

SEC Issues Guidance on Tokenized Securities

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On January 28, the Securities and Exchange Commission's (SEC) Divisions of Corporation Finance, Investment Management, and Trading and Markets jointly released a joint statement on tokenized securities (Staff Statement).[1] The Staff Statement returns to a familiar theme in the digital asset space: changing how ownership is recorded does not change what is being sold. A tokenized security is still a security, and the federal securities laws apply in the same way as they do to traditional book-entry interests. Substance prevails over form.

This position aligns with prior SEC and market commentary on tokenization, including analysis of Nasdaq's tokenization rule proposal, which operates within the existing framework of the US securities laws and applies current rules to blockchain-based settlement rather than seeking bespoke exemptions.[2] The Staff Statement applies that basic principle at the level of tokenized products.

Issuer Tokenization and Market Infrastructure

For issuer-sponsored tokenization, the Staff Statement describes structures in which the issuer or its transfer agent uses a crypto network as the official record of ownership and transfers. In this model, the token transfers themselves effect changes on the issuer's master securityholder file. The Staff Statement explains that tokenized securities recorded on the ledger may represent the same class of shares as securities recorded through traditional book-entry systems, or a separate class with different rights and features, depending on how the issuer structures and discloses those interests.

The Staff Statement confirms that this change in format (that is, distributed ledger recording rather than traditional book-entry methods of recording) does not alter the core analysis under the federal securities laws: offerings and sales of tokenized securities must be registered under the Securities Act of 1933, as amended (Securities Act), or qualify for an exemption from registration. Likewise, reporting requirements, corporate governance obligations and, for registered funds and similar vehicles, requirements under the Investment Company Act of 1940, apply without differing treatment for tokenized formats of such fund shares.

In other words, the Staff Statement emphasizes that tokenization may change the plumbing but not the policy under federal securities laws.

Alternatively, an issuer (or its agent) may tokenize a security without the crypto network constituting, or forming any part of, the master securityholder file. In that structure, the master record of ownership remains with the issuer or transfer agent in traditional book-entry form, and the ledger reflects token positions that correspond to security entitlements or other interests recorded off-chain. The Staff Statement notes that, even in these cases, the tokenized interests will be analyzed under the same federal securities law framework, with attention to how on-chain and off-chain records are reconciled and how legal ownership and transfer are effected.

Third-Party Tokenizers and Security-Based Swaps

The Staff Statement also addresses circumstances in which third parties unaffiliated with an issuer of a security tokenize the unaffiliated issuer's security. In these cases, the token is issued by an intermediary rather than the underlying issuer, and the analysis turns on how the token relates to the referenced security or securities. The Staff Statement describes two general models for third-party tokenization.

1. Custodial Tokenized Securities

Under a custodial tokenization model, a third party may hold securities or security entitlements and format those entitlements as crypto assets recorded on a ledger. In that structure, the crypto asset is the representation of the entitlement, and transfers on the network are intended to correspond to changes in the entitlement holder's underlying position.

Alternatively, a third party may hold security entitlements and issue a token without the crypto network constituting, or forming any part of, the systems that it uses to record entitlement holders. In that case, the master entitlement records remain off-chain, and the token reflects a position that is separately tracked and reconciled against those records. In both variants, regulatory questions focus on how the intermediary maintains custody and segregation of client assets, and how control and beneficial interests are established and transferred between entitlement systems and any associated crypto assets.

2. Synthetic Tokenized Securities

Under a synthetic tokenization model, a third party may issue its own security in token form that references the economic performance of an underlying security or index but does not grant the holder ownership or voting rights in the referenced instrument. In that structure, the token holder has contractual exposure to the value or return of the underlying security, rather than an ownership interest in the underlying itself. The distinction here is that the third party is issuing ***its own security***,

tokenizing that newly issued security and not the security or index being referenced. The newly issued tokenized security provides economic exposure, just as a non-tokenized newly issued security would provide exposure to a reference security or index. The Staff Statement explains that a token providing economic exposure to a single security or a narrow-based index, without conveying current or future ownership rights in that security, may itself be a "security-based swap" under Section 3(a)(68) of the Securities Exchange Act of 1934. In that case, offers and sales to persons who are not "eligible contract participants" would require registration under the Securities Act, and transactions in the token would need to occur on a national securities exchange. For many synthetic token structures that are designed for or marketed to retail investors, this classification may be dispositive in determining whether the product can be offered in its current form.

Implications for Tokenized Product Design

The Staff Statement sets more clear boundaries for tokenization strategies intended for broad distribution and provides a clear framework of terminology and structures for reference and consistency. Structures that function as enhanced recordkeeping and custody mechanisms, such as Nasdaq-style tokenized settlement or DTC tokenized entitlements, can be built within the existing securities law architecture, subject to careful attention to Uniform Commercial Code issues, broker-dealer customer protection rules and market structure requirements.

By contrast, structures that strip out economic exposure and detach it from ownership and governance rights are more likely to be treated as security-based swaps and face the associated limitations on retail participation and trading venues. For sponsors and platforms, a central design question for tokenized products is therefore not only how to move an asset on-chain, but also how the structure will be characterized for regulatory purposes.

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1 SEC Staff Statement on Tokenized Securities, available at https://www.sec.gov/newsroom/speeches-statements/corp-fin-statement-tokenized-securities-012826?utm_medium=email&utm_source=govdelivery.

2 See, e.g., "Evaluating Nasdaq Tokenization Rule's Potential Impact," *Law360*, Nov. 19, 2025, available at https://katten.com/files/2231096_evaluating_nasdaq_tokenization_rules_potential_impact_-_law360.pdf; see also "SEC Clears Path for Tokenized Securities," Katten, Dec. 22, 2025, available at https://quickreads.ext.katten.com/post/102lyiq/sec-clears-path-for-tokenized-securities.

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