

Submitted Electronically

October 20, 2026

Ms. Vanessa A. Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, D.C. 20549-1090

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

Dear Ms. Countryman:

We respectfully submit this letter in response to the Securities and Exchange Commission's proposed Regulation Crypto Assets. Aave Labs appreciates the opportunity to provide its views on the important questions raised by the proposed rule.

Aave Labs is a core contributor to the Aave protocol, the largest decentralized lending protocol globally by total value locked and one of the largest venues through which high-quality stablecoins are supplied and borrowed. The Aave protocol is non-custodial, permissionless public infrastructure: a set of open-source smart contracts deployed on public blockchains that enables users to supply digital assets to protocol reserves and to borrow digital assets against collateral. Users interact with the protocol directly from user-custodial wallets, and each transaction is initiated and authorized by the user. They do not transfer title or custody of their assets to a centralized financial intermediary, and they do not enter into legal debtor/creditor relationships.

The protocol is non-discretionary. No person, including Aave Labs, exercises judgment over whether, when, or on what terms an individual user supplies, borrows, repays, withdraws, or is liquidated. Each of those outcomes follows from predetermined, publicly disclosed parameters that apply uniformly to all users and that anyone can independently verify onchain. Those parameters are set and adjusted through public governance processes, or by risk stewards and other parties acting within bounded authority that governance has publicly delegated.<sup>1</sup> Any such adjustment applies across the relevant market, not to any particular user's position, and is not made by an intermediary acting on behalf of particular users. The protocol therefore functions as shared public infrastructure rather than as a financial intermediary standing between parties. That distinction underlies each of the comments below: regulatory treatment should turn on the <sup>1</sup> functions actually performed by identifiable persons, not on the existence of software through which independent users transact.

Aave Labs welcomes the opportunity to comment on proposed Regulation Crypto Assets (the **"Proposed Rule"**) and, in particular, to address structural issues affecting decentralized finance (**"DeFi"**). DeFi refers generally to financial activity conducted through blockchain-based protocols and smart contracts that enable users to transact directly with protocol infrastructure, including to supply, borrow, exchange, or otherwise use digital assets,

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<sup>1</sup> Risk stewards are independent service providers that the Aave DAO has authorized, through public governance votes, to adjust specified market risk parameters within predefined ranges and frequency limits. Their adjustments are executed onchain, are publicly visible, and apply uniformly to all users of the affected market.

without relying on a traditional centralized intermediary to execute or custody those transactions.

The treatment of crypto assets under the Proposed Rule has direct implications for DeFi. Digital assets, including tokenized securities, may now or in the future be used as collateral in certain Aave markets, which operate on an overcollateralized basis. Aave Labs therefore has a direct interest not only in the Proposed Rule's treatment of the issuance and secondary trading of crypto assets, but also in whether and under what circumstances those assets may be held, supplied, borrowed, used as collateral, or otherwise integrated into decentralized financial markets, particularly where an asset may have been offered or sold subject to an investment contract even though the asset itself is not a security.

Aave Labs submits these comments to ensure that the Proposed Rule's distinction between a crypto asset and an associated investment contract can be applied in practice by decentralized, non-custodial protocols.

## I. The Commission Should Provide a Workable Framework for Secondary Trading and Other Onchain Uses of Non-Security Crypto Assets

Aave Labs commends the Commission for recognizing that a crypto asset and an investment contract pursuant to which that asset may be offered or sold are fundamentally distinct. That distinction reflects the economic reality of crypto markets and represents an important departure from approaches that effectively treated a crypto asset as permanently carrying the regulatory status of the transaction in which it was initially distributed. The Commission's March 2026 Interpretive Release similarly recognizes that digital commodities, digital collectibles, and digital tools are not themselves securities, even though a non-security crypto asset may be offered and sold along with (termed "subject to") an investment contract.<sup>2</sup> The Proposed Rule refers to an investment contract involving a crypto asset that satisfies the requirements of the Proposed Rule<sup>2</sup> as a "covered investment contract" and builds on the asset-contract distinction by creating tailored offering exemptions for such covered investment contracts and, through proposed Rule 400, a non exclusive safe harbor under which a crypto asset would be deemed no longer subject to an investment contract once specified conditions are satisfied.<sup>3</sup>

That is an important and welcome development. As Chairman Atkins has explained, an investment contract describes a relationship between parties rather than an immutable characteristic of the underlying asset, and it may be performed, expire, or otherwise terminate even though the crypto asset continues to exist and circulate.<sup>4</sup> A workable regulatory framework should therefore permit a crypto asset to move from being distributed pursuant to an initial capital-raising arrangement into an ecosystem in which the asset can trade and be used independently of the issuer's promises.

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<sup>2</sup> U.S. Securities and Exchange Commission & Commodity Futures Trading Commission, *Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets*, Release Nos. 33-11412; 34-105020, 91 Fed. Reg. 13714 (Mar. 23, 2026) (the "Interpretive Release") (classifying crypto assets into categories and stating that digital commodities, digital collectibles, and digital tools, as described in the interpretation, are not themselves securities, while recognizing that a non-security crypto asset may be offered or sold pursuant to an investment contract).

<sup>3</sup> U.S. Securities and Exchange Commission, *Regulation Crypto Assets*, Release Nos. 33-11434; 34-106150, File No. S7-2026-27 (Aug. 18, 2026) ("Proposed Rule") (proposing tailored offering exemptions and a conditional safe harbor from the term "investment contract" in the Securities Act and Exchange Act definitions of "security").

<sup>4</sup> Paul S. Atkins, Chairman, U.S. Securities and Exchange Commission, *The SEC's Approach to Digital Assets: Inside "Project Crypto"* (Nov. 12, 2025) (explaining that an investment contract describes a relationship rather than an immutable label attached to an asset and that investment contracts can be performed or expire).

The practical value of that distinction, however, depends on whether issuers and unaffiliated market participants can determine when it becomes legally operative and what may be done with the underlying crypto asset once it does. The Proposed Rule leaves important uncertainty concerning: (i) the treatment of secondary transactions and other onchain activity before an issuer files a Form TR; (ii) the extent to which third parties may rely on a filed Form TR; (iii) the treatment of crypto assets that were never subject to a covered investment contract; (iv) whether and when crypto assets that are not themselves securities may be supplied, borrowed, or used as collateral through decentralized, non-custodial protocols; and (v) how the Exchange Act's intermediary framework applies to transactions conducted through non-custodial infrastructure, including automated collateral liquidations.

Put differently, the Proposed Rule, together with the Interpretive Release, principally addresses the offer and sale of covered investment contracts and the secondary and spot trading of the associated crypto assets. That focus is welcome, but it leaves unaddressed a host of other issues that directly affect protocols such as Aave, including whether an asset may be supplied to protocol reserves, borrowed, or used as collateral; how automated liquidations are treated; and whether protocol developers, interface providers, governance participants, or risk stewards may be treated as securities intermediaries.

#### a. Proposed Rule 400 Provides an Important Transition Mechanism, but the "Essential Managerial Efforts" Standard Requires Greater Clarity

Proposed Rule 400 provides a mechanism for establishing that a crypto asset is no longer subject to a covered investment contract. The asset would be separated from the covered investment contract when the issuer files a Form TR certifying that the issuer has completed or otherwise permanently ceased all essential managerial efforts that it represented or promised to undertake under the covered investment contract and is not making, and does not intend to make, new representations or promises to undertake essential managerial efforts with respect to the crypto asset.<sup>5</sup> The Form TR must include an analysis supporting that certification.<sup>6</sup>

This approach appropriately focuses on the representations and promises that created the investment contract and places primary responsibility for assessing their completion on the person or group that made them. An issuer seeking a clear path into the safe harbor would have an incentive to identify its promised efforts with precision and avoid making indefinite or unnecessarily expansive commitments.

Nevertheless, the standard may be difficult to apply where responsibility for a project's development has become distributed or where an associated protocol continues to evolve through decentralized governance. In those circumstances, the person that made the original representations may have completed those promised efforts even though unaffiliated developers or governance participants continue to improve the protocol. Continued development beyond the initial promises, or by third parties including a broader community, should be differentiated from the initial promises forming the investment contract and should

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<sup>5</sup> Proposed Rule, proposed Rule 400(a) and accompanying discussion. The Proposed Rule states that the relevant condition is satisfied where the issuer has completed or permanently ceased all essential managerial efforts that it represented or promised it would undertake and is not making and does not intend to make new representations or promises to undertake essential managerial efforts concerning the crypto asset.

<sup>6</sup> *Id.*, proposed Form TR Items 1-3 (requiring identification of the covered investment contract and crypto asset, certification that the Rule 400(a) condition has been satisfied, and supporting analysis).

not be interpreted to mean that the original issuer's investment contract remains in existence indefinitely.

The final rule should therefore clarify, in the text of Rule 400 itself, that the relevant inquiry is whether the issuer has completed or permanently ceased the essential managerial efforts that it represented or promised it would undertake, not whether all development, governance, or maintenance by any person involving the relevant protocol has ended. The Commission has already expressed this view. The Interpretive Release states that a non-security crypto asset separates from an investment contract once the issuer fulfills its promises, "even if the issuer continues to provide efforts that are not essential managerial efforts." The Proposed Rule goes further, stating that once an associated crypto network or application is functional, services to secure, maintain, improve, or enhance it, or to facilitate network effects, "would not constitute essential managerial efforts," and that representations or promises to provide such services, "whether by the issuer or another party," would not satisfy *Howey*. The staff's FAQs repeat that view.<sup>7</sup> But these statements appear in interpretive guidance, preamble discussion, and staff FAQs that have no legal force, and are not present in the proposed rule text, which limits the analysis to the issuer's completion or permanent cessation of its promised efforts. Codifying the principle in Rule 400 would give issuers and market participants a durable basis for reliance and clarify the impact of certain activities by issuers and third parties. Otherwise, managerial activity by independent developers or DAO participants, or even activity by the original issuer that exceeds the scope of its initial promises, could be attributed to the original issuer merely because the protocol remains active.

That clarification would preserve the Proposed Rule's promise-based framework while making it usable for decentralized systems. Issuers already have an incentive to define their initial promises precisely; confirming that subsequent and independent protocol development does not prevent the original investment contract from terminating would also allow developers to continue improving a protocol without taking on additional regulatory risk. Relatedly, the staff has stated that separation does not occur where another party assumes the issuer's representations or promises, "whether affirmatively or by operation of law." The final rule should make clear that a DAO, foundation, or independent developer community that continues to maintain or improve a functional protocol on its own initiative after the issuer has completed its promised efforts has not somehow "assumed" the issuer's promises merely by doing so; otherwise, the assumption principle could swallow the post-functionality principle described above.

The Commission also should accommodate circumstances in which a decentralized project designates an agent to make the required filings on behalf of the issuer or relevant group, although that procedural accommodation does not resolve how the "essential managerial efforts" standard applies when the network continues to develop without centralized control.

## **b. The Commission Should Provide Unaffiliated Market Participants a Clear Basis for Determining When a Crypto Asset Is Not Subject to a Covered Investment Contract**

### **i. Market Participants Need a Workable Means of Determining**

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<sup>7</sup> Div. of Corp. Fin., U.S. Sec. & Exch. Comm'n, *Frequently Asked Questions on the Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets* (the "Corp. Fin. FAQs"), Question 2.3 (Sept. 25, 2026, updated Sept. 28, 2026).

## When a Crypto Asset Is Outside the Covered Investment Contract Framework

The Proposed Rule appropriately recognizes that a crypto asset may exist independently of any investment contract associated with its offer or sale, both where an asset was never offered or sold subject to a covered investment contract and where a covered investment contract once existed but has terminated. The Interpretive Release similarly distinguishes the underlying crypto asset from the investment contract to which it may have been subject, while proposed Rule 400 would provide a conditional safe harbor under which a qualifying crypto asset would be deemed no longer subject to an investment contract for purposes of the Securities Act of 1933 (the “**Securities Act**”) and Securities Exchange Act of 1934 (the “**Exchange Act**”).<sup>8</sup> In either circumstance, the regulatory treatment of subsequent transactions should turn on whether a covered investment contract actually exists, not on the historical circumstances of the asset’s creation or distribution.

Where an issuer has filed a Form TR, that filing supplies a clear, public answer, and Part I.b.ii below addresses the extent to which third parties should be able to rely on it. The difficulty for unaffiliated market participants arises where no Form TR has been filed, whether because the issuer has not yet filed, has chosen to rely on the Interpretive Release rather than the safe harbor, or never offered the asset subject to a covered investment contract. The Proposed Rule itself recognizes that the benefits of Form TR “will only be realized to the extent an issuer takes advantage of the safe harbor rather than relying on the 2026 Interpretation.”<sup>9</sup> Where a covered investment contract previously existed, the Proposed Rule’s transition mechanism focuses on whether an issuer has completed or permanently ceased the essential managerial efforts that it represented or promised to undertake under the covered investment contract.<sup>10</sup> A decentralized protocol considering whether to support an asset therefore may need to determine whether another person made representations or promises giving rise to a covered investment contract and, if so, which promised efforts were essential, whether those efforts have been completed or permanently ceased, and whether relevant representations or promises remain outstanding. The Commission staff’s subsequent FAQs underscore that this inquiry turns substantially on what the particular issuer represented or promised, including whether the issuer has satisfied any thresholds for “functionality” or “decentralization” that it represented would be achieved.<sup>11</sup> An unaffiliated protocol may not have reliable access to all of the information necessary to make that assessment.

The absence of a Form TR presents a related, but distinct, problem where a crypto asset was never subject to a covered investment contract at all. In that case, there is no issuer promise for a third party to evaluate and no Form TR filing. The Interpretive Release identifies categories of crypto assets, including digital commodities, digital collectibles, and digital tools, that, when possessing the characteristics described therein, are not themselves securities.<sup>12</sup> Where no covered investment contract ever existed, there is nothing from which the asset must transition and not doubt on otherwise lawful transactions involving that asset.

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<sup>8</sup> Proposed Rule, proposed Rule 400; see also Interpretive Release (addressing circumstances in which a non-security crypto asset may be offered or sold subject to an investment contract and subsequently cease to be subject to that investment contract).

<sup>9</sup> Proposed Rule at 253 (economic analysis of the proposed investment contract safe harbor).

<sup>10</sup> Proposed Rule, proposed Rule 400(a).

<sup>11</sup> See Corp. Fin. FAQs, *supra* note 7, Question 1.1 (addressing whether an issuer has fulfilled representations or promises concerning functionality or decentralization by reference to the thresholds described by the issuer).

<sup>12</sup> See Interpretive Release (identifying categories of crypto assets, including digital commodities, digital collectibles, and digital tools, that under the circumstances described therein are not themselves securities).

Form TR therefore should be understood for what it is: a filing through which an issuer that offered and sold investment contracts that included a subject crypto asset informs the public that it has determined the covered investment contract has ceased to exist, and the basis for that determination. It should not become the exclusive practical means of demonstrating that a crypto asset is outside the covered investment contract framework. An issuer may reasonably conclude that its promises have been fulfilled without immediately filing Form TR, may decline to rely on the Rule 400 safe harbor, or may conclude that the investment contract has terminated under ordinary *Howey* principles without resort to the safe harbor.<sup>13</sup> And where no covered investment contract ever arose, there may be no issuer with any reason, obligation, or practical ability to file Form TR. Because Rule 400 is a conditional safe harbor, the absence of a Form TR should not imply that a covered investment contract exists.<sup>14</sup>

Without that clarification, the market risks developing two classes of otherwise non security crypto assets: those associated with an EDGAR-filed Form TR and those without one. Risk-sensitive market participants may favor the first category because Form TR provides a readily identifiable regulatory signal, even where an asset in the second category was never subject to a covered investment contract or a previously existing covered investment contract has otherwise terminated. The practical availability of decentralized financial services should not turn on the existence of a regulatory filing that may be unnecessary or inapplicable to the asset, or arise long after the issuance of the asset.

The final rule should therefore preserve meaningful pathways to clarity regarding the regulatory status of crypto assets both through and outside the Rule 400 safe harbor. Market participants can already apply the Interpretive Release and *Howey* to these questions, but without any Commission-level assurance that a good-faith determination will be respected, which is why risk-sensitive participants may default to requiring a Form TR. The Commission should identify objective circumstances in which an unaffiliated market participant may reasonably determine that no covered investment contract exists, whether because (i) none arose in the first instance or (ii) one previously existed but has terminated. In the latter case, an unaffiliated market participant should be permitted to rely reasonably on publicly available information concerning the relevant promises and objective evidence that the issuer's essential promised efforts have been completed or permanently ceased. More generally, market participants should be able to rely on the Commission's crypto-asset taxonomy, the Interpretive Release, and traditional *Howey* principles.<sup>15</sup>

To make that determination administrable, the Commission should provide objective, non exclusive criteria that unaffiliated market participants may consider, including whether: (i) the asset falls within a category the Commission has recognized as a non-security crypto asset; (ii) an identifiable issuer or promoter made representations or promises to undertake essential managerial efforts; (iii) the asset provides a claim against an issuer or other obligor; (iv) the asset's value and functionality depend principally on the programmatic operation of a functional crypto system and supply-and-demand dynamics; and (v) purchasers are relying on managerial promises of an identifiable person rather than on the programmatic operation and decentralized use of the network.<sup>16</sup>

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<sup>13</sup> See Interpretive Release; *SEC v. W.J. Howey Co.*, 328 U.S. 293, 298–99 (1946).

<sup>14</sup> See Proposed Rule, proposed Rule 400; see also Interpretive Release.

<sup>15</sup> See Interpretive Release; *Howey*, 328 U.S. at 298–99.

<sup>16</sup> See Interpretive Release (addressing the characteristics of non-security crypto assets and the role of representations or promises concerning essential managerial efforts); see also Corp. Fin. FAQs, *supra* note 7. The

These criteria largely reflect how careful market participants approach the question today and track positions the staff has already taken, including that promoting a crypto system's current utility, or indefinite aspirational statements without any promotion of profit, likely would not constitute promises to engage in essential managerial efforts, and that once a functional crypto system has no central party, issuer statements likely would not create a new investment contract. Articulating these criteria in the final rule would make a determination under them defensible after the fact. The Commission also should confirm, consistent with the Interpretive Release, that a non security crypto asset does not remain subject to an investment contract in secondary market transactions where purchasers would not reasonably expect the issuer's promises to remain connected to the asset, consistent with the conclusion in *SEC v. Ripple Labs, Inc.*, that programmatic secondary-market sales to purchasers who did not know the seller's identity did not satisfy *Howey*.<sup>17</sup> Finally, the staff has stated that a trading platform offering a secondary market for a crypto asset would be a promoter only if it meets the definition of "promoter" in Securities Act Rule 405; the Commission should confirm that the same principle applies to decentralized protocols that support an asset for supply, borrowing, or collateral use. Such criteria would give market participants a practical diligence framework while preserving Form TR as a source of additional certainty rather than a mandatory regulatory passport.

## ii. Unaffiliated Market Participants Should Be Permitted to Rely on Form TR

Aave Labs recognizes that Form TR can provide particularly valuable certainty because it is a public, standardized statement by the person ordinarily best positioned to know what it promised and whether those efforts have been completed. Under the Proposed Rule, neither the Commission nor its staff would be required to review or act on the filing for the safe harbor to operate.<sup>18</sup> That approach appropriately avoids turning Form TR into an SEC qualification process, but it raises a related question: what may an unaffiliated third party reasonably conclude from a filed Form TR?

The final rule should answer that question. If every exchange, custodian, lending protocol, or other market participant must independently reconstruct the issuer's historical promises and verify that each essential managerial effort was completed notwithstanding the public Form TR, the filing provides substantially less certainty than its existence would suggest. Proposed Rule 103 helps. Rule 103(b)(1) would require an issuer relying on the startup or fundraising exemption to disclose its promises to engage in essential managerial efforts and its progress on them, and the Commission expects issuers to use that disclosure in the Form TR analysis, noting that it "may provide issuers, investors, and other market participants with a more objective means by which to determine whether a covered investment contract has ceased to exist." But Rule 103 disclosure would exist only "to the extent [the issuer] had relied on the startup exemption or the fundraising exemption."<sup>19</sup> It would not exist for crypto assets offered under other exemptions, before the Proposed Rule is adopted, or never subject to a covered investment contract. And even where it exists, it documents the issuer's own account of its promises and progress; it does not tell a third party whether it may act on the certification without independently verifying it. Commentators have likewise identified

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objective criteria proposed herein are intended to provide an administrable framework for application of those principles by unaffiliated market participants.

<sup>17</sup> *SEC v. Ripple Labs, Inc.*, 682 F. Supp. 3d 308 (S.D.N.Y. 2023).

<sup>18</sup> See Proposed Rule, proposed Rule 400 and proposed Form TR.

<sup>19</sup> See Proposed Rule at 165–66.

secondary-market certainty as a significant unresolved feature of the proposed framework.<sup>20</sup>

The Commission should therefore establish an express good-faith reliance protection for unaffiliated market participants. For example, the final rule could provide that, beginning 60 days after a Form TR is filed, an unaffiliated market participant may rely in good faith on that filing unless and until a court of competent jurisdiction or the Commission, in a final judgment or order, determines that the certification is ineffective or materially deficient, the issuer withdraws the Form TR, or the crypto asset becomes subject to a new covered investment contract.<sup>21</sup> Tying the end of reliance to a final judgment or order, rather than to a public allegation or even a filed claim, would prevent tactical or bad-faith objections, or unproven claims brought in litigation or enforcement, from impairing an asset's liquidity before any determination on the merits. The 60-day period would provide an administrable point at which reliance protection attaches without conditioning effectiveness of Form TR on Commission approval. The issuer would remain responsible for the accuracy of its certification, but a third party acting reasonably and without knowledge of a material deficiency would not face retroactive liability merely because the certification was later challenged. This would assign the risk of an inaccurate certification to the person that made it, while giving the market an objectively observable signal on which to act.

### iii. Non-Custodial Protocols Should Not Be Treated as Securities Intermediaries Solely Because They Provide Transaction Infrastructure

Finally, the Commission should clarify how these principles apply when holders transact through non-custodial infrastructure. Where users initiate transactions through user-custodial wallets using predetermined smart-contract functionality, and the infrastructure provider does not exercise discretion over the transaction, the fact that software enables the transaction should not, without more, cause the transaction to be attributed to the protocol or its governance participants. The staff's April 2026 statement concerning Covered User Interface Providers provides useful support for this functional distinction (the "**Staff Statement**"). The Staff Statement described interfaces through which users prepare user-initiated crypto asset securities transactions on blockchain protocols or smart contracts using user-controlled self-custodial wallets and explained its views concerning the circumstances in which providers of user interfaces need not register as broker-dealers.<sup>22</sup>

The staff's position is expressly interim, however, and addresses the use of Covered User Interfaces for crypto asset securities transactions, not the full range of lending,

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<sup>20</sup> See, e.g., Davis Polk & Wardwell LLP, *SEC Proposes Regulation Crypto Assets: A Meaningful Offering Framework, Though Key Questions Remain* (2026) (discussing secondary trading and limitations of the proposed transition framework); see also Sidley Austin LLP, discussion of the proposed Rule 400 safe-harbor mechanics.

<sup>21</sup> This proposed 60-day period is intended to provide an administrable mechanism for third-party reliance and is not intended to suggest that the Commission must affirmatively review or approve a Form TR before reliance may be reasonable. Other industry participants, including The Digital Chamber, have similarly proposed frameworks intended to permit third parties to rely on an issuer's Form TR or other objective indicia of a crypto asset's regulatory status, reflecting the broader need for a workable reliance framework for unaffiliated market participants.

<sup>22</sup> See Staff of the Division of Trading and Markets, U.S. Securities and Exchange Commission, *Staff Statement Regarding Broker-Dealer Registration of Certain User Interfaces Utilized to Prepare Transactions in Crypto Asset Securities* (Apr. 13, 2026) (addressing certain user interfaces used to prepare user-initiated transactions in crypto asset securities involving blockchain protocols or smart contracts and self-custodial wallets); see also Sidley Austin LLP, *U.S. SEC Clears Path for Decentralized Crypto Asset Security Trading With Broker Registration Exception for User Interfaces* (Apr. 15, 2026).

borrowing, collateral, or other activities conducted through decentralized protocols.<sup>23</sup> The Commission therefore should incorporate the underlying principle into a durable framework: regulatory treatment should turn on the function actually performed by an identifiable person, rather than on the mere availability of non-custodial smart-contract infrastructure through which independent users transact.

The same functional analysis should apply across the Exchange Act's intermediary framework. The relevant definitions generally contemplate an identifiable person performing the regulated function and, where required, capable of registering and complying with the resulting regulatory obligations. Permissionless protocols may present materially different circumstances. Control over whether an asset is supported through a particular user interface does not necessarily entail control over third parties' power to transact directly using deployed smart contracts. And where protocol-level activity occurs through smart contracts subject to decentralized governance, there may be no identifiable person that both performs the asserted intermediary function and possesses the authority necessary to register and operate the protocol as an exchange, broker, dealer, or clearing agency. The Commission should therefore focus on the functions actually performed by identifiable persons rather than attribute intermediary status based solely on the existence of protocol infrastructure or participation in decentralized governance.<sup>24</sup>

The Commission itself recognizes that the Proposed Rule does not resolve these broader Exchange Act questions. Footnote 192 to the Proposed Rule acknowledges recommendations for exemptions from the definitions of "exchange," "broker," and "dealer" and states that the Proposed Rule does not address them.<sup>25</sup> The Commission should nonetheless ensure that uncertainty regarding intermediary status does not frustrate the practical operation of the Proposed Rule for decentralized, non-custodial protocols.

### c. The Final Rule Should Confirm That Non-Security Crypto Assets May Be Used Productively Onchain

Regulatory clarity regarding the status of a crypto asset is important not only to whether the asset may be issued or traded, but also to whether it may be put to productive use onchain. In decentralized financial markets, crypto assets may be supplied to reserves, borrowed, used as collateral, and included in other transactions executed through smart contracts.<sup>26</sup> For protocols such as Aave, these uses are not incidental to an asset's secondary

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<sup>23</sup> See Staff Statement, *supra* note 22 (describing the staff position concerning certain Covered User Interface Providers).

<sup>24</sup> 15 U.S.C. § 78c(a)(1), (4), (5), (9), (23) (defining "exchange," "broker," "dealer," "person," and "clearing agency"); see also Staff Statement, *supra* note 22 (addressing broker-dealer registration requirements applicable to persons providing certain interfaces used for user-initiated crypto asset securities transactions through blockchain protocols or smart contracts and self-custodial wallets).

<sup>25</sup> See Proposed Rule, n.192 (acknowledging concerns regarding other aspects of the federal securities laws that may apply to transactions involving covered investment contracts, including recommendations for exemptions from the definitions of "exchange," "broker," and "dealer" under the Exchange Act, and stating that the Proposed Rule does not address those recommendations and that the Commission will continue to consider whether further action with respect to covered investment contracts is warranted).

<sup>26</sup> "Collateral" as used herein refers to crypto assets that a user transfers to the control of a protocol smart contract, the value of which the protocol's code uses to determine the amount of liquidity a user may draw and which are subject to automated liquidation under predetermined parameters. The term does not refer to collateral subject to a security interest under a security agreement. Similarly, "supply," "borrow," and "lend" refer to providing assets to, or drawing liquidity from, protocol smart contracts; those transactions function like loans but do not involve legal loan agreements, debtor/creditor relationships, or other legal duties between a user and any protocol, developer, or governance participant. "Reserve" refers to the smart contract that holds deposited units of a single asset and records deposits, draws, and repayments against it. The term is common to Aave, Compound, and protocols derived from

market; they enable an asset, once issued and capable of lawful secondary transfer, to be deployed in financial transactions without a traditional centralized intermediary.

The Commission should therefore confirm that, once a crypto asset is not subject to a covered investment contract, either because none arose or because any such contract has terminated, the asset may be used productively in DeFi applications, not merely traded in the secondary market.

In particular, the mere supply, borrowing, or use as collateral of a non-security crypto asset through a non-custodial protocol should not, by reason of the regulatory history or status of the underlying asset alone, cause the asset to become subject to a covered investment contract or cause the protocol or its participants to engage in a securities transaction. Any such determination should instead turn on the specific facts and circumstances of a given transaction.

That clarification is a natural extension of the framework in the Proposed Rule, which addresses how crypto assets offered or sold pursuant to investment contracts may transition away from being subject to those arrangements. But the economic significance of that transition depends in part on what holders may then do with the asset. If regulatory certainty extends to secondary trading but not to supplying, borrowing, collateralization, and other ordinary uses of the same non security asset, the Proposed Rule would leave an important part of that transition unresolved.

Nor should these questions be resolved by extending existing intermediary-based regimes to DeFi. Regulation NMS, the federal margin rules, and the rules governing securities lending and the extension of credit are extraordinarily complex frameworks built around centralized broker dealers, exchanges, and lenders that take custody of customer assets, extend credit on a discretionary basis, route orders, and decide when and how to close out positions. None of those functions is performed by a non-custodial protocol in which users supply assets to and borrow assets from shared reserves under uniform, publicly disclosed parameters and in which liquidations occur automatically. Applying those regimes to DeFi would impose obligations that no identifiable person is positioned to perform and would not advance the investor protections those rules were designed to provide. Any framework for onchain lending, borrowing, and collateralization should instead be tailored to how those activities actually function.

This question is particularly significant for Aave because its markets operate on an overcollateralized basis. The utility of a supported asset depends not only on whether it can be transferred, but also on whether users can supply it, use it as collateral to support their borrow position, and rely on functioning markets for valuation and liquidation. Supplying and collateralization therefore expand the functions an asset can perform onchain; they are not simply another form of secondary trading.

Clarifying these uses would also advance the Commission's broader objectives. In announcing "Project Crypto," Chairman Atkins emphasized the need to consider the benefits and risks of moving financial markets onchain and directed Commission staff to update rules

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them, and is not used to describe, and should not be read as conceding, any pooling of investor capital in the sense used in the common enterprise case law. See, e.g., *Aave, Reserves*, <https://aave.com/docs/aave-v3/smart-contracts/pool> (last visited Oct. 20, 2026); *Compound, cTokens*, <https://docs.compound.finance/v2/ctokens/> (last visited Oct. 20, 2026).

to account for onchain software systems<sup>27</sup> He also has emphasized that the federal securities laws historically have assumed the presence of intermediaries, but that regulation should not require intermediation for its own sake where markets can function without it. A framework designed for onchain markets should therefore provide certainty not only for issuance and secondary trading, but for the broader range of financial activity that non-security crypto assets can support once onchain.

#### d. The Commission Should Clarify the Treatment of Infrastructure Related to Automated Liquidations

In an overcollateralized lending protocol, liquidation may occur pursuant to predetermined smart-contract parameters when a borrow position reaches a specified collateralization threshold. Such a mechanism differs functionally from a discretionary secondary-market transaction. The protocol does not make an investment judgment as to whether or when collateral should be liquidated, acquire title to the collateral, negotiate the transaction's terms, or select the parties.

Rather, the position is entered into subject to predetermined parameters, and the smart contracts implement them when the specified conditions are satisfied.

Viewed functionally, a liquidation is a transaction between persons otherwise transacting via non-custodial smart contracts: the borrower, whose position is subject to the pre-accepted parameters, and an independent liquidator that chooses to participate. The smart contracts are infrastructure, not a counterparty or an intermediary standing between them. Aave Labs recognizes that the Securities Act defines "sale" broadly,<sup>28</sup> but whether a liquidation involves a "sale" of a crypto asset is analytically distinct from whether any person acts as an exchange, broker, dealer, or clearing agency in connection with it. And where the collateral is a non-security crypto asset that is not subject to a covered investment contract, the liquidation is not a securities transaction at all.

The final rule, or the adopting release, should therefore state expressly that deploying, maintaining, or providing access to non-custodial smart contracts that permit the liquidation of collateral under predetermined, publicly disclosed parameters does not, without more, require any person to register as an exchange, broker, dealer, or clearing agency. That statement would be consistent with the Staff Statement, which conditions its no-objection position on, among other things, the absence of control or discretion over transactions, software operating on pre-disclosed, objective, and independently verifiable parameters, and the provider not holding user funds or executing or settling transactions. This clarification would be particularly valuable where the collateral is a non-security crypto asset that may previously have been associated with a covered investment contract.

## II. Private Law Considerations

The Proposed Rule includes a statement suggesting that legal rights derived from an investment contract "travel with" secondary market sales of subject crypto assets until the issuer of that crypto asset files a Form TR. Specifically, the Proposed Rule states:

"[t]he associated investment contract will continue to be transferred to subsequent purchasers of the non-security crypto asset in secondary market

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<sup>27</sup> See Paul S. Atkins, Chairman, U.S. Securities and Exchange Commission, *American Leadership in the Digital Finance Revolution* (July 31, 2025) (discussing Project Crypto and the modernization of the Commission's regulatory framework in connection with the movement of financial markets onchain).

<sup>28</sup> 15 U.S.C. § 77b(a)(3).

transactions until the non-security crypto asset separates from the issuer's representations or promises, as discussed below."<sup>29</sup>

This statement, however, conflicts with state property and contract law and would not prevent the separation of legal rights arising under the investment contract from the subject crypto asset. It would create confusion in the market, especially in an insolvency context, where a party with control of a subject crypto asset may think it obtained investment contract rights but would in fact have obtained only bare title to the crypto asset, with the disposition of the investment contract rights determined as a matter of state law. The statement should be revised to reflect the SEC's likely intent, which is to protect subsequent purchasers of subject crypto assets by allowing them to access remedies against issuers under the federal securities laws.

The statement also has direct consequences for DeFi. If the investment contract "travels" with the crypto asset in every secondary transfer, then supplying that asset to a protocol reserve, withdrawing it, or transferring it to a liquidator in an automated liquidation could arguably be characterized as transferring the investment contract. That characterization would risk pulling non custodial protocols, and the persons who develop or govern them, into securities transactions solely because users moved an asset through deployed smart contracts.

The Proposed Rule, consistent with the SEC's recent approach to digital assets, recognizes that crypto assets are not securities but may be sold subject to transactions that are securities, and thus distinguishes the crypto asset from the investment contract. Rights against the issuer arise under the legal agreement (the investment contract), and the crypto asset is property that is transferred to the purchaser of the investment contract.

State commercial law draws the distinction this structure requires. When a borrower supplies a crypto asset as collateral, the protocol's smart contracts obtain system control of the asset, but title to the borrower's collateral does not pass. Article 12 of the Uniform Commercial Code treats control, as defined therein, and title ownership as distinct: control is the functional equivalent of possession of a controllable electronic record, but a transfer of control does not by itself transfer a property interest in the CER absent a voluntary transaction intended to create a transfer.<sup>30</sup>

A smart contract is not a person capable of holding legal title to any property, and no person, including Aave Labs or any governance participant, acquires an ownership interest in the borrower's collateral or position by reason of the protocol's ability to exercise technical system level control (contrasted against control as defined in U.C.C. § 12-105) over any asset. The borrower therefore remains the owner of its collateral and its position even though the protocol's smart contracts are programmed to transfer the collateral to a liquidator on the occurrence of predetermined conditions. Title to collateral passes only on liquidation, and then directly from the borrower to the liquidator, in accordance with system-enforced parameters that the borrower accepted when it entered the position. At no point does the protocol, or any person who develops or governs it, become the owner of any collateral or a counterparty to its transfer.

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<sup>29</sup> Proposed Rule at 18. This language deviates from the corresponding language in the Interpretive Release, which conditioned the transfer of the investment contract through a transaction in the subject crypto asset on purchasers' reasonable expectations.

<sup>30</sup> See U.C.C. §§ 12-104(d), 12-105; § 1-201(b)(29) (defining "purchase" as a voluntary transaction creating an interest in property); § 1-201(b)(27) (defining "person").

Under the Proposed Rule's statement, by contrast, supplying the asset to a protocol reserve or transferring it to a liquidator could be characterized as transferring the investment contract itself. State law does not support that result. Supplying collateral transfers neither title nor contract rights. A liquidation transfers title to the crypto asset, but not the issuer's promises. As discussed further below, the borrower and liquidator do not intend an assignment, the issuer does not consent to a novation, and the parties typically do not know each other's identities or have the opportunity to communicate intent, and thus do not transfer the investment contract or rights arising thereunder.

Transacting the legal rights arising under the investment contract requires a transaction that complies with state law. A mere transfer of a crypto asset from one user to another does not carry legal rights with it, and an SEC statement to the contrary does not alter any party's rights under state law. Because an investment contract is a contract, any transfer of rights arising under it must occur pursuant to state contract law unless the purchase agreement grants rights to a party other than the direct purchaser. Most investment contracts do not specify intended third-party beneficiaries, so rights against the issuer belong to the direct purchaser in privity with the issuer. Secondary market purchasers of subject crypto assets are generally not in privity with the issuer.<sup>31</sup>

Thus, the only party receiving rights under an investment contract is the purchaser in privity with the issuer through the offer and sale of the investment contract.

A federal rule cannot alter state law; although federal law may preempt state law in limited circumstances, there is no evidence that Congress intended the SEC to preempt state property or contract law governing transfers of contract rights. As discussed below, state law dictates what is recognized as property, how property is transferred, the form in which a security may be created,<sup>32</sup> and the circumstances in which rights under a security may be transferred. Because a crypto asset is property as defined under state law, and a security is a set of legal rights that is also a defined form of property under state law, those rights must be transferred in compliance with state law.

Generally, a transfer of contract rights under state law requires novation of the agreement or assignment of rights under it. Novation substitutes one party for another while otherwise maintaining the terms of the agreement, and thus transfers both its benefits and burdens to the new party. An assignment generally transfers the benefits of an agreement to a third party unless otherwise indicated. Both require the parties to intend a transfer and to agree to terms; novation requires more. Novation requires the issuer to agree, and must be supported by consideration. As discussed below, a spot crypto transaction does not meet state law requirements to establish an assignment of any rights or novation of any legal agreement.

Under New York law, an assignment of rights is effective only if the owner of the right shows an intention to transfer it so that it becomes the property of the transferee, and the thing assigned is sufficiently identifiable.<sup>33</sup> Assignments under New York law may be prohibited where the assignment would materially change the other party's duty, materially

<sup>31</sup> See 30 Williston on Contracts § 76:1 (4th ed.) (explaining the distinction between assignment and novation and that novation substitutes a new party or obligation for an existing one); see also Assignability of Commercial Contracts (FL), Practical Law Practice Note w-009-8819 (explaining that transfer of a contractual position may involve assignment of rights, delegation of performance obligations, or both, and separately addressing novation).

<sup>32</sup> See generally U.C.C. art. 8 (governing the holding, transfer, and registration of investment securities, including certificated and uncertificated securities).

<sup>33</sup> *Am. Banana Co. v. Venezolana Internacional de Aviacion, S.A.*, 411 N.Y.S.2d 889 (App. Div. 1979).

increase the burden or risk, or materially impair the chance of obtaining return performance.

<sup>34</sup> Likewise, under Florida law, an assignment requires intent to assign a present right in the subject matter and to divest the assignor of control over what is assigned.<sup>35</sup> California similarly recognizes that an assignment occurs if the assignor manifests an intention to make a present transfer of rights to the assignee.<sup>36</sup> The vast majority of spot transactions in crypto assets occur on anonymous exchanges of various types, where parties do not know the identity of their counterparties, cannot practically contact them, and do not communicate beyond offering and matching a price. Various decentralized exchanges rely on peer-to-protocol interactions in which there is no communication or transaction with another legal person. These transactions therefore do not provide even an opportunity for any party to express an intent to transfer legal rights of any kind to its counterparty. The Proposed Rule ignores the legal requirement of intent, which is generally not present in spot crypto asset sales.

Novation requires more, including mutual assent by all parties, including the issuer, and consideration. Under New York law, novation requires a previous valid obligation, agreement of all parties to the new obligation, extinguishment of the old contract, and a valid new contract.<sup>37</sup> New York law requires consent by all three parties.<sup>38</sup> Thus, New York law requires an express agreement, the issuer's consent, and consideration to the issuer.<sup>39</sup> Likewise, under Florida law, novation is "a mutual agreement between the parties concerned for the discharge of a valid existing obligation by the substitution of a new valid obligation."<sup>40</sup> In Florida, novation requires a valid contract, agreement of the parties to cancel and extinguish the first contract, and agreement of the parties that a second contract take the place of the first and a new valid contract.<sup>41</sup> Florida law thus requires a bilateral agreement both between the issuer and the initial purchaser and between the issuer and the subsequent purchaser. California similarly recognizes that novation "is made by contract, and is subject to all the rules concerning contracts in general,"<sup>42</sup> including mutual consent and consideration.<sup>43</sup> Novation thus "requires an intent to discharge the old contract, a mutual assent, and a consideration."<sup>44</sup> Spot crypto asset transactions are typically anonymous, do not include negotiation of terms between buyer and seller beyond price in some cases, and do not involve peer-to-peer transactions at all in other cases. Moreover, spot crypto asset sales do not include contact with, or any opportunity to obtain the assent of, the issuer. These elements are therefore generally not present, and such transactions are insufficient to operate as assignments or novations of contract rights under state law.

Transfers of the crypto assets themselves are also governed by state law, which separates the requirements to transfer title to the crypto asset from any transfer of legal

<sup>34</sup> *Williams v. Ingersoll*, 89 N.Y. 508 (1882).

<sup>35</sup> *Physicians Care Ctrs. of Fla., LLC v. PNC Bank, Nat'l Ass'n*, No. 4D21-3228 (Fla. 4th DCA Aug. 17, 2022).

<sup>36</sup> *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court*, 209 P.3d 937 (Cal. 2009).

<sup>37</sup> *Wasserstrom v. Interstate Litho Corp.*, 114 A.D.2d 952, 953-54 (2d Dep't 1985) (citing *Griggs v. Day*, 136 N.Y. 152, 160 (1892)); *Callanan Indus. v. Micheli Contr. Corp.*, 124 A.D.2d 960, 961 (3d Dep't 1986).

<sup>38</sup> *Winner Commc'ns, Inc. v. Bell*, 2013 N.Y. Slip Op. 30210(U).

<sup>39</sup> See *Wasserstrom*, 114 A.D.2d 952 (citing *FDIC v. Hyer*, 66 A.D.2d 521, 529).

<sup>40</sup> *Ades v. Bank of Montreal*, 542 So. 2d 1013 (Fla. 3d DCA 1989), rev. denied, 551 So. 2d 460 (Fla. 1989); *Miami Nat'l Bank v. Forecast Constr. Corp.*, 366 So. 2d 1202, 1204 (Fla. 3d DCA 1979).

<sup>41</sup> *Jakobi v. Kings Creek Village Townhouse Ass'n*, 665 So. 2d 325 (Fla. 3d DCA 1995) (citing *Ades*, 542 So. 2d at 1014, and *Sans Souci v. Div. of Fla. Land Sales & Condos.*, 421 So. 2d 623, 630); *Thompson v. Jared Kane Co.*, 872 So. 2d 356, 361 (Fla. 2d DCA 2004).

<sup>42</sup> Cal. Civ. Code § 1532.

<sup>43</sup> Cal. Civ. Code § 1580.

<sup>44</sup> *Klepper v. Hoover*, 21 Cal. App. 3d 460, 463 (1971).

rights arising under an investment contract. Thirty-seven U.S. states, districts, or territories have enacted the 2022 Amendments to the Uniform Commercial Code (the “**2022 Amendments**”), which introduced new Article 12. Article 12, among other things, defines controllable electronic records (“**CERs**”) as a type of legal property and provides defaults and gap fillers to address common legal questions arising from transfers of most crypto assets.<sup>45</sup> Those rules dictate when, and under what circumstances, a transfer of control of a CER includes a transfer of ownership rights, along with any property claims that may apply to it. Critically, Article 12 does not alter state contract law or circumvent the need to transfer legal rights by assignment or novation; it determines only when title to the CER itself passes and how much title passes.<sup>46</sup> Thus, Article 12 determines when control of and legal title to the crypto asset is transferred, but does not affect whether legal rights derived from an investment contract have been assigned or otherwise transferred.

The Proposed Rule ignores applicable state law to impose by fiat that a transfer of contract rights occurs automatically when a subject crypto asset is sold. However, a federal agency rule cannot ignore, override, or preempt state contract law in the absence of express preemption, which is not present here.<sup>47</sup>

A typical spot crypto asset sale via a centralized or decentralized exchange does not satisfy the state-law requirements for transferring rights arising under an investment contract, and an SEC statement cannot change that result. A rule under which federal regulatory law treats a spot sale as transferring rights in an investment contract, while state law does not recognize a transfer of those rights under those circumstances, will sow confusion.

For example, an issuer that seeks relief under the federal bankruptcy laws may be subject to claims by purchasers of investment contracts. Under state law, however, secondary market buyers of the subject crypto asset would have no claims or rights against the issuer; the proper parties to enforce rights arising under the investment contract would be the initial purchasers in privity with the issuer, who would remain the holders of those rights. Similarly, the estate of a party holding a subject crypto asset that seeks protection under the federal bankruptcy laws may value the crypto asset as if it carried both contract rights and the asset itself, even though the party holds only property rights to the crypto asset, and a bankruptcy judge would likely rule, based on applicable state property law, that the contract rights remain with the seller of the crypto asset. A party suing an issuer for violating the federal securities laws, breaching its contract, committing fraud, or otherwise would be required to show standing, which typically requires allegation and later evidence that the plaintiff holds rights against the issuer under the investment contract.

Holders who received the crypto assets via secondary market spot transactions would not have contract rights as a matter of law and would therefore lack standing to bring an action based solely on holding a crypto asset. The initial purchasers, not the secondary market purchasers, would be deemed to hold the required contract rights, and thus standing, to bring a claim. The result would be unmet expectations and confusion in the market.

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<sup>45</sup> Article 12 applies to crypto assets that satisfy the definition of “controllable electronic record” in U.C.C. § 12–102(a)(1).

<sup>46</sup> See U.C.C. § 12–104 cmt. 2 (Am. L. Inst. & Unif. L. Comm’n 2022).

<sup>47</sup> See *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 98–99 (1991) (holding that, where federal securities law leaves a gap concerning substantive rights traditionally governed by state law, federal courts should incorporate state law unless it is inconsistent with the policies underlying the federal statute); see also *Butner v. United States*, 440 U.S. 48, 55 (1979) (“Property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding. . . . The justifications for application of state law are not limited to ownership interests; they apply with equal force to security interests . . . .”) (citations omitted).

Although changes to state contract and property law are beyond the scope of regulatory rulemaking, the SEC can readily accomplish the goal of allowing secondary market purchasers of subject crypto assets to seek remedies against issuers. The SEC should revise the statement in the Proposed Rule to provide that remedies under the federal securities laws typically available to parties to investment contracts are also available to secondary market purchasers of subject crypto assets under the circumstances noted above. Specifically, the SEC should state that “the right to invoke remedies arising under the Securities Act will be transferred to subsequent purchasers of the non-security crypto asset in secondary market transactions,” and clarify that any transfer of contract rights arising under an investment contract remains a function of, and subject to, state law.

### III. The Commission Should Provide a Workable Framework for Onchain Use of Tokenized Securities

A workable framework for onchain markets should seek to bring lawful secondary-market activity within the U.S. regulatory perimeter rather than unnecessarily channeling that activity to offshore or otherwise less transparent markets. Chairman Atkins has identified bringing crypto activity back to the United States and enabling U.S. financial markets to move onchain as objectives of Project Crypto.<sup>48</sup>

The Commission’s recent Innovation Exemption similarly represents an important step toward onchain secondary trading by permitting qualifying venues to trade certain tokenized NMS stocks through automated market makers and liquidity pools.<sup>49</sup> That relief addresses a particular venue model, and the Commission should consider, as a natural next step in its efforts to facilitate onchain markets, how tokenized securities may also be used through non-custodial protocols.<sup>50</sup>

In doing so, the Commission should recognize that some holders may seek to exercise governance, voting, or other rights associated with an asset, while others may seek only economic exposure through secondary-market transactions. The regulatory framework should distinguish transactions involving the exercise of governance or managerial rights from those whose function is simply to transfer economic exposure.

Traditional exchange-traded securities provide a useful analogy for this distinction: investors can obtain continuously traded economic exposure without thereby exercising operational control over the underlying enterprise or asset. Aave Labs encourages the Commission to consider a similarly functional approach to price-focused secondary transactions in tokenized securities, without requiring the creation of a fund or other

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<sup>48</sup> See Paul S. Atkins, Chairman, U.S. Securities and Exchange Commission, *American Leadership in the Digital Finance Revolution* (July 31, 2025) (launching Project Crypto to enable America’s financial markets to move onchain); Paul S. Atkins, Chairman, U.S. Securities and Exchange Commission, *The SEC’s Approach to Digital Assets: Inside “Project Crypto”* (Nov. 12, 2025) (cautioning that onchain innovations will migrate to other jurisdictions if the United States requires every such innovation to run through a securities-law minefield).

<sup>49</sup> See Paul S. Atkins, Chairman, U.S. Securities and Exchange Commission, *American Leadership in the Digital Finance Revolution* (July 31, 2025); see also U.S. Securities and Exchange Commission, *SEC Issues “Innovation Exemption” to Facilitate the Trading of Tokenized NMS Stock and Request for Comment*, Press Release No. 2026-90 (Sept. 17, 2026) (announcing temporary, conditional relief allowing qualifying Tokenized Securities Venues to trade tokenized NMS stocks through permissioned automated market makers and liquidity pools).

<sup>50</sup> See U.S. Securities and Exchange Commission, *SEC Issues “Innovation Exemption” to Facilitate the Trading of Tokenized NMS Stock and Request for Comment*, Press Release No. 2026-90 (Sept. 17, 2026); see also Davis Polk & Wardwell LLP, *SEC’s Innovation Exemption Opens a Path for Tokenized Stock Trading* (Oct. 6, 2026) (noting that the exemption applies to permissioned venues and is not available for DeFi).

centralized wrapper merely to separate economic exposure from operational control. This would complement the Commission's existing recognition that tokenized securities may take different forms depending on their structure and the rights afforded to holders.<sup>51</sup>

Finally, the Commission should coordinate this approach with its pending modernization of the transfer-agent rules. The treatment of blockchain-based ownership records and the allocation of responsibility for maintaining authoritative securityholder records bear directly on whether tokenized securities can be transferred and used onchain.<sup>52</sup> The proposed transfer-agent amendments would permit a transfer agent to use a blockchain or other distributed ledger as its master securityholder file, or a component of it, provided the transfer agent maintains at all times exclusive control over that file, and the Commission has asked how it should address records that exist solely on a blockchain that is not exclusively controlled by the transfer agent. The Commission should ensure that the two regulatory initiatives operate consistently so that rules governing recordkeeping and transfer-agent functions do not inadvertently foreclose the onchain secondary transfers and collateral uses that the Commission's broader onchain initiatives seek to facilitate. In particular, the Commission should distinguish between the regulated recordkeeping function performed by a transfer agent and the separate operation of blockchain infrastructure through which holders may transfer or use tokenized securities.

#### IV. Conclusion and Requested Relief

Aave Labs appreciates the Commission's work on the Proposed Rule and respectfully requests that the Commission expressly clarify whether and when crypto assets associated with covered investment contracts may be listed, supplied, borrowed, or used as collateral on decentralized, non custodial protocols, including through automated liquidations. To give that clarification practical effect, in adopting the final rule, the Commission should:

- Provide objective, non-exclusive pathways to determine that an asset was never subject to a covered investment contract or has separated from one, without making Form TR a prerequisite to lawful onchain use;
- Codify that continued maintenance, improvement, or independent governance of a functional protocol does not, without more, perpetuate the issuer's essential managerial efforts or constitute an assumption of its promises, provided those continuing efforts were not part of the issuer's initial promises;
- Protect good-faith third-party reliance beginning 60 days after a Form TR is filed, unless the filing is withdrawn, a new covered investment contract arises, or a court of competent jurisdiction or the Commission determines in a final judgment or order that the certification is ineffective or materially deficient. A mere challenge to the filing or the asset's status should not prevent reliance, and a subsequent adverse determination should not impose retroactive liability on protected third parties;
- Clarify that once a crypto asset is not subject to a covered investment contract, either because none arose and the crypto asset is not a security, or because any

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<sup>51</sup> See Staff of the Division of Corporation Finance, Division of Investment Management, and Division of Trading and Markets, U.S. Securities and Exchange Commission, *Statement on Tokenized Securities* (Jan. 28, 2026). <sup>52</sup> See Commissioner Mark T. Uyeda, U.S. Securities and Exchange Commission, *Statement on Proposed Amendments to the Commission's Transfer Agent Rules* (Sept. 1, 2026); see also U.S. Securities and Exchange Commission, *SEC Proposes to Modernize Rules for Registered Transfer Agents*, Press Release No. 2026-81 (Sept. 1, 2026).

such contract has terminated, the asset may be used productively in DeFi applications, and not merely traded in the secondary market;

- Clarify that, regardless of an asset's status, providing non-custodial infrastructure through which users supply assets to and borrow assets from protocol reserves, and through which independent liquidators participate in automated liquidations, or through which persons otherwise transact via non-custodial smart contracts, does not, without more, make a protocol, developer, interface provider, governance participant, or risk steward a broker, dealer, exchange, clearing agency, or other securities intermediary, or require its registration as such, and that intermediary status should instead turn on the regulated functions actually performed by an identifiable person;
- Decline to extend Regulation NMS, the federal margin rules, or securities-lending rules to non-custodial protocols, and instead tailor any framework for onchain lending, borrowing, and collateralization to how those activities actually function;
- Characterize price-only secondary trading of tokenized securities consistently with the functional characterization used for exchange-traded, price-tracking securities, distinguishing economic exposure from governance or operational control;
- Clarify that secondary purchasers of subject crypto assets obtain the rights to invoke federal securities-law remedies available to direct purchasers, but that secondary market sales of subject crypto assets transfer contractual rights only if those sales satisfy applicable state law;
- Reconcile incentives to decentralize with the potential liability exposure of governance participants and risk stewards;
  - Establish a durable, Commission-level framework, including protections for non custodial infrastructure, rather than relying solely on interim staff positions; and
- Coordinate the final rule with the pending transfer-agent rulemaking so that ownership recordkeeping requirements do not inadvertently foreclose onchain secondary transfers or collateral use.

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Aave Labs appreciates the opportunity to comment and would welcome further engagement with the Commission and its staff on these recommendations.