

Statement on “Framework for ‘Investment Contract’ Analysis of Digital Assets”

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Blockchain and distributed ledger technology can catalyze a wide range of innovation. We have seen these technologies used to create financial instruments, sometimes in the form of tokens or coins that can provide investment opportunities like those offered through more traditional forms of securities. Depending on the nature of the digital asset, including what rights it purports to convey and how it is offered and sold, it may fall within the definition of a security under the U.S. federal securities laws.

As part of a continuing effort to assist those seeking to comply with the U.S. federal securities laws, FinHub is publishing a framework for analyzing whether a digital asset is offered and sold as an investment contract, and, therefore, is a security. The framework is not intended to be an exhaustive overview of the law, but rather, an analytical tool to help market participants assess whether the federal securities laws apply to the offer, sale, or resale of a particular digital asset. Also, the Division of Corporation Finance is issuing a response to a no-action request, indicating that the Division will not recommend enforcement action to the Commission if the digital asset described in the request is offered or sold without registration under the U.S. federal securities laws.

As financial technologies, methods of capital formation, and market structures continue to evolve, market participants should be aware that they may be conducting activities that fall within our jurisdiction. For example, market participants may engage in activities that require registration of transactions and persons or entities involved in those transactions. Even if no registration is required, activities involving digital assets that are securities may still be subject to the Commission's regulation and oversight. More specifically, the information contained in this framework may apply to entities conducting the following activities related to digital assets:

- offering, selling, or distributing
- marketing or promoting
- buying, selling, or trading
- facilitating exchanges
- holding or storing
- offering financial services such as management or advice
- other professional services

This framework represents Staff views and is not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved its content. This framework, like other Staff guidance, is not binding on the Divisions or the Commission. It does not constitute legal advice, for which you should consult with your own attorney. It does not modify or replace any existing applicable laws, regulations, or rules. Market participants are encouraged to review all the materials published on FinHub.

The Staff recognizes that determining whether a new type of financial instrument, including a digital asset, is a security can require a careful analysis of the nature of the instrument and how it is offered and sold. If after applying the framework, market participants have questions regarding whether a particular digital asset is a security, they are encouraged to reach out to the Staff through FinHub's webform.