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SEC Issues Guidance on Tokenized Securities

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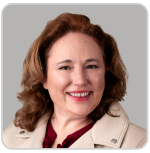

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Introduction

On January 28, 2026, the SEC's Divisions of Corporation Finance, Investment Management, and Trading and Markets issued a **joint statement** addressing "tokenized securities." The staff defines a tokenized security as a financial instrument that already fits within the statutory definition of a "security,"[1] but is "formatted as or represented by a crypto asset," with ownership recorded in whole or in part on a crypto network. In other words, putting a security "onchain" does not in and of itself change the security into something else.[2]

Tokenized securities generally fall into two categories:

The statement divides tokenized securities into two broad categories: (1) issuer-sponsored, and (2) securities tokenized by unaffiliated third parties.

1. For issuer-sponsored tokenization, the message is straightforward: if an issuer integrates distributed ledger technology into its master securityholder file so that transfers on a blockchain update the official ownership record, the tokenized security will still have the same properties and treatment as a non-tokenized security. To this end, the staff states plainly that "[t]he format in which a security is issued or the methods by which holders are recorded (e.g., onchain vs. offchain) does not affect application of the federal securities laws." Registration requirements, reporting obligations, and the definition of "equity security" apply regardless of whether the cap table sits in a traditional database or on a blockchain.

   The staff also notes that issuers can have multiple formats of the same class of securities, or even create a separate class in tokenized form. But if the tokenized instrument is of "substantially similar character" and carries "substantially similar rights and privileges," it may be treated as the same class for certain securities law purposes.

   The statement also addresses structures where the blockchain does not itself constitute the official master securityholder file. In those models, the issuer maintains the authoritative ownership record offchain, and the token functions as a mechanism to facilitate transfers that are then reflected in the issuer's books. Even in that case, the tokenized instrument involves a securities transaction and must comply with the federal securities laws.

2. The more complex analysis arises with third-party tokenization of securities that have already been issued. Here, an unaffiliated entity creates a crypto asset tied in some way to an underlying security issued by someone else. The staff observes that these models vary, and that the rights associated with the crypto asset "may or may not be materially different from those of the underlying security." Importantly, holders of the resulting token may face risks related to the third party (such as insolvency) that would not exist for holders of the underlying security.

The statement describes two primary third-party models.

A. *Custodial tokenized securities*. In this model, the third party holds the underlying security in custody and issues a token representing a "security entitlement." The token reflects the holder's indirect interest in the underlying security. As with issuer-sponsored models, using a crypto asset format does not alter the application of the securities laws. Whether the entitlement records are maintained onchain or offchain, the instrument remains a security subject to the existing regulatory framework.

B. *Synthetic tokenized securities*. These do not represent an ownership interest in the underlying security. Instead, the third party issues its own security that provides economic exposure to a referenced security.

   i. One version is a "linked security," such as a structured note or exchangeable instrument, where the return is tied to the value or performance of another security. The linked security "is not an obligation of the issuer of the referenced security and confers no rights or benefits" from the original issuer. This suggests that the third-party must itself comply with securities laws, registrations and requirements.

   ii. Another version is a security-based swap formatted as a crypto asset. The staff emphasized that if a crypto-formatted instrument meets the definition of a "swap"**[3]** and satisfies one of the prongs of the "security-based swap" definition**[4]**, then it is regulated as such.**[5]** The statement highlights that security-based swaps generally may not be offered or sold to persons who are not eligible contract participants unless a Securities Act registration statement is in effect and transactions occur on a national securities exchange.

The staff underscores that whether an instrument is a security-based swap or a linked security can depend on exclusions from the definition of "swap," and that "the economic reality of the instrument rather than the name given to the instrument" determines its treatment.

[1] The Guidance explicitly noted that "security" is defined in Section 2(a)(1) of the Securities Act of 1933, Section 3(a)(10) of the Securities Exchange Act of 1934, and Section 2(a)(36) of the Investment Company Act of 1940.

[2] We note that due to changes regarding securities in the 2022 Amendments of the Uniform Commercial Code (UCC), the management of an onchain security for UCC purposes may vary from the way an offchain security would be handled.

[3] *See* Commodities Exchange Act Section 1a(47). The Guidance noted that the definition consists of six prongs and specified exclusions. If a crypto asset satisfies one or more of the prongs of the definition of "swap" and does not fall within one of the statutorily specified exclusions, the crypto asset is a swap.

[4] *See* Securities Exchange Act Section 3(a)(68).

[5] The statement reinforces the jurisdictional boundary with the Commodity Futures Trading Commission, as instruments that qualify as "swaps" but not "security-based swaps" may fall under the Commodity Exchange Act. On December 8, 2025, the CFTC's Market Participants Division, Division of Market Oversight, and Division of Clearing and Risk issued **guidance** on tokenized collateral in Staff Letter 25-39; and the CFTC's Market Participants Division issued **guidance** in Staff Letter 25-40 regarding digital assets accepted as margin collateral. The CFTC's December 2025 guidance on tokenization takes a notably practical, market-operations approach, in contrast to the SEC's taxonomy-heavy analysis. Rather than focusing on how to categorize tokenized instruments, the CFTC addressed how tokenized assets can function within the existing derivatives regulatory framework—particularly as margin collateral. *See also* Cadwalader Resources: Client and Friends, *CFTC Opens the Door to Digital Asset Collateral: Regulatory Guidance, No-Action Relief, and Practical Implications* (Dec. 23, 2025); available at: **https://www.cadwalader.com/resources/clients-friends-memos/cftc-opens-the-door-to-digital-asset-collateral--regulatory-guidance-no-action-relief-and-practical-implications**.