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September 3, 2025

By Email

Chairman Paul S. Atkins
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-0213

Commissioner Hester M. Peirce
Chair of the SEC Crypto Task Force
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-0213

RE: Ava Labs Proposal Concerning a Regulatory Framework for Protocol Tokens

Dear Chairman Atkins, Commissioner Peirce, and Members of the SEC Crypto Task Force:

Our client Ava Labs, Inc., together with its Owl Explains project (collectively, "Ava Labs"), submits this comment letter to the Securities and Exchange Commission (the "SEC" or "Commission") Crypto Task Force in continuation of the ideas and legal analysis in our April 23[1] and May 27, 2025[2] submissions. The aim for this submission is to provide a practical framework for the Commission to regulate activities related to protocol tokens, including those of intermediaries under the SEC's jurisdiction, ensuring protection of all stakeholders while preserving innovation and U.S. leadership. This framework accepts the challenge implicit in Chairman Atkins' remarks in *American Leadership in the Digital Finance Revolution*, the work of the Crypto Task Force,[3] the Staff of the SEC and the Commodity Futures Trading Commission's

[1] *See* Lilya Tessler, Sidley Austin LLP on behalf of Ava Labs, Inc. and Owl Explains, *RE: Asset-Based Classification; Decentralization; Regulatory Status of Technology Functions; Treatment of Infrastructure Providers*, U.S. Sec. and Exch. Comm'n (Apr. 23, 2025), https://www.sec.gov/files/ctf-written-sidley-austin-ava-labs-04232025.pdf [hereinafter, the "April Submission"].

[2] *See* Lilya Tessler, Sidley Austin LLP on behalf of Ava Labs, Inc. and Owl Explains, *RE: Supplemental Submission Proposing a Nature of the Activity Test to Determine Whether Infrastructure Providers Need to Register as Securities Intermediaries*, U.S. Sec. and Exch. Comm'n (May 27, 2025), https://www.sec.gov/files/sidley-austin-behalf-ava-labs-052725.pdf [hereinafter, the "May Submission"].

[3] *See Crypto Task Force*, U.S. Sec. and Exch. Comm'n, https://www.sec.gov/about/crypto-task-force (last visited on Sept. 2, 2025).

("CFTC") cross-agency initiative in furtherance of Project Crypto and Crypto Sprint,[4] and the mandate of the President's Working Group on Digital Asset Markets[5] to propose the regulatory means by which the Commission can fulfill its responsibility to calibrate its posture so that innovation is met with "thoughtfulness rather than fear."[6] Ava Labs believes the best way to accomplish this important mandate is through a forward-looking, workable approach that leverages the many merits of existing laws and SEC-regulated intermediaries, with appropriate modifications for new systems and functionality. The framework achieves this balance by recognizing that protocol tokens are a new asset type that, like other SEC-regulated assets, are traded and custodied electronically, such that only incremental changes are needed to keep America at the forefront of the digital asset revolution.

Herein, Ava Labs respectfully offers a framework for regulation of (i) the offer and sale of "protocol tokens"—i.e., those tokens that are integral to the functioning of protocols, whether blockchain, smart contract, or otherwise; and (ii) securities intermediaries that support protocol tokens. The proposal sets forth new proposed regulations and amendments to existing regulations that recognize protocol tokens do not fit neatly into the existing definitions of "securities" or "commodities," and outlines a clear and practical path forward that treats protocol tokens as a distinct type of electronic asset while weaving them into existing regulatory structures.

I. Background

Ava Labs is a Brooklyn-based technology company formed in 2018, with the aim of advancing blockchain and related technologies in order to foster greater adoption of this new database layer of the internet.[7] Ava Labs' founder and CEO, the Cornell computer scientist Dr. Emin Gün Sirer, has spent much of his career developing, building, and implementing distributed systems and blockchain protocols. His testimony before the House Financial Services

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[4] *See* Staff of SEC and CFTC, *SEC-CFTC Joint Staff Statement (Project Crypto-Crypto Sprint)*, U.S. Sec. and Exch. Comm'n (Sept. 2, 2025), https://www.sec.gov/newsroom/speeches-statements/sec-cftc-project-crypto-090225.

[5] *See Fact Sheet: The President's Working Group on Digital Asset Markets Releases Recommendations to Strengthen American Leadership in Digital Financial Technology*, The White House, https://www.whitehouse.gov/fact-sheets/2025/07/fact-sheet-the-presidents-working-group-on-digital-asset-markets-releases-recommendations-to-strengthen-american-leadership-in-digital-financial-technology/ (last visited on Sept. 2, 2025).

[6] *See* Comm'r Atkins, *American Leadership in the Digital Finance Revolution*, U.S. Sec. and Exch. Comm'n (July 31, 2025), https://www.sec.gov/newsroom/speeches-statements/atkins-digital-finance-revolution-073125.

[7] Owl Explains is a project created by the legal team at Ava Labs with the goal of becoming a trusted educational resource for regulators, policymakers, and other stakeholders interested in learning about blockchain technology, cryptoassets, and Web3. Owl Explains also collaborates with academics to give greater exposure to the research being done on these topics, including through its podcast series with CBER forum.

Committee in 2023 provides background for the technology and several of the themes and concepts discussed below.[8]

Ava Labs focuses its efforts on the Avalanche blockchain technology, which is one of the most innovative blockchain technologies available due to its speed to finality and the ability of users to build customized blockchains for virtually any use case, including those that have strict compliance requirements or rulesets. The Avalanche Primary Network was launched by a diversified group of validators in September 2020, bringing its novel consensus mechanism and the ability to create compliant blockchains to the world. The Avalanche Primary Network is powered by the proof-of-stake[9] based Avalanche consensus[10] and is secured by a distributed set of independently operated validators located around the globe who secure the network and authenticate transactions. The native token of the Avalanche Primary Network is AVAX, which serves as the unit of account and means by which resources are allocated on the network through, among other things, paying "gas" and other fees and staking to operate validator nodes.

The Avalanche protocol also affords users the ability to build interoperable, custom layer-1 blockchains,[11] integrating compliance needs with bespoke programming for any use case and integration into any tech stack. This capability makes Avalanche a network of blockchains, rather than a single chain.

To date, the network has not only been used to process multitudes of transactions, but also to launch and operate all sorts of projects, as detailed in our April Submission[12] and Appendix A to this letter.

II. Considerations Related to SEC and CFTC Jurisdiction

In crafting and implementing regulation of digital assets, it is critical to maintain the integrity of the federal securities[13] and commodities laws.[14] Each of these regulatory regimes was

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[8] *See The Future of Digital Assets: Providing Clarity for the Digital Asset Ecosystem*, House Comm. on Fin. Serv. (June 13, 2023), https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=408851.

[9] *See Team Rocket, et al*., *Scalable and Probabilistic Leaderless BFT Consensus through Metastability* (Aug. 24, 2020), https://cdn.prod.website-files.com/6009805681b416f34dcae012_Avalanche Consensus Whitepaper.pdf.

[10] *Id.*

[11] *See Avalanche L1s*, Avalanche, https://build.avax.network/docs/avalanche-l1s.

[12] *See* Tessler, *supra* note 1.

[13] The Securities Act of 1933, 15 U.S.C. § 77a et seq. [hereinafter, the "Securities Act"]; the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq. [hereinafter, the "Exchange Act"]; the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 et seq. [hereinafter, the "Investment Company Act"]; and the Investment Advisors Act of 1940, 15 U.S.C. §§ 80b-1 et seq. [hereinafter, the "Investment Advisors Act"] (together, the "Securities Laws").

[14] Namely, the Commodity Exchange Act (CEA), 7 U.S.C. § 1 et seq. [hereinafter, the "CEA"].

structured to bring only certain types of instruments and transactions within their scope, in furtherance of well-defined regulatory purposes. Consistent with that design, Ava Labs believes it is best for the Securities Laws to remain centered on securities, and for the commodities laws to remain centered on commodities and commodity interests.

While this important principle has generally been accepted, a critical question remains unanswered: how should digital assets be classified? Ava Labs has long emphasized the importance of classification, because blockchains allow for the digital representation of virtually anything. Ava Labs' April Submission to the Crypto Task Force[15] explained how important the nature of an asset is in classifying tokens and set forth five high-level categories of tokens based on asset type:

- **Physical asset tokens**: Any digital representation of a tangible asset (e.g., gold coins, Air Jordans, cups of coffee vs. coffee cups) created and maintained on a blockchain (also known as "DLT" for distributed ledger technology).
- **Services tokens**: Any digital representation of services (e.g., cleaning services, personal performances vs. concert tickets, legal services) to be provided by one or more person(s)/entity(ies) to other person(s)/entity(ies).
- **Intangible asset tokens**: Any digital representation of intangible assets (e.g., bonds, intellectual property rights, government benefits, loyalty points programs).
    - **Security tokens**: A subset of intangible asset tokens representing any asset that meets the definition of a "security" under the Securities Laws.
- **Native DLT tokens**:[16] A category of tokens that are integral to the functioning of a blockchain protocol. Native DLT tokens have no existence or purpose without the associated protocol. These are within the grouping "Protocol Tokens" as defined below. As outlined in our April 23 submission, Native DLT tokens are not investment contracts.[17]

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[15] *See* Tessler, *supra* note 1.

[16] "A native token is the primary digital asset and currency of a specific blockchain. It is essential for the blockchain's operations. Native tokens facilitate transactions and pay for transaction fees. They also reward miners or validators who secure the blockchain. Unlike non-native tokens, native tokens are integral to the blockchain's core functions… [and] are created directly on their respective blockchains. They are essential for the blockchain's operations." *Native Token*, CoinAPI.io, https://www.coinapi.io/learn/glossary/native-token.

[17] *See* Lee Schneider, *Oranges Are Not Securities And Neither is SOL*, Crowdfund Insider (Jul. 12, 2022), https://www.crowdfundinsider.com/2022/07/193572-oranges-are-not-securities-and-neither-is-sol/.

- **Stablecoins**: A narrow category of tokens designed to maintain stable value against some underlying reference or linked asset or pool/basket of assets, usually fiat currencies.[18]

From this classification methodology, many of the jurisdictional issues fall away because the nature of most assets that are tokenized on blockchains are self-evident. The Native DLT token classification, however, has been the area of great debate amongst commentators, regulators, and courts. Lately, Ava Labs has used the term "protocol tokens" as inclusive of Native DLT tokens. Protocol tokens are the tokens integral to the functioning of any type of protocol or network, whether a layer 1 or layer 2 blockchain, a smart contract, a restaking protocol, or otherwise (hereinafter, "Protocol Tokens").[19] The Protocol Token designation has the benefit of being technology neutral in the event new technologies are developed that utilize an integral token.

III. Regulatory Framework for Protocol Tokens

Protocol Tokens represent a new type of asset that, depending on the circumstances, does not fit comfortably within the existing statutory definitions of either "securities" or "commodities." This ambiguity has generated significant legal uncertainty and inefficiency for innovators, users, consumers, investors, market participants, and regulators alike.

To resolve these issues, Ava Labs proposes that the Commission utilize its authority under the Securities Laws to engage in a formal rulemaking process as outlined herein, to establish regulations for Protocol Tokens focused on the persons engaged in the distribution, brokerage, trading, clearing, settling, or custodying of Protocol Tokens at various stages. Such regulatory action should recognize a distinction between two categories of Protocol Tokens: (i) Pre-Functionality Protocol Tokens and (ii) functional Protocol Tokens.[20] "Pre-Functionality" refers to

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[18] SEC Div. of Corp. Fin., *Statement on Stablecoins*, U.S. Sec. and Exch. Comm'n (Apr. 4, 2025), https://www.sec.gov/newsroom/speeches-statements/statement-stablecoins-040425. Certain stablecoins are now regulated under the GENIUS Act. *See* Pub. L. No. 119-27, 139 Stat. 419 (2025).

[19] "Protocol Token" is defined as follows:

> "The term 'protocol token' means an intangible, commercially fungible asset, that is integral to the functioning of a protocol, whether that protocol is a distributed ledger, blockchain, smart contract or other type of software protocol."

This term should not include any asset that confers upon its owner any of the following rights in a person: (i) a debt or equity interest in that person; (ii) liquidation rights with respect to that person; or (iii) an entitlement to an interest, dividend, distribution, or other similar payment from that person.

[20] *See* also Comm'r Peirce, *New Paradigm: Remarks at SEC Speaks*, U.S. Sec. and Exch. Comm'n (May 19, 2025) https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-sec-speaks-051925-new-paradigm-remarks-sec-speaks (noting that "even if a broad swath of the crypto assets trading in secondary markets today were initially offered and sold subject to an investment contract, they clearly are no longer bought and sold in securities transactions. **Many of these crypto assets are functional**. With respect to others, purchasers no longer reasonably expect any business entity or other promisor to perform essential managerial efforts with respect to the crypto asset. In other

the state in which a Protocol Token and its underlying protocol are not fully programmed with the technical features that make it integral to the protocol's operation, and before the protocol and associated token is deployed for live use. In this context, the term "functional" refers to a Protocol Token or its corresponding protocol when, and after, they are programmed with the technical functionality to be integral to the functioning of a protocol, and the protocol has been deployed such that users may use the protocol and the Protocol Token for their intended purposes on a live network.[21]

For the avoidance of doubt—Protocol Tokens should not be deemed securities, whether Pre-Functionality or not.[22] That being said, offers and sales of Pre-Functionality Protocol Tokens have often been called "capital raisings" and "investment contracts." By contrast, there has been broader agreement that functional Protocol Tokens fall more comfortably within the definition of a "commodity."[23]

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words, the crypto asset's value is intrinsically linked to something other than rights or an interest with respect to a business entity or other promisor. These assets are not themselves securities, nor are they any longer part of an investment contract, even if they once were.") (emphasis added).

[21] The terms "Pre-Functionality" and "Functional," with respect to Protocol Tokens are defined as follows:

> "(i) Pre-Functionality.—The term 'pre-functionality,' when used in connection with a 'protocol token' or its corresponding protocol, refers to the state of a 'protocol token' or its corresponding protocol prior to the token and the protocol being programmed with the technical functionality to be integral to the functioning of a protocol and the protocol being deployed such that users may use the protocol and the protocol token for their intended purposes on a live network; and
>
> (ii) Functional.—The term 'functional,' when used in connection with a 'protocol token' or its corresponding protocol, refers to the state of a 'protocol token' or its corresponding protocol when, and after they are programmed with the technical functionality to be integral to the functioning of a protocol and the protocol being deployed such that users may use the protocol and the protocol token for their intended purposes on a live network."

[22] The SEC has repeatedly agreed that digital assets do not constitute securities. In a Motion for Leave to Amend its Complaint in *SEC v. Binance Holdings*, the SEC expressly clarified that it "regrets any confusion it may have invited" with its use of the term "crypto asset securities," and has abandoned the term because it is "not referring to the crypto asset itself as the security." *See* SEC Memorandum of Law in Support of Motion for Leave to Amend Complaint, 1:23-cv-01599 at 24 n.6 (D.D.C. Sept. 12, 2024). Federal courts taking up the question of whether a crypto asset constitutes a security have come to the same conclusion: tokens themselves are not securities. *See SEC v. Telegram Grp. Inc.*, 448 F. Supp. 3d 352, 379 (S.D.N.Y. 2020) (ruling that the token at issue in that case, on its own, is "little more than [an] alphanumeric cryptographic sequence."); *SEC v. Ripple Labs, Inc.*, 682 F. Supp. 3d 308, 324 (S.D.N.Y. 2023) (concluding that "a digital token, is not in and of itself a 'contract, transaction[,] or scheme' that embodies the *Howey* requirements of an investment contract").

[23] Under the CEA, the term "commodity" is defined broadly to include not only traditional agricultural products but also virtually any tangible or intangible good, article, service, right, or interest that is or could be the subject of a futures contract, with a few express exclusions (i.e., onions and motion picture box office receipts and related indexes). *See* 7 U.S.C. § 1a(9). The CFTC has consistently taken the position—and several federal courts have agreed—that many digital assets, including Bitcoin (BTC) and Ether (ETH), fall within this definition and are properly characterized as commodities. *See, e.g.*, Release No. 7820-18, *Federal Court Finds that Virtual Currencies Are Commodities*,

From these concepts, the framework for regulation can readily be devised. It consists of two parts: (i) regulation of the ***distribution*** of Pre-Functionality Protocol Tokens and (ii) regulation of SEC-registered intermediaries conducting activities in Protocol Tokens. Each is addressed in more detail below.

A. Proposed Rulemaking for Offers and Sales of Pre-Functionality Protocol Tokens

The Commission should engage in rulemaking, conducted via the SEC's authority under the Securities Laws, with respect to offers and sales of Pre-Functionality Protocol Tokens that (i) codifies the definition of "investment contract"; (ii) includes a rebuttable presumption that offers and sales of Pre-Functionality Protocol Tokens meet the definition of investment contract; and (iii) recognizes that offers and sales of Pre-Functionality Protocol Tokens may rely on existing exemptions to the Securities Laws, or the new exemption, set forth below.[24]

1. Defining Investment Contract

This rulemaking should define the term "investment contract" as "an express agreement between a seller and buyer that provides for the investment of money in a common enterprise with a reasonable expectation of profits solely from the undeniably significant managerial or entrepreneurial efforts of the seller." This definition starts with the basic articulation from *Howey*[25] and adds modifications based on prevailing Supreme Court case law and other precedent. By reviving the word "solely" from the original *Howey* test and requiring an express agreement, this definition provides greater certainty about the "who" and the "what" of the investment contract.[26] This more precise "investment contract" would provide the basis for a workable regulatory framework for the offer and sale of various investment contracts, including distributions of Pre-Functionality Protocol Tokens.

The rulemaking should also provide clear exclusions from investment contract that codify the SEC's existing guidance[27] related to stablecoins, memecoins, Proof-of-Work, Proof-of-Stake,

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Commodity Futures Trading Comm'n (Oct. 3, 2018), https://www.cftc.gov/PressRoom/PressReleases/7820-18; *Testimony of Chairman Rostin Behnam: U.S. House Committee on Agriculture*, Commodity Futures Trading Comm'n (Mar. 6, 2024), https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam42. *See also supra* note 19.

[24] Ava Labs has already submitted a comment letter to the CFTC on how its jurisdiction might work with respect to the spot trading of Protocol Tokens through CFTC-regulated entities, with Pre-Functionality Protocol Tokens excluded. Kate Lashley and Lilya Tessler, Sidley Austin LLP on behalf of Ava Labs, Inc. and Owl Explains, *Ava Labs Comment on CFTC Request for Input on Listing of Spot Crypto Asset Contracts*, Commodity Futures Trading Comm'n (Aug. 21, 2025), https://comments.cftc.gov/Handlers/PdfHandler.ashx?id=35717.

[25] *See SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) [hereinafter, "*Howey*"].

[26] *See Howey* at 301.

[27] *See* SEC Div. of Corp. Fin., *Staff Statement on Meme Coins*, U.S. Sec. and Exch. Comm'n (Feb. 27, 2025), https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme-coins ("A meme coin does not constitute

and liquid staking as well as for other transactions and activities using Protocol Tokens, including those that involve Technology Functions, as discussed in our April Submission.[28] The foregoing is also consistent with existing case law.[29]

2. Offers and Sales of Pre-Functionality Protocol Tokens

Under the new rules, the offer and sale of Pre-Functionality Protocol Tokens would be ***presumed*** to be an investment contract subject to SEC jurisdiction.[30] The presumption would be rebuttable such that a party may seek relief from the Commission if it believes the distribution is not an investment contract. The Commission would have time limits in which to respond to such a request.

The new rulemaking should recognize that offers and sales of Pre-Functionality Tokens may not have an issuer in the classical sense, but rather, a distributor of the Pre-Functionality Protocol Tokens (the "Pre-Functionality Distributor"). The Commission's rulemaking should

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any of the common financial instruments specifically enumerated in the definition of 'security' because, among other things, it does not generate a yield or convey rights to future income, profits, or assets of a business. In other words, a meme coin is not itself a security[.] . . . The offer and sale of meme coins does not involve an investment in an enterprise nor is it undertaken with a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others."); SEC Div. of Corp. Fin., *Statement on Certain Proof-of-Work Mining Activities*, U.S. Sec. and Exch. Comm'n (Mar. 20, 2025), https://www.sec.gov/newsroom/speeches-statements/statement-certain-proof-work-mining-activities-032025; SEC Div. of Corp. Fin., *Statement on Stablecoins*, U.S. Sec. and Exch. Comm'n (Apr. 4, 2025), https://www.sec.gov/newsroom/speeches-statements/statement-stablecoins-040425; SEC Div. of Corp. Fin., *Statement on Certain Protocol Staking Activities*, U.S. Sec. and Exch. Comm'n (May 29, 2025), https://www.sec.gov/newsroom/speeches-statements/statement-certain-protocol-staking-activities-052925; SEC Div. of Corp. Fin., *Statement on Certain Liquid Staking Activities*, U.S. Sec. and Exch. Comm'n (Aug. 5, 2025), https://www.sec.gov/newsroom/speeches-statements/corpfin-certain-liquid-staking-activities-080525.

[28] *See* Tessler, *supra* note 1, at 8–9. Technology Functions should not implicate the Securities Laws because they involve the intrinsic technical use of tokens within a protocol. These functions are essential operational activities that sustain network security and functionality, and thus fall outside the scope of securities regulation. Examples of these Technology Functions include but are not limited to: staking tokens and operating a validator node or delegating tokens to a validator; receiving or distributing staking rewards in connection with validating transactions and/or securing the protocol; locking tokens (e.g., in a smart contract), including wrapping, bridging, and staking; minting and burning tokens; payments of transaction or other fees on the protocol; other participation in the operation or testing of the protocol; claiming or otherwise receiving tokens through an airdrop or similar mechanism; and sending, receiving, or otherwise transferring tokens on the protocol for any related purposes.

[29] *See United Housing Foundation, Inc. v. Forman*, 421 U.S. 837 (1975). As noted in *Forman*, when purchasers are motivated by consumption or use—such as securing housing, or here, access to and operation of a protocol—rather than by the prospect of profit, the instruments in question are not securities.

[30] This jurisdiction would include the SEC's authority with respect to scienter-based claims under Section 17(a) of the Securities Act.

expressly define the Pre-Functionality Distributor to include any person that (whether directly or through one or more subsidiary or controlled entities):

i. is a software developer(s) who offers, sells, or distributes the Pre-Functionality Protocol Tokens;

ii. is not the software developer but otherwise offers, sells, or distributes Pre-Functionality Protocol Tokens, whether or not in coordination with the developer;

iii. buys Protocol Tokens from a person described in (i) or (ii) and then offers, sells, or distributes the Pre-Functionality Protocol Tokens;

iv. offers or sells warrants or other rights or options to buy Pre-Functionality Protocol Tokens; or

v. shares in the proceeds from any offer and sale of Pre-Functionality Protocol Tokens.[31]

Having established the framework for identifying and defining Pre-Functionality Distributors, the rulemaking would next address the regulatory pathways available to them, including reliance on existing exemptions and the creation of a new, tailored exemption regime.

3. Exemptions and Registration

For those transactions that do not overcome the rebuttable presumption, the Commission's rulemaking should expressly allow for Pre-Functionality Distributors to rely on established exemptions from registration under the Securities Act (e.g., Regulation D and Regulation S). In addition to the existing exemptions, rulemaking should create a new exemption from registration for offers and sales of Pre-Functionality Protocol Tokens ("Regulation PT") that would exempt from registration any offer or sale that does not exceed the greater of $50 million or 10% of the total dollar value of the outstanding tokens as of the date of the offer or sale. This proposed

[31] Pre-Functionality Distributors should exclude all of the following: (i) a development stage company that has no specific business plan or purpose, or has indicated that the business plan of the company is to merge with or acquire an unidentified company; (ii) an investment company, as defined in Section 3 of the Investment Company Act of 1940 (15 U.S.C. § 80a-3), or excluded from the definition of the term "investment company" by subsection (b) or (c) of such Section 3, provided that a pre-functionality distributor shall not be deemed to be an investment company solely by virtue of investing, reinvesting, owning, holding, or trading protocol tokens, including protocol tokens offered for sale by the pre-functionality distributor; (iii) a person issuing fractional undivided interests in other commodities; (iv) a person that is or has been subject to any order of the SEC entered pursuant to Section 12(j) of the Securities Exchange Act of 1934 (15 U.S.C. § 781(j)) after the adoption of any new rule defining the concept of a Pre-Functionality Distributor and during the five-year period preceding the offer and sale; or (v) a person that is or has been disqualified pursuant to Section 230.506(d) of Title 17, Code of Federal Regulations, or any successor regulation, unless waived by order of the SEC. These exclusions align with the Responsible Financial Innovation Act, as well as the fact that the SEC has a separate registration process for each of these entities.

exemption draws from the framework set forth in the Senate Banking Committee's draft of the Responsible Financial Innovation Act ("RFIA") and may require adjustment to remain consistent with any future legislation that provides alternative standards and definitions.[32]

In order to rely on the Regulation PT exemption, the Pre-Functionality Distributor must undertake the following:

- **Disclosure Obligations**:[33] Create a disclosures document with the items outlined below and make it publicly available via a website. These disclosures would be updated at least once every six months. The obligation to provide these disclosures would terminate one year after the date on which the Pre-Functionality Distributor determines that the Protocol Token ***and*** the associated protocol is functional. To the extent material and applicable, the disclosures should include:[34]
    - **Network Information**: Core purpose, architecture, consensus mechanisms, transaction validation processes, security features, and key performance metrics such as throughput and block times.
    - **Token Information**: Creation and distribution methods, token roles within and outside the network, governance rights, staking mechanisms, and any risks or future functionality.
    - **Governance**: Voting structures, quorum rules, governing bodies or foundations, and risks associated with governance models.
    - **Governance Arrangements**: Information on entities or individuals with significant influence, including ownership of more than 5% of the supply, treasury holdings, and intended uses.

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[32] Senate Comm. on Banking, Hous. and Urban Affs., *Responsible Financial Innovation Act of 2025*, S. Discussion Draft, 119th Cong., §102(b)(1) (July 22, 2025) available at https://www.banking.senate.gov/imo/media/doc/senate_banking_committee_digital_asset_market_structure_legislation_discussion_draft.pdf. The framework in the draft bill currently sets the limit for this exemption at $75 million in gross proceeds per calendar year for a period of no longer than four years or 10% of the total dollar value of the outstanding assets as of the date of the offer or sale.

[33] Any offer, sale, or distribution of Pre-Functionality Protocol Tokens should be subject to specified and periodic disclosure obligations, unless the aggregate value raised is less than $5 million during the initial 12-month period following the date of the first offer, sale, or distribution.

[34] *See* Sidley-Rutgers FinTech and Blockchain Symposium, *Proposed U.S. Disclosure Guidelines for a Particular Category of Tokens* (May 3, 2024), https://www.sidley.com/en/-/media/uploads/mn23267-fintech-and-blockchain-symposium--token-standardized-disclosures-document_fnl.pdf.

- **Technology**: Codebase maintenance, authority over upgrades, and risks from bugs or vulnerabilities.

- **Material Participants**: Identification of founders, developers, validators, or governance leaders, including their token holdings and any restrictions on transfer.

- **Token Supply and Vesting**: Total and circulating supply, issuance schedule, inflation/deflation mechanics, and vesting or lock-up agreements.

- **Additional Metrics**: Initial distribution details, airdrops, reward mechanisms, testnet usage data, and any ties between token value and company financial performance.

- **Risk Factors**: All material legal, regulatory, technical, market, and governance risks, including cybersecurity threats and price volatility.

- **Purchaser Agreements**: Document each sale in a written purchase agreement that incorporates the required public disclosures by reference. These agreements must also specify the seller's responsibilities and prohibit disclaimers of liability for fraud, gross negligence, or willful misconduct. Where different purchasers are offered different agreements—for example, reflecting varied terms or pricing—the differences must be disclosed publicly so that all parties can evaluate the fairness of the offering.

- **Filing with Commission**: File a notice, similar to Form D, within 30 days of first commencing the offer and sale of Pre-Functionality Protocol Tokens to notify the Commission that it is relying on Regulation PT as an exemption from registration and including links to the disclosures and a copy of the form of purchaser agreement.

- **AML/KYC/Sanctions Checks**: Implement procedures to ensure that purchasers undergo KYC/AML and sanctions compliance checks to prevent bad actors from participating in the offers and sales of Pre-Functionality Protocol Tokens.

In addition to this initial rulemaking, the Commission should consider a second rulemaking that would clear a path to public offerings of Pre-Functionality Protocol Tokens and investment contracts (under the more precise definition) more broadly.

B. Regulation of Intermediaries Conducting Protocol Token Activities

The Commission should use its existing authority to update and tailor its rules so that SEC-registered intermediaries—broker-dealers, alternative trading systems ("ATSs"),[35] national securities exchanges ("NSEs"),[36] and clearing agencies—can lawfully and effectively support transactions in Protocol Tokens.[37] Self-regulatory organizations ("SROs") under the Commission's oversight should likewise be directed to adopt, amend, and enforce rules specific to Protocol Token activities for their members, ensuring that these activities are supervised consistently with the standards applied to such intermediaries in securities transactions and markets.

1. Existing Rules Apply to Broker-Dealers

The existing rules and regulations promulgated under the Exchange Act[38] permit SEC-registered broker-dealers to effect transactions in both securities and spot commodities. These rules and regulations can easily be extended by the Commission to include Protocol Tokens, an additional category of electronically traded and custodied assets (although the existing spot commodities power is probably sufficient). Accordingly, an expansion of the existing regulatory framework rather than creating an entirely new regime would allow broker-dealers to conduct Protocol Token activities within a well-established and familiar compliance structure.

2. Rule Amendments for NSEs, ATSs, and Clearing Agencies

The Commission's regulatory framework governing trading venues—namely, NSEs[39] and ATSs[40]—provide a robust foundation for regulating trading activities but are at present limited to

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[35] *See* Regulation of Exchanges and Alternative Trading Systems, Exchange Act Release No. 34-40760, 63 Fed. Reg. 70,844 (Dec. 22, 1998) (codified at 17 C.F.R. §§ 240.300–303).

[36] *See, e.g.*, Regulation National Market System, Exchange Act Release No. 34-51808, 70 Fed. Reg. 37,496 (June 29, 2005) (codified at 17 C.F.R. §§ 242.600–612).

[37] Nothing in these updates, expansions, amendments, or guidance shall be construed to limit the SEC's authority to pursue scienter-based claims under Section 10(b) of the Exchange Act, or the CFTC's jurisdiction over scienter-based claims arising from commodity trading.

[38] *See* Exchange Act §15(a)(1) ("It shall be unlawful for any broker or dealer . . . to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with subsection (b) of this section.").

[39] *See* Section 6 of the Exchange Act.

[40] *See* 17 C.F.R. § 242.300(a) ("Alternative trading system means any organization, association, person, group of persons, or system (1) That constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange[.]").

transactions in securities. Targeted amendments would ensure that these platforms can lawfully and effectively facilitate transactions in Protocol Tokens as a category of electronically traded assets. To illustrate, rules under Section 6 of the Exchange Act are drafted with the assumption that exchange-listed instruments are "securities." To support Protocol Tokens, the Commission could amend the definitional and operational provisions applicable to NSEs to expressly include Protocol Tokens as instruments that may be traded on NSEs. With respect to ATSs, amendments to Regulation ATS[41] could likewise extend the scope of eligible instruments to include Protocol Tokens.

Following such Commission action, NSEs and ATSs would be required to submit conforming amendments to their individual rulebooks,[42] including adjustments to listing standards, surveillance procedures, and disciplinary rules, in order to operationalize these changes within their organizations and for their members. The SEC should similarly consider whether rule amendments would be required with respect to clearing agencies and the Financial Industry Regulatory Authority (FINRA).

3. Tailored Guidance for Securities Intermediaries Supporting Protocol Token Activities

The Commission should couple this extension and amendment of rules applicable to SEC-registered intermediaries with targeted interpretive guidance to clarify how longstanding regulatory obligations—such as customer protection standards, recordkeeping, and supervisory requirements—would apply in the context of Protocol Tokens. Key areas of focus should include:

- **Recordkeeping and reporting**: Intermediaries should be required to maintain complete records of Protocol Token transactions, with systems adapted to incorporate distributed ledger data and blockchain-based audit trails.

- **Capital adequacy and margin standards**: Risk-based financial requirements should ensure that firms engaging in Protocol Token trading maintain appropriate levels of capital and liquidity, calibrated to reflect the volatility of these assets.

- **Customer protection, margin trading, and segregation**: Firms should clearly segregate customer Protocol Token holdings from firm assets to prevent commingling and misuse, and to provide transparency about custody arrangements.

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[41] *See* 17 C.F.R. § 242.300 et seq.

[42] *See* Exchange Act § 19(b) ("Each [SRO] shall file with the Commission, in accordance with such rules as the Commission may prescribe, copies of any proposed rule or any proposed change in, addition to, or deletion from the rules of such [SRO] . . . accompanied by a concise general statement of the basis and purpose of such proposed rule change.").

- **Risk management and internal controls**: Intermediaries should adopt safeguards against operational and technological risks unique to Protocol Tokens, including vulnerabilities in smart contracts, cybersecurity threats, and novel custody challenges.

- **Execution, clearing, and settlement processes**: Standards should ensure the reliability and finality of settlement, with appropriate recognition of the mechanics of distributed ledger systems.

- **Registration and conduct standards**: Clear expectations for intermediaries engaging in Protocol Token activities should be established, including requirements relating to fairness, transparency, and market integrity.

- **Policies and procedures**: Intermediaries should be required to adopt written compliance policies tailored to Protocol Token activities, covering areas such as risk controls, operational safeguards, and compliance with anti-money laundering and sanctions obligations.

To be clear, it is intermediaries, not infrastructure providers, that should be the focus of regulation and guidance. Just as the internet's infrastructure is not regulated as a broker or dealer, blockchain validators, miners, smart contract and self-custody wallet developers, or providers of hardware, software, and communications should not be subject to intermediary regulation. They merely provide the "plumbing"—the passive infrastructure layer that facilitates the functioning of the network.[43]

4. Transitional Grace Period

The Commission via exemptive order should afford a temporary grace period to ensure a smooth transition while it undertakes the process of updating its rules and guidance for intermediaries to engage in activities involving Protocol Tokens.

- During this period, registered brokers, dealers, ATSs, NSEs, and clearing agencies may begin supporting Protocol Tokens to the extent those activities are consistent with the services they are already authorized to provide for securities.

- Intermediaries wishing to rely on this grace period must file a notice with the SEC identifying the Protocol Token activities they intend to conduct and submit an attestation, signed by their chief executive (or president) and chief financial officers, confirming that appropriate policies and procedures are in place. This

[43] *See* Tessler, *supra* note 1, at 10–12 (noting that "blockchain Infrastructure Providers . . . do not engage in archetypal intermediary activities like custodying customer funds or securities, recommending or soliciting trades or portfolio allocations, or executing, clearing, and settling transactions.").

notice must be renewed quarterly until final rules are in effect and they are formally authorized to conduct Protocol Token activities.

- Importantly, the SEC and relevant self-regulatory organizations ("SROs") will actively examine these activities during the grace period and retain the authority to impose conditions, limitations, or suspensions as needed to safeguard investors and market integrity.

This grace period would allow existing market participants to begin offering Protocol Token services without delay, while ensuring ongoing oversight until permanent rules and guidance are finalized.

5. Exclusion for Decentralized Finance Activities

Decentralized finance ("DeFi") activities should be expressly excluded from the scope of the Exchange Act and related regulations, except where they fall within the existing definitions of broker, dealer, exchange, or clearing agency.[44] DeFi protocols and applications, by design, operate without a single point of failure, a single source of truth, or a central authority capable of altering transaction data, creating finality, or custodying assets. Subjecting such decentralized systems to traditional regulatory categories would be inconsistent with their fundamental architecture and risk stifling innovation in a rapidly growing area of digital finance.

At the same time, exclusion does not mean absence of responsibility. SEC-registered intermediaries that choose to provide customer access to DeFi applications or otherwise participate as principal in DeFi should be required to adopt policies and procedures to manage associated risks, including compliance with AML and sanctions obligations. This balanced approach preserves regulatory oversight where intermediaries are involved, while ensuring that decentralized protocols themselves are not inappropriately constrained by frameworks designed for centralized entities.

6. Educational Material Requirements

Finally, the Commission should pair its efforts to regulate intermediaries with a robust public education initiative. SEC-registered entities engaged in Protocol Token activities should be required to provide clear and accessible educational materials covering:

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[44] *See* Tessler, *supra* note 2. As explained in our May Submission concerning the nature of the activity test, "when determining whether an [entity] should be regulated as a securities intermediary, we should look to the nature of the activity performed by the [entity] and employ these factors to evaluate whether it is analogous to the archetypal activities that are the hallmarks of a regulated securities intermediary. Notably, if the crypto assets underlying the activities performed by the [entity] are not securities, then there is no transaction in securities under the U.S. federal securities laws and no need to evaluate whether the [entity] is a securities intermediary."

- **Blockchain fundamentals**: i.e., how distributed ledger systems function in practice.

- **Risk Disclosures**: including volatility, liquidity limitations, technological vulnerabilities, and legal uncertainties associated with Protocol Tokens.

- **Market distinctions**: highlighting how Protocol Token markets differ from traditional securities and commodities markets.

- **Fraud awareness**: guidance on identifying common fraud schemes, such as pump-and dump strategies or phishing scams, and instructions for reporting suspected misconduct.

By making these materials widely available, the Commission will ensure that retail participants—who are increasingly active in Protocol Token trading—are better informed and less susceptible to exploitation.

IV. Conclusion

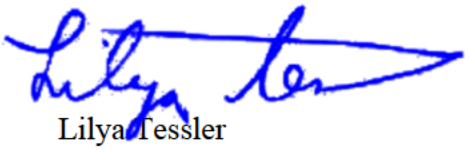
Ava Labs appreciates the Commission's leadership in examining the regulatory challenges and opportunities presented by blockchain technology and associated tokens. Protocol Tokens require a straightforward, workable framework that both safeguards investors and fosters responsible innovation. By tailoring its rules to Protocol Tokens as a new type of electronically traded and custodied asset, directing SROs to update and enforce their own rulebooks accordingly, and ensuring that intermediaries—not infrastructure providers—remain the focal point of oversight, the Commission can provide the clarity and certainty that markets and participants urgently need.

Ava Labs respectfully urges the Commission to act expeditiously to adopt these measures. Doing so will enable SEC-registered intermediaries to lawfully support Protocol Tokens, provide investors with meaningful protections and information, and preserve the United States' leadership in global digital finance.

* * *

Ava Labs appreciates the opportunity to provide comments on these important issues. We look forward to discussing these topics with the Commission further and answering any questions you may have. Please use Lilya Tessler, Partner, Sidley Austin LLP (ltessler@sidley.com or 214-969-3510); Kate Lashley, Partner, Sidley Austin LLP (klashley@sidley.com or 305-391-5203); and Lee A. Schneider, General Counsel, Ava Labs, Inc. (lee@avalabs.org) as your contacts with regard to this letter. Thank you for your attention to this matter.

Sincerely,



Lilya Tessler

Kate Lashley

cc:

Hon. Mark Uyeda, Commissioner, Securities and Exchange Commission

Hon. Caroline Crenshaw, Commissioner, Securities and Exchange Commission

Hon. Caroline D. Pham, Acting Chair, Commodity Futures Trading Commission

Sen. Tim Scott, Chairman of the Senate Committee on Banking, Housing, and Urban Affairs

Sen. Elizabeth Warren, Ranking Member of the Senate Committee on Banking, Housing, and Urban Affairs

Sen. John Boozman, Chairman of the Senate Committee on Agriculture, Nutrition, and Forestry

Sen. Amy Klobuchar, Ranking Member of the Senate Committee on Agriculture, Nutrition, and Forestry

Rep. French Hill, Chairman of the House Committee on Financial Services

Rep. Maxine Waters, Ranking Member of the House Committee on Financial Services

Rep. Glenn Thompson, Chairman of the House Committee on Agriculture

Rep. Angie Craig, Ranking Member of the House Committee on Agriculture

Patrick Witt, Executive Director of the President's Council of Advisers on Digital Assets of the White House

Scott Bessent, United States Secretary of the Treasury

Tyler Williams, Counselor to the Secretary of the Treasury

Andrew Rittenhouse, Senior Advisor, Department of the Treasury

Thomas Weidner, Senior Advisor, Department of the Treasury

Jonathan Hurowitz, Special Advisor, Department of the Treasury

Frank Sensenbrenner, Senior Specialized Examiner on detail to the Department of the Treasury

SEC Division of Trading and Markets

CFTC Division of Market Oversight

CFTC Division of Clearing and Risk

Lee A. Schneider, General Counsel, Ava Labs, Inc.

Appendix A
Avalanche Indicative Use Cases

Tokenization and Finance

- **Inversion Capital**
  Custom blockchain focused on crypto-native private equity acquisitions and go-to-market
  Source

- **Apollo Global Management and Securitize**
  Partnership to tokenize access to a credit fund using Avalanche and other chains.
  Source

- **BlackRock (via Securitize)**
  Launched the BlackRock Digital Liquidity Fund (BUIDL) on Avalanche for tokenized money market funds.
  Source

- **Franklin Templeton**
  Tokenized U.S. Government Money Market Fund (Benji Investments) on Avalanche.
  Source

- **KKR (through Securitize)**
  Private equity fund tokenization via Avalanche subnets.
  Source

- **Diamond Standard**
  Turning diamonds into an investable asset class on Avalanche.
  Source

- **Republic Note**
  Profit-sharing digital asset on Avalanche.
  Source

- **Wine Capital Fund**
  Tokenization of fine wine portfolios for investment purposes.
  Source

- **Homium**
  Issued first home equity loans on Avalanche, enabling fractional real estate ownership.
  Source

- **Intain**
  Launched a dedicated Avalanche L1 to digitize and streamline structured finance

transactions.
Source

- **Citi (On-chain Pricing Smart Contracts)**
  Experimentation with blockchain-based bilateral trade execution using Avalanche smart contracts.
  Source

- **Watr**
  Avalanche L1 to unlock composability and capital efficiency at scale for global commodities trading
  Source

- **Colombian Neobank Littio with OpenTrade**
  Offering interest-bearing USD accounts to Colombian users via Avalanche.
  Source

- **ParaFi**
  Tokenized investment funds on Avalanche using Securitize.
  Source

- **Balcony real estate**
  Real estate tokenization
  Source

- **Misyon Bank**
  Tokenization solution for banking products on Avalanche.
  Source

- **Lemonade Insurance**
  Smart contracts powering climate insurance in rural regions
  Source

- **Re (Decentralized Reinsurance Marketplace)**
  Built on Avalanche for on-chain reinsurance solutions.
  Source

Cross-Border Payments

- **StraitsX**
  Simplifying cross-border payments in Southeast Asia via Avalanche and AvaCloud.
  Source

- **Fonbnk**
  Building Avalanche on-ramps for cross-border payments in Sub-Saharan Africa.
  Source

- **Visa-Powered Avalanche Card**
  A cryptocurrency card integrated with Avalanche for global transactions.
  Source

- **Nonco**
  (FX) On-Chain initiative, bridging institutional FX liquidity and activity with the growing stablecoin market
  Source

Privacy, Security, and Data Integrity

- **California DMV**
  Using Avalanche for digital vehicle titles and fraud prevention.
  Source

- **Deloitte**
  Building solutions for disaster recovery and fraud prevention using Avalanche.
  Source

- **Chainlink and Balcony**
  Leveraging Avalanche for secure data oracles and real estate tokenization compliance.
  Source

- **Bergen County, New Jersey**
  Land records management with Avalanche for transparency and security.
  Source

- **Kinexys and J.P. Morgan**
  Experimenting with Avalanche for privacy-preserving finance and settlement infrastructure.
  Source

Gaming, Ticketing, and Consumer Apps

- **Off the Grid by Gunzilla Games**
  Blockchain-based FPS game available on PC and Consoles
  Source

- **Maplestory**
  Nexon Group, the global game giant and pioneer of the free-to-play model, launched an

Avalanche L1 for the Maplestory IP
Source

- **Zero one**
  All-in-one onchain ecosystem for artists and collectors, available on mobile
  Source

- **Uptop**
  The Fan Rewards Superapp, powering Pistons and Cavs fan programs
  Source

- **Youmio**
  Custom blockchain for tokenization of AI agents
  Source

- **Independent filmmaking**
  Fundraising for filmmaking projects
  Source

- **Sports Illustrated Tickets**
  NFT ticketing platform powered by Avalanche.
  Source

- **Tixbase**
  NFT-based ticketing solution migrating to Avalanche with global event partnerships.
  Source

- **SK Planet**
  Loyalty rewards and consumer engagement programs on Avalanche.
  Source