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September 16, 2025

By Email

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

Chairman Caroline D. Pham
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581-3308

RE: Ava Labs' Response to SEC and CFTC Joint Statements

Dear Chairman Atkins and Chairman Pham:

Our client, Ava Labs, Inc., together with its Owl Explains project (collectively, “Ava Labs”),¹ submits this comment letter to the Securities and Exchange Commission (“SEC”) and the Commodity Futures Trading Commission (“CFTC”) (collectively, the “Commissions”) in response to the recent SEC and CFTC joint statements (the “Joint Statements”).² This letter supplements and is a companion to Ava Labs’ prior submissions to the Commissions (collectively, the “Submissions”).³

¹ [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. Ava Labs focuses its efforts on the [Avalanche](#) blockchain technology. Ava Labs’ prior Submissions (defined below) provide further information about Ava Labs and the Avalanche network. Owl Explains is a project created by the legal team at Ava Labs with the goal of becoming a trusted resource for regulators, policymakers, and other stakeholders.

² See SEC & CFTC Staff, *SEC-CFTC Joint Staff Statement (Project Crypto-Crypto Sprint)* (Sept. 2, 2025), <https://www.sec.gov/newsroom/speeches-statements/sec-cftc-project-crypto-090225>; *Joint Statement from the Chairman of the SEC and Acting Chairman of the CFTC*, (Sept. 5, 2025), <https://www.sec.gov/newsroom/speeches-statements/joint-statement-atkins-pham-090525>.

³ The Submissions, filed by Sidley Austin LLP, on behalf of Ava Labs, are as follows:

- (i) *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, “April Submission”];

Ava Labs commends the release of the Joint Statements, which acknowledge the need to move beyond fragmented oversight and commit to a path of harmonization grounded in regulatory clarity. Such clarity is essential to ensuring that novel products—particularly those involving digital assets and associated protocols—can develop within the United States under frameworks that are both robust and flexible. These themes have been central to the Submissions as well as in Ava Labs’ comments to both houses of Congress.

This letter outlines how the frameworks advanced in the Submissions align with the priorities identified in the Joint Statements and in the report by the President’s Working Group on Digital Asset Markets (“PWG”) on “Strengthening American Leadership in Digital Financial Technology” (the “PWG Report”).⁴ Ava Labs’ proposals focus on the regulation of activities in protocol tokens, as referenced in the PWG Report—i.e., those tokens that are integral to the functioning of protocols, whether blockchain, smart contract, or otherwise (referred to herein as “Protocol Tokens”).⁵

Ava Labs encourages the Commissions to use their existing authorities and regulatory structures to create vibrant markets for Protocol Tokens through a two-pronged approach whereby (i) the SEC has jurisdiction over offers and sales of Protocol Tokens prior to functionality, including disclosure obligations;⁶ and (ii) the CFTC and the SEC each regulate the Protocol Token activities of their respective intermediaries, including spot market trading and custody.⁷ To facilitate immediate permissibility for intermediaries, Ava Labs urges the Commissions to utilize their exemptive authority to adopt a transitional grace period during which these activities would

(ii) *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, “May Submission”];

(iii) *RE: Ava Labs Proposal Concerning a Regulatory Framework for Protocol Tokens*, U.S. Sec. and Exch. Comm’n (Sept. 3, 2025), <https://www.sec.gov/files/ctf-written-sidley-austin-ava-labs-09-03-2025.pdf> [hereinafter, “September Submission”]; and

(iv) *RE: 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> [hereinafter, “August Comment Letter”].

⁴ See President’s Working Group on Digital Asset Markets, *Strengthening American Leadership in Digital Financial Technology* (July 30, 2025), available at <https://www.whitehouse.gov/wp-content/uploads/2025/07/Digital-Assets-Report-EO14178.pdf>.

⁵ *Id.* at 50 (“A network token, sometimes called a protocol token, refers to a token that is intrinsically connected to the functioning of a decentralized network or protocol.”).

⁶ See September Submission at 7–11.

⁷ See *id.* at 12–14 (regarding SEC-regulated intermediaries); August Comment Letter at 6–10 (regarding CFTC-regulated intermediaries).

be permitted for existing SEC- and CFTC-registered intermediaries, thereby bridging the gap between existing guidance and the finalization of tailored regulations for Protocol Tokens.⁸

Because Ava Labs has provided details of its proposal in the Submissions, this letter simply summarizes and highlights key aspects of its framework, with footnotes to reference where more information can be found in the Submissions. As evidenced by the Joint Statements and the PWG Report, the time is ripe to act and Ava Labs' framework is the straightest path to achieving the goals laid out in those important documents.

I. Ava Labs' Proposals Address Priorities Identified in the Joint Statements and Recommendations from the PWG Report

Ava Labs' proposals directly advance the priorities set out in the Joint Statements and the PWG Report: harmonization of oversight, regulatory clarity, market integrity, and support for responsible innovation. The framework Ava Labs proposes reflects a pragmatic approach that leverages existing regulations while addressing the unique features of blockchain technology and Protocol Tokens—ensuring that investors are protected, innovators have clarity, and U.S. markets remain competitive.⁹ Here is the framework for fulfilling these objectives and solving the challenges identified by the Commissions and the PWG.

- **Clarifying Jurisdiction over Protocol Tokens and Intermediaries:** The Submissions emphasize that Protocol Tokens should be regulated in a manner consistent with their nature¹⁰ and propose a framework that distinguishes between two categories of Protocol Tokens: (i) those Protocol Tokens not yet integral to a live protocol (referred to herein and in the Submissions as “Pre-Functionality Protocol Tokens”); and (ii) functional Protocol Tokens.¹¹ As explained in the Submissions, offers and sales of Pre-Functionality Protocol Tokens, which have often been called “capital raisings” and “investment contracts,” are properly subject to SEC jurisdiction.¹² By contrast, “functional” Protocol Tokens—which refers to the state when both the tokens and the

⁸ See August Comment Letter at 11–12; September Submission at 14–15.

⁹ It is worth noting that nothing in the Senate Banking Committee's latest discussion draft of the Responsible Financial Innovation Act or in the Digital Asset Market Clarity (CLARITY) Act awaiting action in the Senate prevent your respective agencies from implementing the proposals that follow. See Senate Comm. On Banking, Hous. and Urban Affs., *Responsible Financial Innovation Act of 2025*, S. Discussion Draft, 119th Cong. (Sept. 5, 2025), available at https://fm.cnbc.com/applications/cnbc.com/resources/editorialfiles/2025/09/05/Market_Structure-Discussion-Draft-9-5-25.pdf; Digital Asset Market Clarity Act of 2025, H.R. 3633, 119th Cong. (2025).

¹⁰ See April Submission at 3–5.

¹¹ As explained in the August Comment Letter and September Submission, any regulatory action taken by the Commissions should recognize this distinction. See August Comment Letter at 3–6; September Submission at 3–7.

¹² As explained in the September Submission, Protocol Tokens themselves, whether functional or Pre-Functionality, should not be deemed securities. See September Submission at 6.

protocol are live and functioning in accordance with their design, such that the tokens can be used as an integral part of the protocol—fall more comfortably within the definition of “commodity” under the Commodity Exchange Act (the “CEA”).¹³

- **The SEC Regulates Offers and Sales of Pre-Functionality Protocol Tokens:** Because distributions of Pre-Functionality Protocol Tokens may be investment contracts, the SEC would engage in rulemaking to (i) codify a straightforward definition of “investment contract” based on existing case law and practice; (ii) create a rebuttable presumption that offers and sales of Pre-Functionality Protocol Tokens meet the definition of investment contract; and (iii) confirm that offers and sales of Pre-Functionality Protocol Tokens may rely on existing exemptions from registration,¹⁴ as well as a proposed new exemption, described in detail in the September Submission.¹⁵
- **Both Commissions Leverage Existing Intermediary Frameworks:** The Submissions propose that, rather than create entirely new categories of registrants, the SEC and the CFTC should use their existing authority to allow registered intermediaries to engage in Protocol Token activities when functionality is achieved.¹⁶ By amending and tailoring existing rules, the intermediaries regulated by the Commissions (e.g., broker-dealers, alternative trading systems, national securities exchanges, clearing agencies, in the case of the SEC; and designated contract markets, futures commission merchants, introducing brokers, swap dealers, and derivatives clearing organizations, in the case of the CFTC) would become able to lawfully and effectively support activities in functional Protocol Token. Several concepts from the PWG Report, while not directly addressed in the Submissions, are resolved by this proposal, such as integrating multiple financial services in one business model and vertically integrated business models in the digital asset space.¹⁷ This proposal also has the benefit of bringing the financial markets one step closer to the “Super-App” envisioned by Chairman Atkins by allowing SEC-registered intermediaries to offer trading in “non-security crypto assets, alongside crypto-asset securities, traditional

¹³ See August Comment Letter at 3–6; September Submission at 3–7.

¹⁴ The Securities Act of 1933, 15 U.S.C. § 77a et seq.

¹⁵ See September Submission at 7–11 (proposing new Regulation PT to create an exemption from registration for any offer or sale of Pre-Functionality Protocol Tokens not exceeding 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 if the distributor meets disclosures requirements, signs sale and purchase agreements with each buyer, conducts AML/KYC/sanctions checks, and files notice (similar to Form D) with the SEC).

¹⁶ See August Comment Letter at 9–11; September Submission at 12–16.

¹⁷ See PWG Report at 144.

securities, and other services without requiring . . . multiple federal licenses.”¹⁸ It also extends that concept to CFTC-registered intermediaries.

- **Tailored Guidance for Registered Intermediaries Supporting Protocol Token Activities:** The Commissions should couple the extension and amendment of rules applicable to their respective registered intermediaries with targeted guidance to clarify how longstanding regulatory obligations would apply in the context of Protocol Tokens. Key areas for such guidance would include: recordkeeping and reporting; capital adequacy and margin standards; customer protection, margin trading, and segregation; risk management and internal controls; execution, clearing, and settlement processes; registration and conduct standards; and policies and procedures.¹⁹ To be clear, the focus of this regulation and guidance should be intermediaries—not infrastructure providers—who provide the passive infrastructure layer that facilitates the functioning of a network, including through the use of Protocol Tokens in accordance with their design.²⁰
- **Disclosure Requirements:**²¹ Ava Labs’ proposals also contemplate various disclosure obligations, both for distributors of Pre-Functionality Protocol Tokens seeking to rely on the new exemption from registration, and for SEC and CFTC-registered entities engaged in Protocol Token activities.²² Among other things, these disclosure obligations would require entities to provide clear and accessible materials detailing information such as the risk factors, network information, token information, token supply and vesting, governance, and other key metrics.

II. Exemptive Relief Creating a Transitional Grace Period

The Joint Statements invite market participants to meet with the Commissions’ staff to discuss how they might bring trading activity onshore and innovate. Ava Labs proposes a direct path to jumpstart that activity today—implement a transitional grace period through exemptive

¹⁸ See U.S. Sec. and Exch. Comm’n, *How Super-Apps Can Revolutionize Finance*, YOUTUBE (Aug. 22, 2025), <https://www.youtube.com/watch?v=wiXNMXJ60As>.

¹⁹ See August Comment Letter at 10–11; September Submission at 13–14.

²⁰ See April Submission at 8–12 (noting that Web 2 infrastructure providers “and their functions have never been regulated under the federal securities laws. For the same reasons, [blockchain] Technology Functions, and the persons who perform them, should not be regulated under the securities laws, merely by dint of the fact that they are part of a protocol” because they “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,” whether they are engaged in activities that utilize Protocol Tokens or not).

²¹ See the PWG Report at 56 (“In addition, digital asset trading platforms, and other intermediaries as appropriate, should consider prominently disclosing features that may be unique to digital assets, such as token economics (i.e., allocation percentages and rationales) and source code, if applicable.”).

²² See August Comment Letter at 12–13; September Submission at 9–11.

relief that could serve as a regulatory “on-ramp,” allowing intermediaries registered with the Commissions to engage in Protocol Token activities without delay, while ensuring ongoing oversight until rules and guidance are finalized. The grace period would also allow the Commissions and their associated self-regulatory organizations to gain direct experience with regulating these markets while conducting the relevant rulemakings.

During this grace period, a registrant would be able to engage in Protocol Token activities to the extent they are consistent with the activities for which it is already authorized to engage by the SEC or the CFTC, respectively. Registrants who wish to rely on the grace period would be required to submit to the SEC or CFTC, as applicable, (i) a notice of intent detailing the activities it intends to conduct; and (ii) an attestation signed by the registrant’s chief executive officer (or president) and chief financial officer, confirming that appropriate policies and procedures are in place with respect to the proposed Protocol Token activities. This notice and attestation would be renewed quarterly until the registrant is formally authorized to conduct Protocol Token activities.²³

The grace period would remain in effect until final rulemaking and/or exemptive relief or guidance is finalized. Both Commissions and the relevant self-regulatory organizations would actively monitor activities during the interim phase, with the authority to impose conditions, limitations, or suspensions to safeguard investors and markets.

III. Conclusion

Ava Labs applauds your efforts to work collaboratively to seize this opportunity to provide clarity, foster innovation, and safeguard U.S. leadership in blockchain technology. By implementing a transitional grace period, leveraging existing statutory authority, providing clarity through targeted rulemaking, and recognizing reasonable exclusions and exemptions from regulation, your agencies can ensure that the regulation of Protocol Tokens develops quickly and in a manner that protects investors, fosters market integrity, and enhances U.S. competitiveness in digital financial technology, all goals expressed by the Joint Statements and the PWG Report. Ava Labs stands ready to engage in the development of durable, workable regulations that both protect the public and enable responsible innovation.

* * *

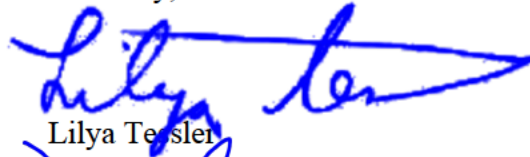
²³ See August Comment Letter at 11–12; September Submission at 14–15.

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Chairman Atkins and Chairman Pham
September 16, 2025
Page 7

Ava Labs appreciates the opportunity to provide comments on these important issues. We look forward to discussing these topics with you 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. Hester M. Peirce, Commissioner, Securities and Exchange Commission

Hon. Mark Uyeda, Commissioner, Securities and Exchange Commission

Hon. Caroline Crenshaw, Commissioner, Securities and Exchange Commission

[Crypto Task Force](#), Securities and Exchange Commission

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



Chairman Atkins and Chairman Pham
September 16, 2025
Page 8

[SEC Division of Trading and Markets](#)

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