ripple

Chairman Tim Scott
Senate Committee on Banking, Housing, and Urban Affairs
United States Senate
Dirksen Senate Office Building
Washington DC, 20510

August 5, 2025

Dear Chairman Scott:

Ripple welcomes the opportunity to respond to the Committee's Request for Information ("RFI") regarding the digital asset market structure and supports the Committee's effort to establish a clear, consistent regulatory framework that fosters responsible innovation, protects consumers, and provides regulatory clarity for all stakeholders. Thank you for your consideration.

Regulatory Clarity and Tailoring

1. **The proposed legislation aims to provide clarity on how to allocate jurisdiction over digital assets between the CFTC and the SEC. Does the legislation strike the right balance?**

The draft creates more ambiguity than clarity for the industry in its attempt to delineate SEC jurisdiction over digital assets. It brings most tokens and projects into an SEC-administered gatekeeping and disclosure regime, even when sales or project activity fall outside the SEC's traditional scope. Additional revisions are required to refine jurisdictional boundaries and achieve a balanced oversight framework.

   a. **Should legislation rely on the concept of ancillary assets? If so, is the definition in proposed Section 4B(a) of the Securities Act appropriate? Does it exclude the right categories of assets?**

The current definition of "ancillary asset" risks significant regulatory overreach because it effectively presumes that any token once offered in connection with an investment contract places future transactions of that token by the "originator" under SEC jurisdiction—indefinitely. There is no objective statutory endpoint, leaving market participants dependent on discretionary SEC action to terminate oversight. While we may hope that the current Commission will act in good faith, changes in administration can bring shifts in enforcement priorities and interpretations. There is no assurance that different SEC leadership will faithfully apply the law or exercise discretion in a consistent or principled manner.

This approach could subject long-established, widely traded tokens operating on open and permissionless networks—including ETH, SOL, and XRP—to perpetual SEC oversight, even when current or future transactions bear none of the hallmarks of a securities offering. If the test is truly about economic realities, then the reality is this: some well-established tokens are not securities, and trading them are not securities transactions.

Moreover, requiring all ancillary assets to pass through an SEC-administered test to determine their status undermines the foundational premise that most digital assets are properly viewed as commodities—or at a minimum, not presumptively securities. A more balanced framework would reflect market realities and draw clear jurisdictional boundaries based on objectively applied criteria, rather than defaulting to ongoing SEC authority over mature tokens and networks.

Even if a token was once sold as part of an investment contract by its "originator," that fact alone should not confer perpetual SEC jurisdiction or gatekeeping authority over the token itself, or over all future transactions involving it. SEC authority should attach only to an investment contract—not to future transactions in the underlying asset—and certainly not to transactions that lack any of the characteristics of an investment contract. Securities regulation must be tied to the transaction at issue—not to historical facts that no longer inform, and have no relevance to, whether that transaction involves a security transaction.

Past conduct may warrant scrutiny if it violated the law at the time and enforcement is no longer barred. However, the approach taken by the draft provides a backdoor to assert jurisdiction over present-day transactions based on conduct that is either irrelevant to the transaction at issue or barred from enforcement by fundamental legal protections—including res judicata, statutes of limitations, and statutes of repose.

To avoid regulatory fragmentation and market uncertainty, any legislative framework should align with the Clarity Act's approach to digital asset classification and acknowledge the practical reality of mature networks that are not controlled by any person or group of persons under common control. To be clear nothing prevents the SEC from investigating or bringing enforcement actions where facts support a new investment contract offering. But the law should not create a presumption of continuing jurisdiction merely because a token was once sold as part of one.

b. Should legislation rely on existing concepts, such as from *SEC v. W.J. Howey Co.* (*Howey*), when defining which digital assets are securities?

Under the previous administration the SEC led a regulatory crackdown on the digital asset industry through enforcement actions. Their weapon of choice was the *Howey* test—originally a flexible framework, *Howey* was stretched beyond recognition. In the absence of clear, bright-line rules defining the SEC's jurisdiction over digital assets, the test became a tool of limitless discretion. The result: an industry left vulnerable to unchecked and punitive enforcement, subject to the shifting regulatory views.

Good regulation, consistently applied, should guide behavior and produce predictable outcomes. If Congress intends to codify the *Howey* test, it should do so in a way that prevents misuse or manipulation by the SEC. Congress—not regulators—should set objective boundaries for how and when Howey applies to digital assets, to ensure consistent and accountable application.

Codifying *Howey* in vague or open-ended terms would only deepen uncertainty, harming consumers and markets alike. Conversely, a clear, narrowly tailored application of *Howey* would provide long-overdue legal certainty for industry participants, strengthen market integrity, and enhance investor protection.

c. Should legislation mandate, as under proposed discussion draft Section 105, that the SEC undertake a rulemaking to clarify the definition of "investment contract" as articulated in Howey? If so, how?

A congressional mandate requiring the SEC to issue formal rules on the meaning of "investment contract" would provide much-needed predictability—*but only if* that rulemaking is guided by clear and objective statutory criteria. This would prevent regulators from deviating from congressional intent or imposing subjective interpretations, as occurred under prior leadership. By contrast, vague and untested concepts like "entrepreneurial or managerial efforts that primarily determined the value" of an asset – which is a threshold criteria for certification in the draft – are ambiguous on their face and risk creating even greater uncertainty. Indeed, the SEC's prior disingenuous, and ultimately unworkable, attempt to provide clarity based on *Howey* referred to sufficient levels of "decentralization"; there too, the SEC's pronouncement created even more confusion, and the test was ultimately abandoned by the SEC in the courts. Any resulting rule, whether premised on *Howey* or not, should offer clarity not only to token issuers, but regulators and to all market participants—exchanges, brokers, dealers, and others—who could otherwise find themselves unintentionally swept into another securities regulation by enforcement regime. Clarity—not confusion—is what protects consumers and unlocks innovation.

A token or arrangement that does not confer enforceable rights to future income, profits, or business assets should not be classified as a security under Section 2(a)(1) of the Securities Act or Section 3(a)(10) of the Exchange Act. Traditional securities—such as stocks, notes, and bonds—are defined by these very rights. The catch-all category of "investment contract," however, should be read within that same context as it was all through legal history before the prior administration sought to stretch Howey beyond recognition.

Some applaud, on the one hand, that *Howey*'s emphasis on "economic realities" can capture arrangements that lack the objective indicia of an investment contract—but then, on the other hand, caution that *Howey* was too easily weaponized by the prior administration. The solution is not to revert to that administration's transformation of *Howey* into a Rorschach-style "duck test"[1] that left the industry, markets, and consumers confused and reeling, but rather to return to legal first principles grounded in the common law that informed the statutory definition of an investment contract. The draft's Section 105 seeks to do just that.

Consistent with *Howey*, and with the Blue Sky laws that informed the Securities Act and the Exchange Act, an "investment contract" requires an enforceable agreement: one party must invest capital with an expectation of profit, and the other must make an explicit commitment to generate that profit through future efforts. Until the prior administration distorted the

[1] Quoting American poet James Whitcomb Riley, former SEC Chair Gensler and his co-authors explained that "When I see a bird that walks like a duck and swims like a duck and quacks like a duck, I call that bird a duck.' We think this 'duck test' can apply to the broad definition of an investment." Gensler et al., "The Impact of Blockchain Technology on Finance: A Catalyst for Change," 2018, at pp. 35-36.

boundaries of *Howey*, every court finding of an investment contract involved a clear promise by one party to undertake such efforts.

Applying the Securities Act's registration requirements to a token sale absent these characteristics is both impractical and legally unsupported. A registration statement must include detailed information about the "issuer"—defined as the party that "issues or proposes to issue [the] security." Crucially, sales by anyone other than an issuer, underwriter, or dealer are exempt from registration. In the context of an investment contract, the "issuer" is not merely the creator of the token—it is the party making enforceable commitments to perform future efforts that drive the purchaser's expectation of profit.

In contrast, a token sale that lacks enforceable promises or specific forward-looking commitments does not involve a relevant "issuer" and is indistinguishable from any other asset sale where buyers may speculate on future value. Speculation alone is not investment. Shared hopes for appreciation do not constitute a 'common enterprise.' Consider the sale of artwork: a buyer may believe its value will rise, but no one—not even the SEC—would claim that constitutes an investment contract, or that the artist is an "issuer." Any delegated rulemaking authority should make this distinction explicit to avoid conflating market speculation with regulated investment activity.

f. Should legislation clarify the status of certain technology functions that are inherent to the operation of a distributed ledger network? This could include technology functions such as running consensus algorithms, executing smart contracts, or engaging in activities like staking and mining.

Legislation should make clear that protocol-level operations—such as mining, staking, running consensus algorithms, and executing smart contracts—do not, by themselves, trigger securities law obligations. To avoid misapplication of the *Howey* test, it should be explicitly stated that "entrepreneurial or managerial efforts" do not include core network functions or routine administrative services. This distinction is especially important when determining whether disclosure obligations have ended under Section 4B(c)(3) of the Securities Act of 1933

g. Should existing tokens be grandfathered into a new token classification framework created by Congress? If so, how?

Tokens that have been freely and widely traded for a sustained period—such as five or more years—on permissionless, open networks – should be presumptively excluded from securities regulation. Once a robust, liquid market has formed, it should not be disrupted by retroactive or ongoing government intervention. To prevent such disruption, Congress should establish a grandfathering exemption based on market maturity. This would provide legal certainty, preserve market stability, and ensure regulatory authority remains tethered to clear statutory boundaries.

Investor Protection

5d. When should ongoing disclosure obligations discontinue? For example, proposed Section 4B of the Securities Act sets forth a mechanism by which disclosure obligations could cease. Does that subsection set forth the appropriate test, or should another test or mechanism be considered?

The proposed language to create a standard for certification to terminate disclosures in new section 4B(d) of the Securities Act of 1933 raises more questions than answers for both the SEC and industry participants. Many independent market factors contribute to the trading value of a digital asset. It remains unclear what the SEC may consider more than a "nominal level of entrepreneurial or managerial efforts that primarily determined the value of the related ancillary asset"-- indeed, it is not difficult to imagine reasonable minds disagreeing whether that standard is met for *any* asset. That is a poor foundation for legislation intended to provide clarity to an industry that urgently needs it. The draft risks creating the same regulation-by-enforcement regime that defined the previous administration's approach to the crypto industry.

A certification pathway to terminate SEC disclosures also presumes that such disclosures were properly required in the first place. The presumption should be the opposite. For "grandfathered" tokens, Congress should establish a separate standard—grounded in objective, statutory criteria that the SEC cannot expand. This could mirror the "deemed mature" test in the Clarity Act, providing clear, predictable rules for long-standing, widely traded tokens.

6. **Proposed Section 4B(h) of the Securities Act would provide the SEC with authority to establish "limitations on the disposition of certain ancillary assets . . ." What, if any, restrictions on the disposition of ancillary assets by related persons or in affiliate transactions should Congress consider? To what extent are conflicts disclosures sufficient?**

Congress should not delegate open-ended authority to the SEC to redefine key terms such as "related party" or "common control" after enactment. Any restrictions on dispositions by related persons must be clearly defined, narrowly tailored, and grounded in statute. While protections are needed to prevent abuse by those with privileged access to an asset's development, the mere status of being a current or former employee, advisor, or consultant should not, by itself, trigger resale restrictions or disclosure obligations—especially where that association relates to conduct long in the past.

Preemption

35. **Should federal legislation preempt certain state laws, and if so, how?**

Federal legislation should preempt certain state laws to establish national consistency, reduce regulatory fragmentation, and support innovation. Preemption is especially critical in areas like market structure, stablecoin issuance, custody standards, and token classification—areas where uniform federal oversight is essential. However, federal legislation should preserve state authority in traditional areas such as consumer protection and fraud enforcement.

Sincerely,

Stu Alderoty
Chief Legal Officer
Ripple