Substance Over Syntax: Three SEC Divisions Align on Tokenized Securities

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On January 28, 2026, the SEC Staff (the "Staff") from the Division of Corporation Finance, the Division of Investment Management, and the Division of Trading and Markets issued a joint statement on tokenized securities.[1] The statement builds upon and expands Commissioner Peirce's July 2025 remarks, "Enchanting, but Not Magical," emphasizing that innovations in tokenization should be approached as a process of regulated evolution. The statement provides the Staff's views on tokenized versions of securities that are issued as crypto-assets and recorded on a distributed ledger technology (DLT), such as a blockchain network. The statement emphasized five themes:

- **Substance over form**: Regulatory treatment turns on economic substance rather than technical form.

- **Tokenization does not override existing securities laws**: Tokenizing an existing security or issuing a new tokenized instrument does not change the core securities law analysis or relieve issuers, sponsors, or intermediaries of registration, exemption, or compliance obligations.

- **Structuring matters**: Choices in how a tokenized product is structured can change how securities laws apply. For example, if a tokenized instrument has materially different rights or economics from the reference asset, it may be treated as a separate class of the issuer's securities.

- **Where is the master securityholder file?** Do token movements either (a) directly update that record when the ledger is on-chain-integrated, or (b) serve as instructions to update an off-chain record when the ledger remains off-chain?

- **Third-party issuers**: If an unaffiliated third-party issues the tokenized product, it may be treated as a different type of security and may raise Investment Company Act and Securities Act considerations for the third-party issuer.

The Staff's statement comes at a moment when tokenization of traditional securities is rapidly accelerating, with major market participants actively exploring blockchain-based systems for trading and settlement. Several mainstream institutions have recently proposed ways to represent and transfer traditional securities using blockchain-based systems. The New York Stock Exchange and Nasdaq each have advanced tokenization proposals aimed at modernizing how securities might trade and settle, building upon the no-action relief provided to the Depository Trust & Clearing Corporation. Issuers and sponsors are exploring tokenized share formats within the fund space. Additionally, several proposals for trading tokenized securities have been submitted to the SEC. Project Open suggested a limited pilot in which companies would issue and trade registered shares as blockchain tokens, with investors using preapproved, whitelisted wallets and a transfer agent tracking ownership on-chain. GUARDD, Inc. proposed that the SEC approve standard disclosure, enabling regulated trading platforms to more easily support secondary trading in tokenized securities. Other industry participants, such as Figure, have proposed secondary market trading platforms designed for tokenized securities. More recently, F/m Investments recently filed a proposal with the SEC for tokenized ETF share classes. These developments reflect a broader industry push toward digital asset infrastructure, but regulatory clarity remains essential for widespread adoption.

Tokenization Types

In its statement, the Staff mentions two orthogonal lines of analysis that together determine treatment and risk:

1. Who tokenized the security? The issuer or a third party?

2. Where is the issuer's master securityholder file (or securities intermediary's record of entitlement holders) kept? On-chain or off-chain?

A practical framework:

- **Issuer + on-chain-integrated:** The token evidences that the token holder has been entered as a security holder in the on-chain master securityholder file. On-chain transfers directly update the master securityholder file. The tokenized and paper formats may be the same "class" if rights are substantially similar.

- **Issuer + off-chain-signaling:** The token is an instruction mechanism – recording of registered ownership remains on the off-chain master securityholder file, which is updated upon token transfer. However, substantive obligations are unchanged.

- **Third-party + on-chain-integrated entitlement:** The token evidences a security entitlement to underlying securities held by a third-party securities intermediary. Here, on-chain movements update the entitlement register.

- **Third-party + off-chain-signaling entitlement or synthetic:** Either (a) a custodial entitlement recorded off-chain with token transfers prompting updates, or (b) a "linked" note/stock or a security-based swap that provides synthetic exposure to a referenced security. Here, the classification turns on economic reality and swap definitional exclusions.

The Staff's focus on the different types of tokenization revolves around what the token represents and how token movement relates to the legally controlling ownership record, which affects compliance, disclosure, and investor-protection concerns.

Issuer-Sponsored Tokenized Securities

Issuer-sponsored tokenized securities can be implemented in two recordkeeping configurations that map to the framework above:

- **On-chain-integrated master file:** The issuer (or transfer agent) integrates DLT, so that on-chain transfers of the tokenized security contemporaneously update the master securityholder file. On-chain attributes (wallet address, quantity, issue date) are linked to off-chain identifiers (name, address).

- **Off-chain master file with on-chain signaling:** The issuer issues the security off-chain and a corresponding token that does not, itself, convey rights. In this instance, on-chain transfers of the token function as instructions for the issuer (or agent) to update the off-chain master file where records of legal ownership reside.

Across either configuration, the Staff reiterates that format does not change substance: offers and sales must be registered or exempt, "stock" remains an equity security, and, where rights and privileges are substantially similar, tokenized and traditional shares may be treated as the same "class" for purposes of the Securities Act of 1933 ("Securities Act") and the Securities Exchange Act of 1934 ("Exchange Act").

Third-Party Tokenization

Third-party tokenization occurs when an unaffiliated party, someone other than the issuer of the underlying security, creates a tokenized product referencing or representing that security. The Staff emphasized that these structures can change what an investor actually owns and can introduce risks that direct holders of the underlying security do not

face, including operational risk and insolvency exposure to the third party. The Staff's guidance identifies two main third-party models:

- First, in a "custodial tokenization," the third party holds the underlying security in custody and issues a token that represents a security entitlement or comparable indirect interest in the underlying security. The token holders typically are not recorded as registered owners on the issuer's master securityholder file. Instead, they hold an entitlement through the intermediary arrangement. Recordkeeping may be on-chain-integrated (token movements directly update the entitlement register) or off-chain with on-chain signaling (token movements prompt updates to the off-chain entitlement records). In all cases, the entitlement or other indirect interest, and not the token *per se*, is the legally controlling interest, and holders face custody, operational, and intermediary insolvency risks.

- Second, in a "synthetic tokenization," a third party issues its own instrument in token form. The value is tied to the performance of an underlying reference security. Even if marketed as a "tokenized stock," this is not a tokenized version of the issuer's shares. Instead, it is a new security or other instrument issued by the third party with its own offering analysis and issuer risk profile.[2] This type of issuance is still required to comply with federal securities laws, and there is no registration exemption available based on any non-association with the issuer of the underlying asset.

Third-Party Tokenization as Security-Based Swaps

The statement highlights that some third-party synthetic tokenized products may be security-based swaps, which can materially change the regulatory analysis. As defined in the Exchange Act, a security-based swap is an agreement or transaction that meets the definition of "swap" under the Commodity Exchange Act (*i.e.*, provides for payments or deliveries linked to the value of an underlying reference asset or the realization of a financial contingency) and is based on a single security (other than a US Treasury security or other exempted securities) or loan, a narrow-based security index, or the occurrence, nonoccurrence, or extent of the occurrence of an event relating to a single issuer of a security, or the issuers of securities in a narrow-based security index, if such event directly affects the financial statements, financial condition, or financial obligations of the issuer. There are several statutory exclusions from the "swap" definition that may be relevant to the analysis, such as those for: a note, bond, or evidence of indebtedness that is a security, as defined in Section 2(a)(1) of the Securities Act; or an agreement that provides for the purchase and sale of a security on a fixed basis that is subject to Securities Act and the Exchange Act.

The regulatory requirements for security-based swaps, which include reporting, registration requirements for intermediaries, business conduct standards for dealers, margin requirements, and restrictions on eligible counterparties, would generally not be compatible with market expectations regarding the secondary trading of securities.

Conclusion

Tokenization reflects a gradual evolution within the existing regulatory framework, rather than a sweeping overhaul of regulation. Although the SEC's latest statement on tokenized securities does not break new ground in terms of policy, its real impact comes from the unified and forward-looking stance adopted by three major divisions: Corporation Finance, Investment Management, and Trading & Markets. For the first time, the SEC Staff is not only clarifying its expectations but also actively inviting industry participants to reach out for guidance, providing direct contacts and expressing a willingness to discuss specific questions. This represents a departure from the SEC's previous tendency to communicate primarily through enforcement actions or broad cautionary statements, which often left market participants uncertain about how to proceed. The joint publication by multiple SEC divisions signals that tokenization is now recognized as a topic that affects the entire securities landscape. This coordinated approach should help streamline interactions with the SEC, making it easier for firms to seek approval or guidance and reducing regulatory uncertainty.

This guidance is part of a larger effort within the SEC to bring greater transparency and modernization to crypto asset regulation, sometimes referred to as "Project Crypto." The Commission has indicated its openness to innovation, including the possibility of exemptions and pilot programs that would allow blockchain-based financial products to be

tested under defined conditions. By offering a detailed framework for understanding different tokenization models, the staff is laying the foundation for future regulatory developments, ensuring that any new rules or relief measures are based on a clear grasp of the products and the investor protections required.

The timing of this statement is noteworthy, as it comes amid growing interest in tokenizing real-world assets, with financial institutions and technology firms experimenting with blockchain-based versions of government bonds, real estate, and equities. For those in the industry, the takeaway is clear: tokenization is not a shortcut around existing regulations, but rather a new technological method that must fit within the current legal framework. While the statement gives firms a clearer path to align tokenized products with established rules, a key unresolved issue is how to enable secondary market trading within the framework of the federal securities laws. As programs evolve beyond pilot phases or seek to expand functionality, additional SEC engagement, rulemaking, or exemptive relief may be required.

In essence, while the Staff's statement may not be dramatic, it marks a meaningful advance. By providing a clear and well-defined taxonomy of tokenization methods, the Staff's statement should help alleviate some of the obscurity and obfuscation present in the public dialogue about tokenization, thus facilitating more focused efforts on identifying and resolving the regulatory issues raised by tokenization.

For More Information

We are available at any time to answer questions, discuss scenarios, and provide guidance. If you would like further information concerning the matters discussed in this article, please contact a member of the Investment Management group or visit us online at chapman.com.

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1   Here, tokenization is a method of representing a traditional security using a token on a blockchain, and then using that token and the associated DLT to facilitate transfer, settlement, and record-keeping.

2   Thus, this model differs from the other models discussed, for which the Staff statement assumes that the crypto asset created to represent the security is itself not a separate security.