth Warren
Ranking Member
Committee on Banking,
Housing, and Urban Affairs



Chris Van Hollen
United States Senator