Ava Labs.
1177 Avenue of the Americas, 5th Floor
New York, NY 10036

September 15, 2026

By Electronic Submission to rule-comments@sec.gov

Vanessa A. Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Regulation Crypto Assets, Release Nos. 33-11434; 34-106150; File No. S7-2026-27

Dear Ms. Countryman:

Ava Labs, Inc. appreciates the opportunity to comment on proposed Regulation Crypto Assets ("Reg Crypto"), and commends the Commission for undertaking the creation of regulations for a tailored offering regime. We have long been proponents of rulemaking across a number of areas related to blockchain and crypto assets.[1] Reg Crypto represents an important first step in developing comprehensive crypto asset regulation to help ensure robust, competitive markets for the United States.

Ava Labs is a technology company focused on blockchain and related technologies. Its first major software release was the open-source code for Avalanche blockchains, which resulted in the launch of the Avalanche primary network in September 2020 by a distributed group of independently operated validator nodes around the world. The primary network remains decentralized, public, and permissionless, with a proof-of-stake based consensus mechanism. Ava Labs continues to contribute software and research to the primary network, which functions in accordance with its own protocol rules and the operations of that decentralized validator set.

[1] *E.g.*, Sidley Austin LLP on behalf of Ava Labs, Inc. and Owl Explains, *RE: Ava Labs Proposal Concerning a Regulatory Framework for Protocol Tokens* (Sept. 3, 2025) (the "September Submission"); Lee A. Schneider, Op-Ed, *Regulators Should Use Existing Tools to Jumpstart Crypto*, Law360 (June 1, 2026), available at https://www.avalanchepolicy.com/en/comment-letters/regulators-should-use-existing-tools-to-jump-start-crypto-law360/

Ava Labs is also the convenor of the Avalanche Policy Coalition ("APC"), a resource for policymakers, regulators and trade associations on blockchain and tokenization. One of APC's consistent themes has been the need for proper token classification. In this comment letter, we focus on token classification and explain why the definition of "crypto asset" in proposed Rule 100 does not comport with good classification practice. The term "crypto asset," in the Commission's own words, "dictates the scope of the proposed rules."[2] We believe it is drafted more broadly than is necessary or advisable, and respectfully propose that the Commission replace it with the definition of "protocol token" set out in our prior submissions.[3] As shown below, our proposed solution is consistent with the Commission's intention as described in both the preamble to the Proposing Release and prior interpretations and guidance. Having a more precise definition in a rule creates greater clarity and certainty.

As proposed, the definition would encompass "any digital representation of value that is recorded on a cryptographically-secured distributed ledger."[4] This definition means that any type of asset recorded or tokenized on a blockchain would fall within the ambit of Reg Crypto, because the only real criterion is the medium of recording. As such, the proposed rule text ignores the nature of the asset. As we have previously written, the nature of the asset has long been the legal and regulatory basis for regulation. The Commission, other federal agencies, and other commenters have agreed. Divorcing the nature of the asset from the definition that "dictates the scope of the proposed rules" means that Reg Crypto could apply to any asset.

The implications of this fact are far-reaching. For example, Reg Crypto's crypto asset would capture a tokenized concert, airline or sporting event ticket, a loyalty or in-game point or item, and an AI usage token, bringing them all within the grasp of the federal securities laws simply because distributed ledger technology was used. The Proposing Release confirms the breadth, describing digital securities as "crypto assets that are themselves securities."[5]

---

[2] Proposing Release, section II.A.1.b, at 37.

[3] September Submission; 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. & Exch. Comm'n (Apr. 23, 2025) (the "April Submission"); *RE: Supplemental Submission Proposing a Nature of the Activity Test to Determine Whether Infrastructure Providers Need to Register as Securities Intermediaries* (May 27, 2025).

[4] Proposed 17 CFR 228.100.

[5] Proposing Release, section II.A.1.b, at 37.

Curiously, the definition and its logical results run counter to the Commission's own stated intent: the release explains that "to ensure that Regulation Crypto Assets has an appropriately limited scope, the definition would include only those assets for which the relevant technology (i.e., cryptographically-secured distributed ledger) is a necessary feature."[6] We agree with that objective and our previously proposed terminology of "protocol token" and its definition neatly fit the bill. The absence of such a limiting principle in the proposed definition promotes uncertainty rather than clarity. It also has implications for future rulemakings on related topics. We respectfully urge the Commission to implement a fix using "protocol token" or some equivalent in the rule itself.

I. Reasons to More Precisely Define Crypto Asset

In April 2025 we recommended that the Commission "issue guidance to the effect that tokenization using blockchain technology does not change the nature of the asset—to avoid the confusion and reregulation that would result if the technology platform where an asset is recorded determines the nature of the asset."[7] We made that suggestion for a straightforward reason: classification has always followed the nature of the asset, not the medium on which the asset is recorded. A rule keyed to the medium would re-regulate assets whose legal treatment is already settled, produce different answers for the same asset depending on where it happens to be written down, and expand the breadth of the federal securities laws to virtually anything.

A. Recent federal guidance supports an asset-based approach. Through interpretations and guidance, the Commission has since acted on that recommendation more than once.

- In January 2026, the Division of Corporation Finance confirmed that tokenization does not alter the legal nature of the underlying instrument, and that the analysis turns on the rights conveyed and the structure of the product rather than the technology used to implement it.[8]
- In February 2026, the Division of Trading and Markets keyed net capital treatment of payment stablecoins to reserve quality, redemption rights, and disclosure, not to the ledger.[9]

---

[6] *Id.* at 37–38.

[7] April Submission at 4.

[8] SEC Div. of Corp. Fin., *Statement on Tokenized Securities* (Jan. 28, 2026).

[9] SEC Div. of Trading & Mkts., *Frequently Asked Questions Relating to Crypto Asset Activities and Distributed Ledger Technology*, FAQ 5 (updated Feb. 2026).

- In March 2026, the Commission and the CFTC jointly classified crypto assets "based on their characteristics, uses, and functions" into digital commodities, digital collectibles, digital tools, stablecoins, and digital securities.[10]

Taken together, these actions reflect a consistent analytical principle: regulatory treatment follows the characteristics and function of the asset rather than the technology used to record it. Other federal agencies have issued similar interpretations and guidance:

- The CFTC's December 2025 staff guidance on tokenized collateral states that the use of distributed ledger technology does not by itself change the fundamental characteristics of an asset.[11]
- The Federal Reserve, OCC, and FDIC adopted an expressly technology-neutral approach to the capital treatment of tokenized securities in March 2026, declining even to distinguish between permissioned and permissionless blockchains.[12]

Industry participants have also identified the nature of the asset as a foundational classification principle. The Digital Chamber, representing more than 250 member companies, identified as the first of the principles reflected in the March Joint Interpretation that "[t]he nature of the crypto asset matters," alongside the principle that "[c]rypto assets are distinct from the transactions in which they are sold."[13]

B. The proposed definition contradicts established law and Reg Crypto's own preamble. Proposed Rule 100 runs the other way. This matters because the principle of determining the nature of the asset is not a novelty of crypto policy but rather how the law has always worked:

---

[10] *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 (Mar. 17, 2026) (the "March Joint Interpretation"). *See also* Ava Labs *Re: Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets,* U.S. Sec. & Exch. Comm'n (Apr. 24, 2026) ("Comment Letter on March Joint Interpretation").

[11] CFTC Staff Letter No. 25-39 (Dec. 2025).

[12] Bd. of Governors of the Fed. Reserve Sys., OCC & FDIC, *Capital Treatment of Tokenized Securities: Frequently Asked Questions* (Mar. 2026).

[13] Letter from The Digital Chamber to Vanessa A. Countryman, Secretary, U.S. Sec. & Exch. Comm'n, File No. S7-2026-09, at 2–3 (Apr. 27, 2026) ("TDC Letter"). *See also* Comment Letter on March Joint Interpretation.

> Although blockchain is a new technology, the function of tokenizing assets is not. Tokenization is simply the representation of an asset in a convenient form allowing for establishment of possession and/or ownership and transfer of the asset, including transactions involving the asset. Tokenization on a blockchain is a different technological means by which assets and/or ownership are recorded.[14]
>
> [T]reating all tokens the same simply because they are recorded on a blockchain makes as little sense as treating a sketch, an ID card, a receipt, and a stock certificate the same merely because they are printed on paper. The core consideration should be the substantive nature of the asset, not the means by which it is represented.[15]

Reg Crypto's definitional mismatch is not only with guidance issued elsewhere. It appears within the Proposing Release itself. In explaining when a covered investment contract separates from a crypto asset, the Commission reasons that once the associated crypto network or application is functional, services to maintain or improve it cease to be essential managerial efforts because the asset "should derive its value from the programmatic operation of the associated crypto network or associated crypto application, as well as the market's supply and demand dynamics with respect to such crypto asset."[16] That premise describes a protocol token. It is not true of a tokenized share of stock, money market fund interest, event ticket, or loyalty point, none of which derives its value from the operation of the ledger on which it is recorded.

We also note that much of the proposed disclosure regime in Subpart A is directed at protocol tokens, not at the more broadly defined "crypto assets." Proposed Rule 103(b)(5)–(9), incorporated into Form 1-CRYPTO, requires disclosures of, among other things, a plan of network development, the source code address, and descriptions of any minting-and-burning mechanisms, smart contract governance, and contributor ecosystem. These disclosure items simply do not apply to an asset other than a protocol token. The Commission has written its central analysis for one class of asset while its scoping definition covers all tokenized assets.

---

[14] April Submission at 3.

[15] *Id.*

[16] Proposing Release, section II.A.4.b.i, at 57. The release adds that, prior to functionality, such services "are provided or coordinated by the issuer and likely constitute essential managerial efforts." *Id.* at 58.

C. Putting it in a rule is best. We do not doubt the Commission's stated intention. But a limitation that appears only in the preamble is a statement of present intention rather than a rule. Only the text codified in the Code of Federal Regulations binds the Commission. A future Commission may abandon preamble gloss without notice and comment; amending rule text requires both. The Commission has recognized this distinction twice in the Proposing Release: proposing that Rule 400 "codify this portion of the 2026 Interpretation in a safe harbor"[17] and asking whether it should "codify" its view that covered investment contracts are not equity securities by amending Rule 12g5-1.[18] We ask only that the limitation the Commission has articulated for the scope of "crypto asset" receive the same treatment as the other interpretations it has already decided to codify.

D. There are real consequences to the definition. The breadth of the definition also creates practical problems within the structure of Reg Crypto itself. Reg Crypto is built on the premise that covered investment contracts "eventually will cease to exist."[19] But a tokenized fund interest, ticket, or loyalty point derives its value from a sponsor, an event, or a program — not from a protocol — so no degree of network functionality ever retires the efforts on which its value depends. Such an asset could be drawn into the regime and never satisfy the conditions for leaving it.

The surrounding definitions confirm that the Commission had a narrower class in mind. Rule 100 defines "associated crypto network" as the network on which "such crypto asset is generated, minted, or mined,"[20] using language that presupposes an asset native to the network. A tokenized ticket, in-game item, or physical commodity is not generated, minted, or mined on a blockchain; it is merely recorded there. Again, the Commission seems to intend a narrower asset class than the proposed definition describes.

The definitional over-breadth carries real downstream implications and costs. As other commenters have detailed, uncertainty about whether securities law treatment attaches to a token, among other things, leaves unsettled whether a trading venue may list it without registering as an exchange or ATS, how the asset is treated under the Uniform Commercial Code, and whether ordinary consumptive use of a functional

---

[17] Proposing Release, section II.D.1, at 164.

[18] *Id.*, Request for Comment No. 45.

[19] Proposing Release n.19.

[20] Proposed 17 CFR 228.100 (definition of "associated crypto network").

token requires investment contract analysis every time the token is used for its intended purpose.[21]

E. Conflicts with the GENIUS Act. The proposed definition also creates a conflict with the GENIUS Act. As proposed, “crypto asset” would include payment stablecoins, because they are a digital representation of value recorded on a distributed ledger. Yet in the GENIUS Act, Congress amended the definition of "security" in the Federal securities laws to exclude payment stablecoins issued by permitted payment stablecoin issuers.[22] Drawing payment stablecoins back within a securities offering regime through a broad definition of crypto asset contradicts the GENIUS Act’s specific exclusion and therefore with limits on the Commissioner’s statutory authority. Under recent Supreme Court precedent, the viability of the Commission's construction is in serious doubt in any court challenge.[23]

II. Our Recommendation: Replace "Crypto Asset" With "Protocol Token"

The assets for which distributed ledger technology genuinely is a necessary feature already have a workable definition. As set out in our April Submission, native DLT tokens are those “integral to the functioning of a blockchain protocol,” and are distinct from every other token category because they “have no existence or purpose without the associated protocol.”[24] Our September Submission generalized that concept in technology-neutral terms:[25]

> 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;

---

[21] TDC Letter at 3–4.

[22] Guiding and Establishing National Innovation for U.S. Stablecoins Act, Pub. L. No. 119-27, § 17, 139 Stat. 419 (July 18, 2025) (amending the definition of "security" in the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and the Securities Investor Protection Act of 1970, and the definition of "commodity" in the Commodity Exchange Act).

[23] *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

[24] April Submission at 5.

[25] September Submission n.19.

or (iii) an entitlement to an interest, dividend, distribution, or other similar payment from that person.

We recommend that the Commission adopt this definition in Rule 100 in place of "crypto asset," and use "protocol token" as the scoping term throughout Reg Crypto.

A. Why this is the right scope. The definition is drawn by reference to what an asset is and does rather than where it is recorded, which is the approach the Commission and its fellow agencies have taken on multiple occasions in the past 15 months. It is technology neutral, so it will accommodate protocols not yet built, a durability the Commission expressly seeks.[26] It is layer-agnostic, reaching tokens integral to a smart contract or other application-layer protocol as readily as tokens integral to a layer 1, layer 2 or restaking protocol. This tracks both the Commission's recognition that a digital commodity might be integral to a crypto system at the application layer and the vocabulary already in proposed Rule 100, which defines an "associated crypto network" and an "associated crypto application" as distinct concepts.[27] And its exclusions for debt, equity, liquidation, and distribution rights reinforce, at the definitional level, the requirement the Commission has already built into "covered investment contract" — that the asset subject to the contract is not itself a security.

The Commission has already articulated this criterion in its own words. Its separation analysis turns on whether an asset derives its value from "the programmatic operation of the associated crypto network or associated crypto application," which is the same idea our definition expresses as being "integral to the functioning of a protocol." Adopting "protocol token" therefore asks the Commission not to import an unprecedented or foreign concept but to move a criterion it has already relied upon into the definition that governs scope.

B. The narrower definition preserves the intended coverage of Reg Crypto. Reg Crypto is designed for offerings of investment contracts involving non-security assets whose associated projects are "intended to develop in such a way that the related crypto assets subsequently will cease to be subject to investment contracts."[28] That description fits protocol tokens; it does not describe a tokenized deed, an NFT ticket, or a loyalty point, for which no such evolution occurs and no tailored offering regime

[26] Proposing Release, section II.A.1.a, at 33 (definitions should be "sufficiently flexible to cover potential developments in the market to avoid a need to continually revisit and update the definitions").

[27] Proposed 17 CFR 228.100 (definitions of "associated crypto network" and "associated crypto application").

[28] Proposing Release n.19.

is needed or appropriate because their legal and regulatory treatment is well-established. Assets that are themselves securities, including digital securities, remain subject to existing registration requirements or exemptions, as the Commission has already recognized.[29] Substituting in "protocol token" removes from the proposed regime only those assets the Commission has said it did not intend to capture.

C. Conforming changes. The substitution is mechanical. "Covered investment contract" would refer to an investment contract to which a protocol token is subject; "subject crypto asset" would become "subject protocol token"; and "associated crypto network" would refer to the network on which the protocol token is generated, minted, or mined. The title "Regulation Crypto Assets" remains as the familiar label without importing the breadth of the term as defined in the proposal.

D. The GENIUS Act lineage does not require the broader term. The Commission notes that the proposed definition is identical to "Digital Asset" in section 2(6) of the GENIUS Act.[30] That definition is deliberately broad: the GENIUS Act needed a wide category so that "payment stablecoin" could fit in it. Breadth there is harmless because the statute's operative provisions supply the limits. Importing it here has the opposite effect. It makes the scoping term of an offering regime turn on a definition built to encompass everything including stablecoins, assets the Commission and the CFTC placed in their own category five months ago, and which, when they qualify as payment stablecoins under the GENIUS Act, are not securities at all.[31] The proposal itself confirms the mismatch: it treats permitted payment stablecoins as consideration *received for* covered investment contracts, not as the asset being offered.[32] A term borrowed from another statute is a virtue only where it is asked to do the same work, which is not the case here.

III. The Commission Should Adopt a Functionality Test

Our September Submission also sets out a structured counterpart to the "separation" analysis in the March Joint Interpretation, using a Pre-Functionality/Functional

[29] *Id.* (noting that securities involving crypto assets not expected to undergo such evolution "may be more suitable for registration").

[30] Proposing Release n.122 (citing Pub. L. No. 119-27, 139 Stat. 419 (July 18, 2025)).

[31] March Joint Interpretation; *see* Proposing Release, section I.

[32] Proposing Release n.114 ("The aggregate offering price or aggregate sales would include, for example, permitted payment stablecoins received for the covered investment contracts being offered.").

distinction that the Commission may find useful in calibrating obligations across a protocol token's lifecycle.[33]

The Commission has drawn a similar line in the Proposing Release, though not in the proposed rules. In particular, while discussing services "to secure, maintain, improve, or enhance" a network or application "or to facilitate network effects," the Proposing Release states that "any representations or promises (whether by the issuer or another party) to provide or continue to provide or arrange for the provision of such services after the network or application is functional would not satisfy the Howey test," because once functional the crypto asset "should derive its value from the programmatic operation of the associated crypto network or associated crypto application, as well as the market's supply and demand dynamics with respect to such crypto asset," and such services "would no longer be among the undeniably significant ones."[34] The release continues: "Prior to functionality, however, such services are provided or coordinated by the issuer and likely constitute essential managerial efforts."[35] That is the same distinction our September Submission draws between Pre-Functionality and Functional protocol tokens, keyed there to whether the token is programmed to be integral to the protocol and the protocol has been deployed for live use. We encourage the Commission to give the distinction operative effect by making functionality an objective condition in the rule text rather than a preamble gloss.

* * *

These recommendations respond directly to the Commission's Requests for Comment asking whether defined terms should be changed and whether there is "a more specific definition we should consider" for crypto asset.[36] As demonstrated above, rescoping the definition of "crypto asset" brings many benefits, is consistent with the Commission's own precedents and the rest of proposed Reg Crypto, and will provide a definition that can be used in subsequent, related rulemakings, including about secondary market trading, for intermediaries, and in the Investment Company Act context. While we prefer the precision of "protocol token," if the Commission prefers its own formulation, it could achieve a similar result by revising the current draft definition to encompass only crypto assets integral to, and deriving their value

[33] September Submission n.21 and section III.A.

[34] Proposing Release, section II.A.4.b.i, at 57.

[35] *Id.* at 58.

[36] *Id.*, Requests for Comment Nos. 2, 3, and 8.

from, the programmatic operation of an associated crypto network or associated crypto application.

We appreciate the Commission's consideration and welcome the opportunity to discuss these recommendations further.

Respectfully submitted,

Signed by:

Lee A. Schneider

EBA43E0DF74346A...

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