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

Re: Regulation Crypto Assets, Release Nos. 33-11434; 34-106150; File No. S7-2026-27; RIN 3235-AN38: Reinforcing the 2026 Interpretation's "Digital Commodity" Classification in the Rule Text

Dear Ms. Countryman:

The undersigned organizations[1] build, support, and operate within Layer 1 ("L1") blockchain ecosystems, and respectfully submit this letter in response to the Securities and Exchange Commission's (the "Commission") proposed rule, Regulation Crypto Assets (the "Proposal"), published in the Federal Register on August 21, 2026.[2] We commend the Commission for the Proposal and for its March 17, 2026 interpretation, Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets (the "2026 Interpretation"),[3] which has given builders a much-needed regulatory framework. L1 blockchain networks operate globally, and the teams that contribute to them choose where to do so in part based on the clarity and durability of the rules. We are grateful for the Commission's efforts to provide clarity to blockchain developers, and submit this comment to respectfully urge the Commission to build on that important work by reflecting the "digital commodity" classification, in the operative text of Regulation Crypto Assets.

L1 blockchains are the base-layer infrastructure of the crypto asset ecosystem. Participants in an L1 ecosystem validate transactions directly, and developers build applications, other networks, and protocols on top of it. Each L1 relies on a native crypto asset that, as the 2026 Interpretation recognizes, is used to pay transaction fees, to help secure the network through mechanisms such as staking or mining, and, in many cases, to participate in governance. These networks are global, and the teams that contribute to their development, growth, and decentralization choose where to do so in part based on the clarity and durability of applicable regulatory frameworks. The 2026 Interpretation, including its treatment of protocol mining and staking, and the Crypto Task

[1] This letter acknowledges that several of the signatories to this letter have also submitted earlier comments to the SEC in response to proposed Regulation Crypto Assets that touch on related issues. *See*: Letters from Ava Labs General Counsel Lee Schneider to the U.S. Securities and Exchange Commission on September 15, 2026 (https://assets.ctfassets.net/eynrhjw8vyk9/4SDQhuIQeaRsgQ1pLGSnlW/02c0f883418e094e06c96a9c31a8aa9b/Ava_Labs_Reg_Crypto_Comment_Letter_File_No._S7-2026-27.pdf) and the October 12, 2026 supplemental comment on functionality (https://assets.ctfassets.net/eynrhjw8vyk9/kFxWfrzg1m4Q5yAZ88AKP/efb4a8c3b88a0572e63025c46c8ac3f1/Reg_Crypto_Comment_Letter__October_2026_docx.pdf); Hedera Hashgraph, LLC's Chief Policy Officer, Nilmini Rubin, and General Counsel, Gregory Schneider, letter to the U.S. Securities and Exchange Commission on October 7, 2026 (https://www.sec.gov/comments/S7-2026-27/s7202627-1087219-3794966.pdf).

Force's open engagement with industry have been welcome and meaningful steps toward providing that clarity, and we are grateful for them.

The Proposal and the 2026 Interpretation work together: the 2026 Interpretation's taxonomy addresses whether a crypto asset is a security in the first instance, and the Proposal addresses how an offer or sale of a non-security crypto asset subject to an investment contract may be conducted when that contract ends. We appreciate that the Commission built the Proposal on the foundation established by the 2026 Interpretation as the Proposal's economic baseline relies on the 2026 Interpretation's classifications. The 2026 Interpretation's "digital commodity" classification, however, appears only in the preamble and not in the rule text itself. Codifying it would convert the Commission's interpretive position into a durable rule, reduce regulatory uncertainty, and better serve the capital formation and investor protection goals that motivate the Proposal. The 2026 Interpretation classifies crypto assets into five categories (digital commodities, digital collectibles, digital tools, stablecoins, and digital securities), and the Proposal builds on that taxonomy. Our comments focus on digital commodities, the category most relevant to the L1 ecosystems we represent, and we encourage the Commission to consider whether similar treatment would be appropriate for the 2026 Interpretation's other non-security categories. We respectfully ask the Commission to make the four changes below, which respond to Requests for Comment 3, 5, 131, and 134.

1. Define "digital commodity" and confirm its non-security status.

The Proposal already depends on the 2026 Interpretation's classifications: its definition of "covered investment contract" applies only to a crypto asset that "is not a security" and it looks to the 2026 Interpretation's categories to explain that element (nn.52, 118). We commend that approach and ask the Commission to make the connection explicit. We recommend adding the following to § 228.100 and § 228.101. The definition of "digital commodity" tracks the 2026 Interpretation's own language (Section III.A and footnotes 49 and 51), so it does not create a second standard.

> **§ 228.100 Definitions of terms used in Regulation Crypto Assets.**
> * * * * *
> *(___) 2026 Interpretation. "2026 Interpretation" means the Commission's interpretation in Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, Release Nos. 33-11412; 34-105020 (Mar. 17, 2026) [91 FR 13714 (Mar. 23, 2026)].*
> *(___) Digital commodity. "Digital commodity" means a crypto asset that is intrinsically linked to and derives its value from the programmatic operation of a crypto system that is functional, as well as supply and demand dynamics, rather than from the expectation of profits from the essential managerial efforts of others. A digital commodity does not have intrinsic economic properties or rights, such as generating a passive yield or conveying rights to future income, profits, or assets of a business enterprise or other entity, promisor, or obligor. For purposes of this definition, a crypto system is "functional" if the system's native crypto asset can be used on the system in accordance with the programmatic utility of the system, and "native" refers to a crypto asset generated for use on a particular crypto system. The term includes each crypto asset identified as a digital commodity in the 2026 Interpretation, based on its characteristics, terms, and functions as of the date of the 2026 Interpretation.*

§ 228.101 General provisions.

* * * * *

(f) Status of digital commodities. A digital commodity, as defined in § 228.100, is not a security. The fact that a digital commodity is subject to an investment contract does not transform the digital commodity itself into a security.

2. State a clear default for secondary market transactions in digital commodities.

The 2026 Interpretation provides 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 representations or promises to remain connected to it (Section IV.A), and that an asset may separate from those representations or promises over time (Section IV.B). Rule 400 codifies that separation. We are grateful that the Commission responded to market participants' requests for guidance on secondary market transactions, and we build on that framework here. We respectfully ask the Commission to make clear how that framework applies to digital commodities, using the classification and list of assets the Commission has already published: a non-issuer's offer or sale of a digital commodity in a secondary market transaction is presumed not to involve an investment contract, absent outstanding issuer representations or promises of essential managerial efforts. This explicitly links the 2026 Interpretation's test to the Proposal and would give exchanges, custodians, and holders a clear framework tied to digital commodity status. For the digital commodities the 2026 Interpretation identifies, we urge the Commission to provide class-wide exemptive relief for transactions in those assets without requiring a Form TR filing.

3. Confirm that Rule 400 is voluntary and not an admission.

The Proposal recognizes that parties may fear that relying on Rule 400 is a tacit admission that an investment contract once existed (Request for Comment 134). We ask the Commission to add the following to § 228.400:

§ 228.400 Investment Contract Safe Harbor.

* * * * *

(c) No inference. Reliance on this section, including the filing of Form TR, does not constitute, and the Commission will not treat it as, an admission or determination that a crypto asset is or was subject to an investment contract or that the person relying on this section is or was the issuer of an investment contract.

(d) Voluntary. This section is not exclusive. A person's decision not to rely on this section, or not to file Form TR in connection with it, does not create a presumption that a covered investment contract exists or continues to exist with respect to a crypto asset, and the Commission will apply the 2026 Interpretation in determining whether it does.

4. Confirm that Regulation Crypto Assets builds on the 2026 Interpretation.

In the 2026 Interpretation, the Commission and its staff committed to administer the Federal securities laws consistently with it, including in enforcement, and the Commodity Futures Trading Commission ("CFTC") provided parallel guidance for the Commodity Exchange Act. Because builders and investors make long-term decisions in reliance on the 2026 Interpretation, a brief confirmation would give them confidence that Regulation Crypto Assets continues it. We therefore ask the Commission to state in the adopting release that Regulation Crypto Assets is consistent with that commitment, does not alter the classifications in the 2026 Interpretation, and does not change the respective authorities of the SEC and the CFTC, as the 2026 Interpretation states.

We appreciate the opportunity to comment, thank the Commission and its staff for their engagement with industry, and would welcome the opportunity to discuss these recommendations further with the Commission's staff. Please do not hesitate to contact the undersigned with any questions.

Respectfully submitted,

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