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April 24, 2026

Submitted via email to rule-comments@sec.gov

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

Re: Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets
Release Nos. 33-11412; 34-105020
File No. S7-2026-09

Dear Commissioner Peirce and Members of the SEC's Crypto Task Force:

Avalanche Policy Coalition ("APC") appreciates the opportunity to comment on the joint interpretation issued by the Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC") regarding the application of the federal securities laws to crypto assets (the "Interpretation").

APC has engaged extensively with the Commission over the past year through a series of submissions to and meetings with the SEC Crypto Task Force, including our submissions in April, May, September, and December 2025. Throughout, we advanced a policy framework with three core principles:

- The nature of the asset matters;
- Infrastructure and intermediaries must be treated differently; and
- Regulation should be workable and grounded in real market structure.

We are encouraged to see that the Interpretation reflects meaningful progress toward these principles. In particular, we note several areas of alignment.

First, the Interpretation adopts a functional taxonomy of crypto assets, including the category of "digital commodities," which substantially overlaps with what we have described as "protocol tokens." Both approaches recognize that certain tokens derive value from the programmatic operation of a functional crypto system and are integral to its operation, rather than representing claims on a business enterprise or part of the capital stack of a legal entity.

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This reflects a shared commitment to analyzing assets based on their functions and features, rather than their labels or marketing.

Second, the Interpretation draws a clear distinction between a crypto asset and the transaction in which it is offered or sold. This is a critical clarification. Consistent with the Supreme Court's articulation in *Howey*, the Interpretation acknowledges that investment contract analysis looks at whether a contract, transaction, or scheme—not the underlying asset—constitutes a security requiring application of the federal securities laws. This distinction is foundational and brings crypto assets into alignment with other areas of law where non-security assets may be involved in an investment contract without themselves becoming securities.

Third, the Interpretation appropriately recognizes that certain core blockchain activities—such as protocol mining, staking, wrapping, and certain airdrops—do not involve securities transactions when conducted as described. In each case, the Interpretation characterizes these activities as administrative or ministerial in nature. This reflects an important and necessary distinction between infrastructure functions and intermediary activities.

While we believe these areas of alignment are significant, we also note that several concepts we have previously advanced were not incorporated into the Interpretation or were addressed in a different manner. Our proposals were designed to create clear boundaries around the identity of the parties and the scope of what is regulated. The reliance on facts and circumstances rather than stringent criteria creates uncertainty as to when securities laws apply, particularly in ecosystems involving multiple actors and ongoing development activity.

Most notably, APC has proposed a more structured approach to the definition and application of "investment contract," including a framework that provides clearer boundaries around the identity of the relevant parties, the nature of the agreement, and the role of managerial efforts.

Under APC's approach, the SEC would provide its definition of 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 managerial or entrepreneurial efforts of the seller." This definition starts with the basic articulation from Howey 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. This more precise definition of "investment contract" would provide the basis for a workable regulatory framework for the offer and sale of various investment contracts.

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The Interpretation instead relies on a contextual and fact-specific application of existing precedent, particularly focusing on more amorphous issuer representations and promises. While we appreciate the Commission's careful analysis, we believe that additional clarity in this area would enhance predictability and workability for market participants. We note that the staff guidance of April 13 concerning user interfaces adopts an approach closer to what we have advocated. That guidance focuses on the nature of the activities and whether they involve traditional financial intermediary functions.

Similarly, APC has advanced a lifecycle-based framework distinguishing between pre-functionality and functional protocol tokens. Under that approach, the regulatory treatment of tokens evolves based on objective milestones tied to protocol functionality. The Interpretation introduces the concept of "separation," under which a non-security crypto asset may cease to be subject to an investment contract when reliance on issuer efforts is no longer reasonable. While the underlying concept is directionally similar, the mechanism differs and remains more dependent on intensive facts and circumstances analysis than on structured criteria. Under APC's proposal, there would be a rebuttable presumption that sales of pre-functionality tokens would be pursuant to an investment contract and the relevant disclosure and registration obligations would apply accordingly.

Please see the Appendix for a more detailed outline of our proposal, which is fleshed out in our September submission. The proposal creates a clear lifecycle-based framework: regulate early-stage token distributions as securities transactions, while excluding functional tokens and infrastructure activities from securities regulation.

Finally, APC has proposed a more comprehensive approach to market structure, through the regulation of intermediaries and the development of tailored disclosure and issuance frameworks. The Interpretation does not address these areas in detail, focusing instead on classification and the application of existing law. We recognize that additional rulemaking or legislative action may be forthcoming in this regard.

Taken together, the Interpretation and APC's prior submissions reflect a growing convergence around key principles, even where differences remain in implementation. We respectfully encourage the Commission to continue to consider the frameworks and recommendations we have previously provided, particularly in connection with any future refinement of the Interpretation or related rulemaking.

We appreciate the Commission's continued engagement on these issues and would welcome the opportunity to discuss these matters further.

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Respectfully submitted,

Avalanche Policy Coalition

By: Signed by: Lee A. Schneider
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Lee A. Schneider
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On behalf of Avalanche Policy Coalition

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Appendix

Summary of Proposal: Regulate Pre-Functionality Protocol Tokens Through Targeted Rulemaking or Exemptive Order

1. Distinguish Pre-Functionality vs Functional Tokens
    a. Key conceptual divide:
        i. Pre-functionality tokens → capital-raising → securities framework
        ii. Functional tokens → operational/infrastructure → not securities
2. Define "Investment Contract" More Precisely
    a. Require an express (oral or written) agreement between buyer and seller involving specifics around:
        i. investment of money
        ii. common enterprise
        iii. expectation of profits
        iv. solely from the efforts of the seller
3. Create a Rebuttable Presumption that offers and sales of pre-functionality tokens are investment contracts and allow parties to seek SEC relief to demonstrate otherwise
4. Recognize Flexible "Distributor" Concept (Not Traditional Issuer)
    a. Replace "issuer" concept with "Pre-Functionality Distributor," including:
        i. developers distributing tokens
        ii. third parties selling tokens
        iii. intermediaries reselling tokens
        iv. entities sharing in proceeds
    b. Reflects reality that token distribution does not always involve a single issuing entity
5. Allow Use of Existing Registration Exemptions, so that pre-functionality token distributions can rely on Regulation D and Regulation S, among others
6. Create a New Tailored Exemption ("Regulation PT")
    a. New exemption for token distributions:
    b. Up to $50M or 10% of token value (proposed threshold)
    c. Impose Disclosure and Compliance Obligations
        i. To rely on exemption, distributors must provide public disclosures, including:
            1. network design and function
            2. token mechanics and supply
            3. governance structure
            4. key participants and holdings
            5. risks (technical, legal, market)

ii. Use written purchase agreements
iii. File notice with SEC
iv. Implement AML/KYC controls

7. Limit Disclosure Duration: Disclosure obligations continue until the protocol becomes functional and end 1 year after functionality is achieved