



BY ELECTRONIC SUBMISSION

March 21, 2025

Commissioner Hester M. Peirce
Crypto Task Force
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-0213

Dear Commissioner Peirce and Members of the SEC Crypto Task Force :

Ripple¹ submits this letter in response to Commissioner Peirce and the Crypto Task Force's request for information dated February 21, 2025, titled "There must be some way out of here" (the "RFI"). This quote from Bob Dylan's *All Along the Watchtower* is followed by the next lyric: "There's too much confusion. I can't get no relief." Unfortunately, the Securities and Exchange Commission ("SEC"), when it comes to crypto, has historically created nothing but confusion—issuing guidance that is long, rambling, difficult to decipher, and based on novel standards found nowhere in the law.² That approach directly contradicts the Crypto Task Force's goal of providing crypto market participants with clear, predictable, and precise criteria for determining whether an asset is a security or part of an investment contract and thus, subject to the SEC's jurisdiction.

Congress is actively considering market structure and stablecoin legislation. It is the role of policymakers to establish new legal standards governing crypto assets.³ As the Crypto Task Force appears to recognize, the SEC should return to first principles and, within the bounds of existing statutes, strive to provide straightforward market guidance that has been absent to date. To state it even more plainly, the SEC lacks authority over most digital assets and, in turn, most transactions involving digital assets. It can regulate only "securities" and transactions involving securities as defined by the Securities Act of 1933 ("Securities Act") and the Securities Exchange Act of 1934 ("Exchange Act"). "Agencies have only those powers given to

¹ Ripple Labs Inc. ("Ripple") is a leading provider of digital asset infrastructure—delivering simple, compliant, reliable software that unlocks efficiencies, reduces friction, and enhances innovation in global finance. Among other technologies, Ripple's solutions leverage the XRP Ledger and its native digital asset, XRP, which was purpose-built to enable fast, low-cost, highly scalable transactions across developer and financial use cases. Ripple's payments, custody and stablecoin solutions are pioneering the digital asset economy.

² See, e.g., Hinman, Digital Asset Transactions: When Howey met Gary (Plastic), (Jun. 14, 2018), <https://www.sec.gov/newsroom/speeches-statements/speech-hinman-061418>; SEC, Framework for "Investment Contract" Analysis of Digital Assets, (Apr. 3, 2019), <https://www.sec.gov/newsroom/speeches-statements/statement-framework-investment-contract-analysis-digital-assets>.

³ The Crypto Task Force should make clear that Congress should not delay any legislative efforts on market structure or stablecoins while the Crypto Task Force does its work.

them by Congress, and enabling legislation is generally not an open book to which the agency may add pages and change the plot line.”⁴

The Staff’s Statement on Meme Coins (February 27, 2025⁵) is a welcome example of this approach. In just two pages, it clearly articulates—based on existing law—that meme coins do not fall under federal securities laws and, therefore, are outside the SEC’s jurisdiction. However, as the statement notes, the absence of SEC oversight does not foreclose other federal and state authorities from overseeing these assets and policing abuse. This concise and effective approach should serve as a model for the Crypto Task Force moving forward.⁶

Starting with the Basics⁷

A token or arrangement that does not generate yield or confer rights to future income,⁸ profits, or assets of a business should not be classified under the financial instruments enumerated in Section 2(a)(1) of the Securities Act or Section 3(a)(10) of the Exchange Act, such as “stock,” “note,” or “bond.”

That brings us to the term “investment contract”—a 79-year old concept that the prior administration weaponized to distort the SEC’s mission. Instead of protecting investors,⁹ this approach disrupted markets¹⁰ and drove innovation outside the United States.

The application of the *Howey*¹¹ test under the prior administration was distorted and made needlessly complex to obscure its failure to apply the law faithfully. A flexible test became a test

⁴ *West Virginia v. EPA*, 597 U.S. 697, 723 (2022).

⁵ <https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme-coins>.

⁶ Similarly, the Staff’s March 20, 2025 Statement on Certain Proof-of-Work Mining Activities is another example of concise and effective guidance.

<https://www.sec.gov/newsroom/speeches-statements/statement-certain-proof-work-mining-activities-03-2025>.

⁷ This section generally responds to questions 1-3 of the RFI.

⁸ We address staking and yield generating opportunities *infra*. at page 5.

⁹ From 2019 to 2022, Sam Bankman-Fried was the leader and mastermind of a scheme to defraud customers of global cryptocurrency exchange FTX by misappropriating billions of dollars of those customers’ funds. His conduct was not detected until a run on deposits exposed an \$8 billion hole in FTX’s accounts. See

<https://www.nytimes.com/2023/11/02/technology/sam-bankman-fried-fraud-trial-ftx.html>.

¹⁰ The SEC’s filing of its non-fraud federal lawsuit against Ripple in December 2020 and its allegation that XRP itself was a “security” significantly impeded XRP markets: the price of XRP declined by approximately 70% in the days following the filing of the initial complaint, wiping out approximately \$15 billion in market value (impacting retail holders), and nearly every exchange accessible to U.S. parties de-listed XRP or blocked access to it. This underscores the critical need for the SEC (and policy makers) to exercise the utmost caution when seeking through guidance, rule making or legislative action, to alter the legal status of tokens (or transactions in them) that have been openly traded for many years (in XRP’s case more than 12 years as of today). The markets for Solana, Cardano and Polygon also plummeted following the SEC’s enforcement action against crypto exchanges Coinbase and Binance in which it was alleged that those tokens were securities. See

<https://finance.yahoo.com/news/solano-cardano-polygon-plunge-nearly-004524465.html>. Notably, as of the date of this submission, the SEC has dismissed with prejudice this same lawsuit against Coinbase and its lawsuit against Binance is stayed at the parties’ request.

¹¹ *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946).

without boundaries or limits. Good regulation, consistently applied, should guide behavior and lead to predictable results. The exact opposite happened. Under the regulation by enforcement approach of the prior administration:

- “Speculation”¹² was improperly substituted for “investment.”
- A “common interest” in a token’s value or viability was wrongly substituted for a “common enterprise.”¹³
- The mere sale of an asset of value became a “capital raise.”
- The subject of the investment contract was arbitrarily redefined as a “crypto asset security” – a sleight of hand that turned both the oranges and orange groves from *Howey* into the security itself, so the SEC could claim jurisdiction over the secondary markets.¹⁴
- Decentralization – a concept found nowhere in the law – became a talisman for assets to magically morph from security status to non-security and back again.¹⁵

Moving forward, the SEC must disavow these past distortions and avoid creating new, needlessly complex approaches. Clear, principled applications of existing law should be the North Star of the Crypto Task Force.¹⁶

Consistent with *Howey*, the Blue Sky laws that informed the Securities Act and the Exchange Act, and the Acts themselves, the Crypto Task Force should affirm that the ordinary meaning of “investment contract” requires an enforceable agreement: one party must invest money or capital in an enterprise with the expectation of profit, while the other must commit to take action

¹² As explained in the Staff’s Meme Coin guidance, see *supra* n.5, “[A]ny expectation of profits that meme coin purchasers have is not derived from the efforts of others. That is, the value of the meme coins is derived from speculative trading and the collective sentiment of the market.” See also, *SEC v. Ripple Labs, Inc.*, 682 F. Supp. 3d 308, 329 (S.D.N.Y. 2023), a “speculative motive [alone] ... ‘does not evidence the existence of an ‘investment contract.’” (quoting *Sinva, Inc. v. Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 253 F. Supp. 359, 367 (S.D.N.Y. 1966), which gave the examples of buying a “horse or an automobile”).

¹³ Courts have not gone so far as to find that tying “the fortunes of investors [to the] fortunes of the promoter” is enough to find an investment contract. See e.g., *Revak v. SEC Realty Corp.*, 18 F.3d 81, 88 (2d Cir. 1994) (citing *Brodt v. Bache & Co., Inc.*, 595 F.2d 459, 461 (9th Cir. 1978)).

¹⁴ As explained in the Crypto Task Force’s February 21 Statement: “The Commission’s authority in secondary markets is limited to assets that themselves are securities based on their intrinsic economic or property rights...”

¹⁵ Hinman, Digital Asset Transactions: When *Howey* met Gary (Plastic), June 14, 2018.

¹⁶ Congress may seek to create new legal tests and standards. It is not the SEC’s role - nor does the SEC have the power - to fill gaps it may perceive in the law. For example “information asymmetries” was frequently bandied about by the prior administration as an excuse to regulate by enforcement. But, such “information asymmetries” - if they exist at all - are not a license for the SEC to regulate a non-security or a non-security transaction. Any such gaps are for Congress to fill. The abuse of any such asymmetries—especially through fraudulent or manipulative practices—is subject to legal action by federal and state authorities, as well as others, to maintain market integrity and to protect consumers regardless of the SEC’s jurisdiction. See fn. 25.

to generate that profit.¹⁷ Until the prior administration attempted to expand *Howey* beyond recognition, every case finding an investment contract involved an investor providing money in exchange for a promise to share in profits from work the other party was obligated to perform.¹⁸

Applying the Securities Act's requirements to a mere token sale is both impractical and legally unsound. A registration statement demands detailed information about the "issuer"—the party that "issues or proposes to issue [the] security."¹⁹ Notably, sales by anyone other than an "issuer, underwriter, or dealer" are exempt from registration.²⁰ In the context of an investment contract, the "issuer" is the party making commitments that give rise to that contract and promising to undertake efforts in the future.

In contrast, a token sale without promises or representations lacks a relevant issuer, making it indistinguishable from any other asset sale where there is potential appreciation in the future. Consider artwork: a buyer may hope its value will appreciate, perhaps believing the artist's rising fame will drive demand, and indeed, the artist is motivated to increase their own fame. But no one—not even the SEC²¹—would call that an investment contract. The prior administration's overreach, however, would stretch *Howey* so far that an investment contract could be found based on mere alignment of interests and generalized statements the supposed investor never saw or heard.

Worse still for innovation, it would discourage companies and developers from publicly discussing their independent efforts to enhance the technology underlying a token. Consider a company that integrates a blockchain and that blockchain's native token into the company's proprietary products and services. Simply by marketing its products and services, consistent with its obligation to grow its business and maximize equity value for its actual equity investors, the company could be improperly swept into the investment contract framework—solely because unrelated third parties decided to purchase the token.²²

Perhaps this explains why the prior administration struggled to define the "common enterprise" in its enforcement cases. A "common enterprise" under *Howey* refers to a profit-seeking business venture where investors provide capital, share in earnings and profits, and where promoters manage, operate, and control the venture.²³ Ignoring this requirement, the prior

¹⁷ This position is grounded in the learnings from *Howey* itself. Notably, however, this does not mean there needs to be a *written* contract in every instance. In some cases, an oral or implied-in-fact contract may suffice. The point is that *some* contract is necessary for there to be an "investment contract." In its crypto enforcement actions, the SEC was not able to cite a single case finding an "investment contract," without a contract. Even in the initial coin offering cases, the promises and obligations were either found in actual contacts or clearly implied-in-fact.

¹⁸ The SEC should clearly affirm this meaning of "investment contract." Even if the current SEC is moving away from its regulation-by-enforcement campaign, other litigants still may seek to take advantage of the flawed theories espoused by the prior administration.

¹⁹ 15 U.S.C. §77b(a)(4); see *id.* §§77g, 77aa (Schedule A).

²⁰ *Id.* at §77d.

²¹ *Art Appraisers of Am., Ltd.*, 1976 WL 12424, at *4 (SEC Oct. 4, 1976) (no action against offers and sales of lithographs where the gallery did not contractually obligate itself to provide a resale market).

²² Courts have rejected the theory that a common enterprise can be established by showing "[b]road vertical commonality," in which "the fortunes of ... investors need be linked only to the *efforts* of the promoter." *Revak*, 18 F.3d 81, 87-88.

²³ 328 U.S. at 300.

administration went so far as to suggest in its 2019 Guidance that a common enterprise wasn't even necessary to establish an investment contract.²⁴

This does not mean that those who commit fraud and abuse will not be held accountable. For the SEC, the only relevant question is what authority did Congress grant the agency? General appeals to "investor protection" do not justify unilateral expansion of the SEC's powers beyond what Congress granted it. Those who use digital assets to perpetrate fraud can still be held accountable by virtue of multiple federal and state laws already designed to protect investors from fraud. For example, the Commodities Exchange Act, gives the Commodity Futures Trading Commission ("CFTC") authority to safeguard commodity investors; and wire and mail fraud statutes apply broadly to fraudulent schemes.²⁵ Only securities are subject to the strict-liability preregistration requirements of the securities laws—an extraordinary burden that should be imposed only in the clearest and most justified circumstances.

Services and Protocols that Provide Yield Opportunities

A variety of services and protocols have emerged that allow token holders to earn returns and yield, including staking, rewards, lending, automated market making and many others. Some are "on chain" and some are not. Whether these arrangements are securities will vary based on the specific business model, promises made and the role of each party involved.

There is an opportunity for the Commission to confirm now what is clear: arrangements for earning yield directly from the programmatic functioning of a public, permissionless network should not be considered securities.²⁶ Such arrangements do not involve an investment with a definable counterparty, unlike traditional securities, which are premised on a contractual agreement between an investor and an issuer who undertakes managerial efforts to generate profits.

As an example, certain blockchains with staking mechanisms allow token holders to earn returns by participating in the protocol. Any yield or rewards earned are generated by the protocol itself and the user's participation in the protocol under a set of predefined algorithmic rules—not by the managerial efforts of a third party. Even if the users are seeking returns, there is no counterparty making investment promises and there is no issuer to register the arrangement.

For clarity and consistency, the Commission should confirm that staking and yield-generating arrangements dependent on the programmatic, functioning of a public, permissionless network that do not involve a definable issuer or counterparty making investment commitments are not

²⁴ "The Commission...does not require vertical or horizontal commonality per se, nor does it view a 'common enterprise' as a distinct element of the term 'investment contract.'" SEC, Framework for "Investment Contract" Analysis of Digital Assets, n.10 (Apr. 3, 2019).

²⁵ It was the Department of Justice and bankruptcy proceedings - not the SEC - that brought Sam Bankman-Fried to justice and secured the return of 98% of customer funds.
<https://www.reuters.com/legal/crypto-exchange-ftxs-liquidation-plan-receives-court-approval-2024-10-07/>
<https://www.justice.gov/archives/opa/pr/samuel-bankman-fried-sentenced-25-years-his-orchestration-multiple-fraudulent-schemes>

²⁶ This is not to suggest any other product or service that may have the opportunity to earn yield is a security.

securities. Put simply, returns generated algorithmically by deployment of assets to protocols outside any party's control are fundamentally different from profits earned through the managerial efforts of a third party and outside the scope of the securities laws today.

Safe Harbors, the SEC's Exemptive Authority and Initial Coin Offerings²⁷

As the SEC well knows, it has the statutory authority to exercise its exemptive authority when doing so is in the public interest and consistent with investor protection. We commend Commissioner Peirce's efforts to leverage the SEC's exemptive authority with Rule 195, the Token Safe Harbor Proposal 2.0, and we further commend her efforts to promote a pathway for innovation to flourish in the digital asset industry in the United States despite significant efforts to thwart such innovation from her colleagues.

While we believe there may be a moment in time when a safe harbor may make sense, like others in the industry, we believe that moment is not now—with one exception: initial coin offerings ("ICOs") discussed below.

In order for innovation to truly flourish in the United States, the paramount need is the passing of market structure legislation and a clear voice from Congress as to which activities will be regulated by which agencies. Once there is clear guidance as to what activity can and should be regulated by the SEC, the discussion around potential safe harbors should be revisited based on the jurisdiction delegated to the SEC from Congress. At that time, Ripple looks forward to participating in the conversation.

ICOs and the *Howey* Test

ICOs occur when a promoter solicits funds for a blockchain or digital assets that do not yet function.²⁸ The promoter necessarily promises to use those funds raised to build a blockchain or launch digital assets and to later distribute the resulting tokens to investors – allowing them to profit from the project's future success.²⁹ ICOs thus may be ripe for safe harbor relief, because they involve pre-functional networks that rely on the promise of managerial efforts by a founding team to make the network functional. Thus, unlike tokens and protocols that are fully functional on an already existing blockchain, ICO's may come closer to traditional investment contracts.

In several ICOs considered by the courts to be investment contracts, investors entered into agreements with promoters of a project and provided money directly to a promoter in exchange for the future receipt of tokens that did not yet exist. The promoter was then committed to use that money to build the blockchain and/or the functionality for the tokens. The investor could receive value only after – and only if – the promoter built the blockchain and/or the functionality using the investor's assets as promised.³⁰

²⁷ This section generally responds to question 10-14 in the RFI.

²⁸ See, e.g., *Balestra v. ATBCOIN, LLC*, 380 F. Supp. 3d 340, 346-47 (S.D.N.Y. 2019).

²⁹ See *id.*

³⁰ See e.g., *id.* at 340; *SEC v. Telegram Group, Inc.*, 448 F. Supp. 3d 352 (S.D.N.Y. 2020); and *SEC v. Kik Interactive, Inc.*, 492 F. Supp. 3d 169 (S.D.N.Y. 2020).

Whether those cases were correctly decided (none were tested on appeal), if the SEC decides to exert jurisdiction over ICO's it should be clear as to where the dividing line lies between ICO and non-ICO cases. That said, we agree with Commissioner Peirce's observations, "for a network to mature into a functional ... network ... the Tokens must be distributed to and freely tradeable by potential users, programmers, and participants in the network."³¹ We further agree that "[t]he application of the federal securities laws to the primary distribution of Tokens and secondary transactions frustrates the network's ability to achieve maturity and prevents Tokens sold as a security from functioning as non-securities on the network."³²

Commissioner Peirce's Safe Harbor Proposal

Commissioner Peirce recognized these challenges and proposed her safe harbor framework for digital asset issuers, which would, in relevant part:

- Provide a time-limited exemption for token projects to develop and become functional before facing securities law scrutiny.
- Require disclosures, including but not limited to source code, transaction history, team identities, token economics, token sales activity, and roadmap details, to enhance transparency and investor protection during the safe harbor period.
- An exit report detailing that network maturity, as defined in the safe harbor, was achieved.

To enhance innovation and prevent unnecessary enforcement actions against new projects and their developers, Ripple is supportive of the application of a version of Commissioner Peirce's safe harbor proposal to ICOs. However, we believe there are provisions within the latest proposal that do not advance the goals of the Commission, such as equating ownership of tokens with control on a network or that meeting a certain ownership percentage tips the scale one way or the other on control of a network. Where ownership does not give the owners any special rights or privileges with respect to a permissionless network, it should not be a criteria to determine control.

Sandboxes³³

Once Congress has spoken and delegated regulatory oversight over the digital asset industry as it deems appropriate, regulatory sandboxes conducted by the SEC, perhaps even in partnership with other federal and/or state agencies, may be advantageous.

Regulatory sandboxes allow market participants to test new and innovative products, services, and business models with end-users in a controlled environment while being subject to regulatory oversight. Regulatory sandboxes provide a framework that:

1. Provides the ability for digital asset markets to launch (within certain safeguards);
2. Allows regulators to observe and learn from the real-world operation of such markets;

³¹ Commissioner Peirce, Token Safe Harbor Proposal 2.0 (Apr. 13, 2021).

³² *Id.*

³³ This section generally responds to questions 47-48 of the RFI.

3. Use those observations to concurrently evolve the regulations and licenses; and then
4. Allow the digital markets and digital asset use cases to ‘graduate’ out of the sandbox into new, fit-for-purpose regulations or licenses.

Notably, regulatory sandboxes have been successfully deployed in several jurisdictions to encourage safe innovation. For example, the DLT Pilot Regime in the European Union³⁴ and the Digital Securities Sandbox in the United Kingdom³⁵ allow firms to offer trading and/or clearing services with exemptions from or modifications to the usual rules that would apply to these activities, to support exploration of new business models based on distributed ledger technology. The sandbox firms are subject to business limits to mitigate risks.

The Swiss Financial Market Supervisory Authority (“FINMA”) introduced the Swiss sandbox³⁶ in 2018, which is designed to support new opportunities for financial service providers aiming to collaborate with fintech startups. The Swiss sandbox allows market participants to experiment with new business models using blockchain technology while operating under flexible regulatory requirements. This framework is particularly beneficial for startups that do not initially meet the full regulatory requirements, enabling them to refine their business models before scaling up.

Successful sandboxes also exist outside of Europe. In the United Arab Emirates, a cornerstone of the Abu Dhabi Global Market (“ADGM”) innovation strategy is the ADGM Regulatory Lab (“RegLab”)³⁷ launched in 2016 as a specialized regulatory sandbox designed to support FinTech startups in developing and scaling their innovative solutions. The ADGM RegLab provides a unique environment where participants can test their products and services under the supervision of ADGM’s regulatory authority,³⁸ with reduced regulatory requirements during the early stages of development. Additionally, the Dubai Financial Services Authority (“DFSA”) operates a licensed sandbox, known as the DFSA Innovation Testing Licence (ITL) Programme,³⁹ which enables ITL holders to test new and innovative financial products, services, and business models within the Dubai International Financial Centre (“DIFC”). Launched in 2017, the DFSA ITL program provides temporary regulatory flexibility, allowing firms to experiment with concepts without being subject to the full suite of regulatory requirements.⁴⁰

³⁴ See <https://www.esma.europa.eu/esmas-activities/digital-finance-and-innovation/dlt-pilot-regime>.

³⁵ See <https://www.fca.org.uk/firms/innovation/digital-securities-sandbox>.

³⁶ See

<https://www.finma.ch/en/documentation/dossier/dossier-fintech/finanztechnologie-und-digitalisierung-2017/>.

³⁷ See <https://www.adgm.com/setting-up/fintech/overview>.

³⁸ See

<https://www.adgm.com/documents/legal-framework/guidance-and-policy/fsra/fintech-reglab-guidance.pdf>.

³⁹ See <https://www.dfsa.ae/innovation>.

⁴⁰ See

<https://dfsae.thomsonreuters.com/rulebook/9october-2019-dfsa-invites-applications-its-2020-regulatory-sandbox-winter-cohort>.

Also, in Singapore, the Monetary Authority of Singapore (“MAS”) operates a FinTech Regulatory Sandbox⁴¹ that enables financial institutions and FinTech firms to experiment with innovative financial products or services in a live environment but within a well-defined space and duration. Depending on the experiment, MAS will provide appropriate regulatory support by relaxing specific legal and regulatory requirements (which the sandbox entity would otherwise be subject to) for the duration of the sandbox. The sandbox includes appropriate safeguards to contain the consequences of failure and maintain the overall safety and soundness of the financial system. Upon successful experimentation and on exiting the sandbox, the sandbox entity must fully comply with the relevant legal and regulatory requirements.

Experience suggests a few factors are important to the success of sandboxes: (i) limits need to be high enough so there are commercial incentives for firms to get involved; (ii) there needs to be a high degree of flexibility on regulations, with regulators empowered to take an agile approach; and (iii) there needs to be a clear roadmap to an end state in which firms can operate without limits subject to a stable set of rules.

So far, sandboxes have been jurisdiction specific in nature, but as Commissioner Peirce pointed out in her submission to the UK sandbox consultation, they could also be extended to firms outside the jurisdiction. This would maximise the potential benefits given the inherently cross-border and internationally fungible nature of crypto assets.

In short, regulatory sandboxes may be an exciting opportunity once Congress has spoken.

Ripple anticipates it will submit additional letters in the future responding to RFI questions not addressed here, including in response to questions 21-23 related to custody.

⁴¹ See

<https://www.mas.gov.sg/-/media/mas-media-library/development/regulatory-sandbox/mas-fintech-regulatory-sandbox-framework.pdf>.

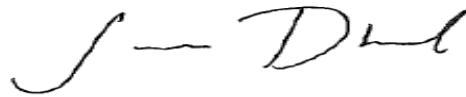
Conclusion

Ripple appreciates the opportunity to respond to the RFI and commends the Commission, and the Crypto Task Force, for its attention to these pressing issues. We remain available to answer any questions and look forward to continued constructive engagement with the Commission on these topics.

Respectfully submitted,



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