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May 11, 2026

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

**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 Ms. Countryman:

Consensys Software Inc. ("Consensys") respectfully submits this comment on the Commission's interpretive release entitled *Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets* (Release Nos. 33-11412; 34-105020) (the "Release")[1] and the associated solicitation of public comment. As the developer of MetaMask, a widely used, noncustodial digital asset wallet and user interface that helps individuals interact with decentralized networks using their own self-custodied keys, Consensys appreciates the efforts of the Securities and Exchange Commission (the "Commission") in this area. It is vital that we clarify the application of the federal securities laws to activity involving crypto assets and establish a common vocabulary across categories of digital commodities, digital collectibles, digital tools, stablecoins, and digital securities.

We commend the Release for expressly acknowledging that most crypto assets are not themselves securities and that, consistent with the Supreme Court's holding in *SEC v. W.J. Howey Co*.,[2] an investment contract may be formed when an issuer offers a security by inducing an investment of money in a non-security crypto asset[3] through an arrangement that constitutes a common enterprise with representations or promises to undertake essential managerial efforts from which a purchaser would reasonably expect to derive profits.

We write concerning the Commission's position in the Release that an investment contract may persist across secondary market transactions in a non-security crypto asset (referred to as "attachment") until any representations or promises made by the issuer in connection with the initial sale of the crypto asset are fulfilled or publicly abandoned (referred to as "separation"). As the Release observes, this attachment would result in subsequent transactions in that

[1] 91 Fed. Reg. 13,714 (Mar. 23, 2026).
[2] 328 U.S. 293 (1946).
[3] As used in the Release, we understand the term "non-security crypto asset" to refer to any crypto asset that is not itself a security, including a crypto asset that may be considered a digital commodity, a digital collectible, a digital tool, or a stablecoin.

non-security crypto asset being considered securities transactions, requiring either registration or an applicable exemption, despite the assets themselves not being crypto asset securities.[4]

The Release was followed by a statement entitled "Staff Statement Regarding Broker-Dealer Registration of Certain User Interfaces Utilized to Prepare Transactions in Crypto Asset Securities" published by the Staff of the Commission's Division of Trading and Markets ("Trading & Markets") on April 13, 2026 (the "Staff Statement"). The Staff Statement addressed broker-dealer registration for providers of self-custodial, user-directed crypto asset interfaces utilized for user-directed transactions involving crypto asset securities.[5] The Staff Statement provides welcome guidance where a Covered User Interface (as defined in the Staff Statement) facilitates user activity involving crypto asset securities, and we agree with the approach that a neutral interface should not be required to register as a broker dealer when used to execute self-directed securities transactions.

While it is anticipated that an increasing number of securities transactions will occur onchain, most user-directed onchain activity currently taking place through self-custodial interfaces such as MetaMask involves digital commodities or other non-security crypto assets. The Staff Statement is understandably silent about interfaces that facilitate user activity involving digital commodities, but more importantly, it also leaves open the question of the treatment of user activity through a non-custodial interface involving a digital commodity or other crypto asset which, under the Release, is considered a non-security crypto asset to which an investment contract has attached but not separated.

Clarity on that question is very important to the peer-to-peer blockchain ecosystem. While there may be other approaches that the Commission might consider, we respectfully request the issuance of a rulemaking or formal guidance (both of which would incorporate the Staff Statement position) establishing a safe harbor from the requirement of registering as a broker-dealer for providers of self-custodial, user-directed crypto asset interfaces such as MetaMask that facilitate secondary market transactions in non-security crypto assets, regardless of whether an investment contract may have attached to any such assets and not yet separated. In the last section of this letter, we discuss the scope of the proposed safe harbor and applicable conditions for it to apply.

## I. MetaMask and the Importance of Self-Custodial User Interfaces

MetaMask is a noncustodial interface for crypto assets that allows users to hold their own keys, compose their own instructions to initiate onchain user operations, and interact directly with smart contracts and decentralized applications. MetaMask does not take custody of user assets, does not execute or settle users' crypto asset transactions, does not route orders to third-party liquidity platforms or handle customer assets, funds, or securities, and does not interpose itself as a counterparty. MetaMask converts user-selected parameters into blockchain-legible crypto asset transaction instructions for signature in a user's own wallet.

Millions of users rely on such tools to engage in lawful crypto asset transactions, whether those transactions involve assets that are plainly non-securities or assets that, under *Howey*, may

[4] *See* 91 Fed. Reg 13,714, 13,720 n.82, 13,722 (Mar. 23, 2026).
[5] The Staff Statement notes that "[c]rypto asset securities *include* tokenized versions of an equity or debt security." Staff Statement at fn. 3 (emphasis added).

previously have been offered or sold as part of an investment contract. The Release recognizes the centrality of non-security crypto assets to blockchain innovation, and it underscores that many activities in the crypto ecosystem, including protocol mining, protocol staking as defined in the Release, and "wrapping" of non-security crypto assets, do not themselves involve securities transactions. We agree on both counts.

## II. Reading the Release with the Trading and Markets Staff Statement Raises an Issue for Interfaces Which Merits Commission-Level Action

Interface providers read the Release alongside the Staff Statement issued by Trading & Markets because both affect the products and services they offer. The Staff Statement articulates an interim, five-year, non-binding position that the Staff "will not object" to providers creating, offering, or operating "Covered User Interfaces" (as defined in the Staff Statement) without registering as a broker-dealer pursuant to Section 15(b) of the Securities Exchange Act of 1934, as amended. Appropriately, the Staff Statement is directed toward user activity involving "crypto asset securities" and unsurprisingly does not address user activity around digital commodities.[6] The issue is that the Staff Statement appears not to address the Release's "attachment/separation" framework and is therefore silent on a category of activity the Release brings into existence, namely secondary transactions in attached non-security crypto assets, which the Release characterizes as securities transactions.

That category does not readily fit into either side of the Staff Statement's binary framework. User activity involving crypto assets considered at any given point in time to be attached non-security crypto assets does not sit alongside the plainly non-security user activity that the Staff Statement appropriately leaves outside of securities broker dealer registration rules. Neither are these crypto assets tokenized securities, which the Release itself confirms. This type of user activity appears to occupy a third position that the Release creates and the Staff Statement does not address.

The practical difficulty for an interface provider is that, as discussed below, it is structurally very difficult, if not impossible, for a non-issuer that does not focus on the nature of specific digital commodities and other non-security crypto assets, let alone have the necessary access to firsthand information on specific crypto assets, to determine whether at any given point in time a non-security crypto asset has become attached to, or has subsequently separated from, an investment contract. Whether an investment contract has attached turns on issuer-side facts, including statements and the circumstances of distribution, that the interface provider generally has no inherent means to discover or verify. Complicating the matter, those facts and circumstances can (and presumably will, for many crypto asset-based projects) change over time, likely with no advanced warning or contemporaneous signal, and with no clear end point at which user activity in the crypto asset may conclusively fall outside of securities transaction

[6] The Staff Statement importantly recognizes that, in the context of transactions involving *crypto asset securities*, an Covered User Interface provider that (i) satisfies identified conditions, (ii) avoids certain prohibited activities, and (iii) makes robust disclosures, can provide a variety of services, and receive transaction-based compensation, without becoming subject to required broker-dealer registration. By inference, a Covered User Interface provider that receives transaction-based compensation but fails to satisfy the identified conditions, avoid the identified prohibited activities, or make the required disclosures may be acting as an unregistered broker-dealer, at least in the view of the Staff.

status.[7] As a result, an interface provider cannot know under most circumstances whether a user transaction involving a non-security crypto asset is a securities transaction or not.

Faced with this attached-or-not uncertainty, an interface provider has two choices, neither of which is workable. The first is to apply the Staff Statement's conditions for a neutral interface across all activity involving non-security crypto assets, presuming that securities transactions involving non-security crypto assets would be seen as akin to transactions in tokenized securities for purposes of the Staff Statement. We would expect this to be an unwelcome choice for any interface provider that would otherwise choose to steer clear of tokenized securities altogether to focus on facilitating the type user activity that need not be limited by the Staff Statement's requirements for a neutral interface. The second choice would be to limit the interface's interoperability to only those crypto assets the provider could confidently classify as outside the Release's attachment/separation framework. Interfaces choosing this approach would effectively be operating a whitelist for digital commodities and other non-security crypto assets, rather than functioning as a general discovery tool for non-security crypto assets, which would be wholly out of step with how wallet interfaces have operated to date and how internationally available interfaces are likely to continue to operate.

Both options tie the hands of U.S.-based interface providers in a way that competing offshore interfaces operating without reference to the federal securities laws would not face. Said differently, those offshore providers would be able to distribute user interfaces that offer more services, technical features, and broader access to tokens than their U.S. competitors adhering to the Staff Statement guidance. Based on our industry experience, users would consider those interfaces to be better products and, given that they can switch wallets at little or no cost, would migrate to those competing interfaces over time. We presume that it was not the Commission's intention to present interface providers with a choice between two unworkable options or to change the competitive dynamics around these particular offerings in ways that favor foreign offerings.

The Commission-level safe harbor we request addresses these concerns without disturbing the Release's substantive taxonomy or undermining the Trading and Market Staff's Covered User Interface framework with respect to neutral interfaces that allow users to transact in tokenized securities. It would recognize and accommodate that interface providers cannot reasonably be expected to make the issuer-side factual determinations that dictate attachment or separation. The Staff Statement and the requested safe harbor would then operate in complementary fashion, with the former addressing activity in crypto asset securities and the latter addressing activity in non-security crypto assets.

It would also be consistent with the approach the Staff Statement embodies. Both would focus on how the interface functions, rather than on asset- or issuer-specific facts outside the knowledge or control of the provider of the interface. The safe harbor would also be faithful to the Commission's commitment to focus its regulatory authority on transactions within its

[7] For example, the Release explains that a digital commodity is a crypto asset the value of which stems from the functionality and supply-and-demand of a crypto system, not from external managerial efforts. While that is a useful standard for many purposes, it does not necessarily make the determination of whether a particular crypto asset is a digital commodity an easy or straightforward task.

regulatory jurisdiction rather than implementing rules the impact of which bleed into markets outside the securities laws. Likewise, the safe harbor would further the Commission's goals with the Release, that being clarity around various activities like offering stablecoins, protocol mining, protocol staking, and wrapping. Clear lines around one of the most common crypto asset activities, swapping, is precisely the kind of practical guidance that the Commission is pushing forward and which interface providers can incorporate into product design and user education.

## III. Interface Providers Cannot Reliably Apply the Attachment Framework Because the Standards Are Unclear and the Facts and Circumstances Will Be Unknowable

### A. *The "attachment" and "separation" concepts are novel*

The Release frames the "attachment" of an investment contract to a non-security crypto asset and its later "separation" as flowing from the *Howey* doctrine, but these concepts themselves are new. No court has yet interpreted them. No adversarial process has yet tested when, in the context of secondary transactions in such assets not involving the issuer or its agents, an issuer's statements may rise to the level of a "representation or promise," whether such a representation or promise has been "fulfilled or publicly abandoned," whether third party statements by foundations, labs entities, or prominent investors should be imputed to the issuer, or how the framework operates across the full life cycle of a crypto asset. The attachment/separation concept does not yet have a developed body of interpretation that would benefit any market participant trying to determine the treatment of transactions involving a particular non-security crypto asset. For certain, an interface provider asked to apply this concept would be operating without the benefit of, or guidance from, a developed body of statutory or jurisprudential law.

### B. *The existing Howey jurisprudence does not supply settled answers either*

Even with the novelty of the framework set aside, existing *Howey* case law does not supply the answers an interface provider would need. *Howey* itself, decided in 1946, addressed an issuer-led fundraising scheme. The eight decades of appellate jurisprudence applying *Howey* have, with one limited exception,[8] also addressed primary transactions. Across that body of case law, the factual uncertainty inherent in a *Howey* analysis has consistently fallen on the party best positioned to resolve it, namely the fundraising issuer.

When *Howey* has been applied to secondary transactions in crypto assets, courts have reached inconsistent results. In *SEC v. Ripple Labs, Inc.*, the court held that programmatic sales of XRP on digital asset exchanges did not satisfy *Howey*, while sales to institutional purchasers did.[9] Shortly thereafter, in *SEC v. Terraform Labs Pte. Ltd.*, a different judge in the same District declined to draw such distinctions, holding that *Howey* turns on the economic reality of the offering rather than on how an asset reaches the buyer.[10] As enforcement actions turned to secondary activity on crypto asset marketplaces, courts continued to struggle with the proposition that a crypto asset itself becomes the "embodiment" of an investment contract for all purposes. Judge Amy Berman Jackson rejected that theory in *SEC v. Binance Holdings Ltd., et al.*, observing that it "muddied the issues before the Court, [and] ignored the Supreme Court's directive that the analysis is supposed to be based on the entire set of understandings and

[8] *Hocking v. Dubois*, 885 F.2d 1449 (9th Cir. 1989) (en banc), cert. denied, 494 U.S. 1078 (1990).
[9] *SEC v. Ripple Labs, Inc.*, 682 F. Supp. 3d 308 (S.D.N.Y. 2023).
[10] *SEC v. Terraform Labs Pte. Ltd.*, 684 F. Supp. 3d 170 (S.D.N.Y. 2023).

expectations surrounding the offering."[11] Another approach was taken by Judge Katherine Polk Failla, who largely denied a motion for judgment on the pleadings in *SEC v. Coinbase et al*. and found an "ecosystem" conception of *Howey* to pass the standard of plausibility. She reasoned that, even if a token is not itself a security, downstream transactions may constitute investment contracts when viewed against a broader matrix of issuer, developer, and promoter representations, pooled proceeds, and ongoing promotional efforts.[12] Because enforcement priorities then shifted, most of the major secondary-transaction cases were resolved before final decisions on the merits, leaving the jurisprudential record unsettled.

An interface provider looking for authoritative guidance on attachment thus finds neither a developed body of interpretation in the Release's own framework nor a coherent body of secondary-transaction case law. What guidance the case law does provide cautions against, rather than supports, imposing on third-party platforms a duty to classify every transaction in a non-security crypto asset as securities transactions across shifting factual landscapes and time periods.

### C. *The necessary facts are not available to a third-party interface provider*

Even if the standards were well-developed and the supporting case law settled, the underlying facts to which the standards must be applied are, as a practical matter, not available to an interface provider. Whether and when a non-security crypto asset may be "subject to" an investment contract turns on who said what, when, and with what specificity about the essential managerial efforts of the entity considered to be the "issuer," and whether those commitments have been fulfilled or abandoned. Relevant statements may appear across white papers, blogs, social media accounts, governance forums, podcasts, conference remarks, and community updates, much of it issuer-controlled and subject to ongoing revision. Interface providers are generally not party to those communications and have no practical means to discover, verify, and continuously monitor them across thousands of assets.

The Release does not define with precision what constitutes a "representation or promise" in this context, nor identify by whom statements must be made to be attributable to an issuer, leaving unresolved whether remarks by foundations, labs entities, prominent venture backers with governance rights, or third-party promoters should be imputed to the entity that initially offered the crypto asset. This flexibility is appropriate and aligned with the facts-and-circumstances nature of *Howey* jurisprudence. Within that jurisprudence, however, the same flexibility has always operated against the issuer, the party with full knowledge of its own statements and conduct. Applied to an interface provider, which neither made the relevant statements nor was likely aware of the statements when they were made, the same flexibility produces the opposite of clarity.

Imposing an obligation on interface providers to make these determinations is also inconsistent with *Howey*'s underlying premises. The doctrine focuses on the relationship between the issuer making the representations and the purchaser whose expectations the doctrine is designed to protect. An interface provider sits outside that relationship. It does not make the representations. It does not stand in a contractual or representational relationship to the purchaser concerning the specific asset. It manifests no expectation of profits or otherwise derives benefit

[11] *SEC v. Binance Holdings Ltd., et al.*, No. 23 Civ. 1599, ECF No. 248 (D.D.C. June 28, 2024).
[12] *SEC v. Coinbase, Inc. et al.*, 726 F. Supp. 3d 260 (S.D.N.Y. 2024).

from the issuer's statements. The *Howey* framework has never required a non-issuer, non-purchaser third party to make ongoing factual determinations of this kind.

The practical consequence is the same as if the standard were impossible to satisfy. An interface provider responsible for ongoing attachment/separation determinations across hundreds of thousands of assets, with no administrable methodology for doing so and no safe harbor, would face both practical and regulatory pressure simply not to make assets discoverable to users unless an asset was one of the very few for which an affirmative judgment could definitively be reached. This is the antithesis of what a discovery-oriented interface was built to be. It would require a fundamental interface redesign, away from open architecture, competition, and user choice, and toward a type of gatekeeping the interface was never intended to perform, and that software developers are not operationally prepared to perform.

## IV. Request for a Commission-Level Safe Harbor

Consensys respectfully requests that the Commission adopt a safe harbor confirming that providers of self-custodial, user-directed interfaces are required neither to register as broker-dealers under Section 15(b) of the Exchange Act nor to comply with the Staff Statement, solely because the interface makes discoverable, viewable, or user-initiable transactions in non-security crypto assets to which an investment contract may have attached and not yet separated. The Commission's broad exemptive authority under Section 36 of the Exchange Act, together with its general interpretive authority, is well-suited to delivering the requested relief.

### *A. Structure and conditions of the safe harbor*

The safe harbor would apply to self-custodial, user-directed interfaces satisfying the following conditions:

> (1) *Non-custodial*. The interface does not, in connection with any specific transaction at issue, hold, control, or have the ability to access the user's assets. Private keys remain with the user throughout that transaction.
>
> (2) *No counterparty role*. The interface provider does not act as principal or counterparty to the user transaction and does not match user orders against other user orders.
>
> (3) *No discretionary routing*. The interface provider does not exercise discretion over the venue, counterparty, or terms of a user transaction, but rather the liquidity provider for a user transaction is determined programmatically based on the user's chosen parameters.
>
> (4) *User-initiated*. Each transaction is initiated and signed by the user. The interface does not pre-sign, batch-sign, or otherwise execute transactions on the user's behalf.
>
> (5) *No undisclosed transaction-based compensation from issuers*. The interface provider does not receive compensation from an issuer, or any affiliate of an issuer, that is contingent on the volume or value of user transactions in that

issuer's asset, unless that compensation arrangement is prominently disclosed to users. Listing fees calibrated to the cost of integration, paid in fiat or in assets the issuer does not control, are not transaction-based compensation for purposes of this condition.

(6) *No active participation in an issuer-controlled distribution*. The interface provider does not participate, and has not participated, as an active party in the initial distribution of the asset, including by serving as an authorized distribution channel for pre-sales, private placements, or similar issuer-directed distribution events. Mere passage of assets to users who receive airdrops through independent protocol activity, without the interface provider serving as a directed distribution vehicle, is not participation within the meaning of this condition.

(7) *No actual knowledge of a Commission or judicial action*. The interface provider does not have actual knowledge, at the time of a specific user transaction, that a non-security crypto asset available through the interface is the subject of a publicly announced Commission enforcement action or a judicial determination that an investment contract has attached to, and not separated from, the asset. The safe harbor would make clear that constructive knowledge of diffuse but publicly available statements by issuers or their affiliates or agents would not disallow reliance by an interface provider on the safe harbor. In addition, upon gaining actual knowledge, the interface providers would have a reasonable amount of time to safely implement a removal of the asset from its interface.

(8) *No false or misleading statements about asset status*. The Interface provider does not make affirmative representations to users that a specific asset is or is not subject to an investment contract or that a specific transaction is or is not a securities transaction.

(9) *Disclosure to users*. The interface provider discloses to users, in plain terms, that the interface does not custody assets, is not a registered broker dealer, does not serve as a counterparty, and does not perform asset-status determinations.

These conditions would be evaluated at the level of the transaction and the interface pathway through which it is executed. An interface provider would not be disqualified from the safe harbor with respect to a specific transaction solely because other features or products of the interface provider involve custody, counterparty functions, order matching, or other characteristics not present in the transaction at issue.

The safe harbor would cover user-directed transactions in non-security crypto assets, including assets to which an investment contract may have attached and not yet separated within the meaning of the Release. It would not affect obligations applicable to user activity involving crypto asset securities, which would continue to be governed by the Staff Statement and any successor Commission-level guidance or rule. It would not preempt obligations imposed by other federal regulatory regimes, including the Commodity Exchange Act, the Bank Secrecy Act, or any future market-structure legislation enacted by Congress.

### *B. Safe Harbors are appropriate for novel doctrines*

This request is consistent with the considerations the Commission routinely weighs when issuing interpretive guidance of this scope. The Release is the first time the Commission has detailed its views on "attachment" and "separation" of investment contracts, a position that has direct implications on the design and operation of non-custodial user interfaces. A defined safe harbor for interface providers with respect to user activity involving non-security crypto assets is a natural and administrable way to give effect to those considerations.

This would not be the only example of such relief. The Commission has a history of introducing novel interpretive doctrines, the strict application of which would impose unworkable burdens on market participants Congress did not intend to reach, and pairing those doctrines with administrable safe harbors. For instance, Rule 144 was issued to provide secondary-market participants with a bright-line path through the fact-intensive 'underwriter' inquiry under Section 2(a)(11), so that Section 4(a)(1)'s exemption for transactions by non-issuers and non-underwriters would be available with certainty. Rule 15a-6 was issued under Section 15(b), the same provision at issue here, to provide foreign broker-dealers transacting with U.S. institutional investors a tailored alternative to full registration where the policy concerns underlying the broker-dealer regime were not implicated. Rule 10b5-1 provided corporate insiders with an administrable framework for trades arranged before they acquired material non-public information.[13] In each instance, the Commission concluded that the policy concerns underlying the relevant statutory provision were better served by a structured safe harbor than by a strict-liability application that would distort participant behavior.

* * *

Consensys appreciates the Commission's effort to provide clarity through the Release and the invitation for public comment. We support the Release's taxonomy and the explicit recognition that most crypto assets are not themselves securities as well as the activity guidance on protocol mining, protocol staking, wrapping, and airdrops. Furthermore, we appreciate the Commission's articulation of the concepts of "attachment" and "separation" under *Howey*. We also acknowledge the Staff Statement as a meaningful interim step forward for providers of Covered User Interfaces.

But even with these advances, Commission-level action is urgently needed to avoid inadvertently placing interface providers in the position of either treating all non-security crypto assets as if they were crypto asset securities under the Staff Statement or attempting to conduct a costly and, likely, ineffective exercise of monitoring all statements, whether offered by issuers or by their affiliates and potential agents, with respect to all non-security crypto assets discoverable and available through its platform. Without a Commission-level safe harbor, we are likely to see some interface providers strictly limiting the crypto assets available on their platforms, driving U.S. users to less safe offshore markets, reducing investor protection.

[13] Although Rule 10b5-1 is an affirmative defense to a liability rule and not an exemption from a registration requirement, it nonetheless shows that the Commission has paired novel interpretive positions with administrable safe harbors.

We would welcome the opportunity to discuss these proposals.

Respectfully submitted,

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